Circuit Court for Anne Arundel County
Case No. C-02-CV-20-001676

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1070

September Term, 2022

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GREGORY ALEXANDER WHITE, II

v.

JACQUELINE NAOMI JAMES

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Kehoe, C.,**
Leahy,
Zic,
JJ.

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Opinion by Kehoe, J.

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Filed: November 7, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

** Kehoe, Christopher B., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Gregory Alexander White, II appeals from a judgment from the Circuit Court for Anne Arundel County, the Honorable Philip T. Caroom, presiding, in which a jury awarded Jacqueline Naomi James a sum of $100,000 in damages as result of an automobile accident. Mr. White raises three issues:

> I. Was the trial court legally correct in finding the Appellant's fleeing the scene relevant to the issue of Appellee's damages where Appellant stipulated to his responsibility in causing the subject accident and the only issue before the jury was Appellee's damages?
>
> II. Did the trial court abuse its discretion in finding that the probative value of Appellant's fleeing the scene was not substantially outweighed by the danger of unfair prejudice pursuant to Md. Rule 5-403?
>
> III. Was the improper mention of insurance prejudicial to the jury's assessment of Appellee's damages?

We will affirm the court's judgment.

## BACKGROUND

At approximately 3:00 a.m. on August 25, 2019, Ms. James was driving northbound on the Baltimore Washington Parkway. Mr. White was also traveling northbound on the Parkway and his vehicle collided with Ms. James's vehicle causing her to lose control of her vehicle which then went into a ditch. After the collision, Mr. White pulled over to the side of the road, got out of his vehicle, got back into his vehicle and drove away. Ms. James was left alone for approximately thirty minutes before emergency services arrived to assist her.

Ms. James filed a civil action against Mr. White seeking compensation for pain and suffering and damage to her vehicle. Mr. White filed a timely answer, in which he

admitted that he was responsible for causing the accident. The only issue at trial was damages.

Fleeing the Scene of the Accident

Prior to trial, both parties filed motions in limine. Ms. James requested that the court prohibit Mr. White from introducing medical bills into evidence or suggesting in any way what the total medical bills were in the case. Ms. James asserted that, because she was not claiming medical expenses as an item of damages, evidence of her medical expenses was irrelevant. The court granted the motion. For his part, Mr. White requested that the court "prohibit the introduction of [Mr. White's] alleged flight from the scene of the accident, as well as the issuance and disposition of any and all traffic citations issued to him." Mr. White argued that allowing this evidence would be unfairly prejudicial. The court granted Mr. White's motion in part and denied it in part. The court prohibited the introduction of any evidence regarding traffic citations. However, the court left open the possibility that evidence of Mr. White's leaving the scene of the accident would be admitted. The court explained:

> I think there is some relevance that is not outweighed by the issue of the impact that it had in terms of distress on the plaintiff that it's proffered. If it turns out to be no evidence when the testimony comes in of such stress, then you can renew that motion and the Court will consider instructing on it in due course.

At trial, the fact that Mr. White fled the scene of the accident was raised by Ms. James's counsel on five occasions.

(1)

In Ms. James's opening statement, her counsel told the jury that, after the collision,

> she sees the vehicle that struck her is a hundred yards up the roadway and she sees someone get out of that vehicle. He gets back in the vehicle and leaves the scene of [the] accident and never come down and identify themselves to her, offer her any assistance, or anything like that.

There was no objection to this statement.

(2)

During direct examination of Ms. James, her lawyer elicited the following testimony:

> Q: [W]hat happened immediately after the accident? Were you able to get out of your vehicle?
>
> A: I was so shooken [sic], adrenalin was running, I actually stayed in my vehicle for maybe a second. I got out. I tried to look for my phone, I got out. And I could see Mr. White. He stopped about maybe a hundred feet, got out of his vehicle, looked at his damages and got back in his vehicle.
>
> * * *
>
> Q: Let me stop you right there. Did Mr. White ever come over to your vehicle?
>
> A: No.
>
> Q: Did he identify himself to you or anything?
>
> A: No.
>
> Q: And did you see him leave the scene of the accident?
>
> A: Yes.

There was no objection to counsel's questions or to Ms. James's responses.

(3)

Later in her direct examination, Ms. James testified that approximately thirty minutes passed before emergency responders arrived at the scene. The following exchanges occurred:

> Q: Okay. And during that period of time, did you ever see Mr. White again?
>
> A. No.
>
> Q: Okay. How did you feel during those 30 minutes when you were by the side of the road by yourself?
>
> A: Well, of course I was scared, it was dark. All I could think about is maybe that somebody will come out of the woods and maybe kill me. I don't know who was out there. I felt angry that – I mean, at an accident scene you're supposed to stop –
>
> [Mr. White's counsel]: Objection, Your Honor, sorry.
>
> THE COURT: So I'll sustain the objection to the legal opinion. Maybe you can restate the question.

Mr. White's counsel did not ask the court for any other relief.

(4)

In his closing and rebuttal arguments, counsel for Ms. James alluded to the fact that Mr. White had left the scene of the accident on three occasions.

First, counsel told the jury: "[Mr. White] left the scene. He's not here now. What does that tell you[?]" Defense counsel objected. The court sustained the objection and instructed the jury as follows:

> [I] ask the jury to disregard the culpability. There's no question [that] the parties have agreed that the defendant is responsible for any appropriate compensation.

Second, Ms. James's counsel stated:

> Further, she had emotional issues after the accident. She was very upset when Mr. White left the scene of the accident, but further she found that she had difficulty driving after that, particularly at night that, you know, it was traumatic for her. It took like her [sic] six months where she said little by little she finally got back to driving. She's still not happy about driving, particularly at night, but she has been able to do so.

Mr. White's counsel did not object.

Ms. James's counsel broached the issue for the final time during his rebuttal argument:

> Why isn't . . . Mr. White here who caused this accident? What about this Dr. Hambly[1] that he's relying on so much. Where's he? I didn't get to cross-examine him. They didn't bring anything in.
>
> * * *
>
> So, yes, why aren't they are, and where is Dr. Hambly? How about this elusive Mr. White, where is he at?

Mr. White's counsel objected and "move[d] to strike." The court instructed the jury "to disregard the argument as to Mr. White since the parties have stipulated that he is not contesting liability." Mr. White's counsel did not ask for any additional relief.

[1] Mr. White's Pre-Trial Statement identified "Kevin Hanley, M.D., Orthopedic" as an expert witness. He did not testify but his report assessing Ms. James's injuries was introduced into evidence.

References to Mr. White's Liability Insurance

During the trial, the fact that Mr. White had liability insurance was presented to the jury on two occasions.

First, at the beginning of her direct testimony, Ms. James was asked:

> Q. Ms. James, . . . . Do you recall going to see Dr. Hambly?
>
> A. Yes.
>
> Q. And who was it that requested that you to go see Dr. Hambly?
>
> A. I believe it was Mr. White's insurance company.

Mr. White's counsel did not object.

Later, Ms. James was asked:

> Ma'am, what is it that the doctor – – what is it that the doctor that the defense insurance company sent you to, what did he – –
>
> [Mr. White's counsel]: Objection, can we approach the bench?

After the ensuing bench conference, the trial court instructed the jury "to disregard the last question and, [Ms. James's counsel], you can restate the question."

After the trial concluded, the jury returned a verdict in favor of Ms. James in the amount of $100,000.

Mr. White filed a motion for a new trial arguing that the trial court (1) erred in not granting Mr. White's motion in limine, and (2) erred by admitting evidence of Mr. White fleeing the scene because its introduction "doomed Mr. White to an unfavorable and unfair verdict." The trial court denied the motion. This appeal followed.

THE STANDARDS OF REVIEW

The decision whether to allow or preclude the admission of relevant evidence is generally committed to the sound discretion of the trial court. *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619–20 (2011). We will only find an abuse of such discretion "where no reasonable person would share the view taken by the trial judge." *Consol. Waste Indus. v. Standard Equip. Co*., 421 Md. 210, 219 (2011) (quoting *Brown v. Daniel Realty Co*., 409 Md. 565, 601 (2009)).

We review for clear error "the trial judge's factual finding that an item of evidence does or does not have 'probative value,'" but we review *de novo* "the trial judge's conclusion of law that the evidence at issue is or is not 'of consequence to the determination of the action.'" *Gasper*, 418 Md. at 620 (quoting *Parker v. State*, 408 Md. 428, 437 (2009)).

ANALYSIS

Mr. White's first two contentions are variations on the same theme, namely that the evidence that he fled from the scene of the accident should not have been admitted. Mr. White argues that this evidence was legally irrelevant to Ms. James's emotional distress, and it prejudiced him. Furthermore, Mr. White argues that, even if this evidence was

legally relevant, it nonetheless should have been excluded pursuant to Md. Rule 5-403.[2] We will address these issues together.

Mr. White also argues that the improper mention of insurance was unduly prejudicial and led to the jury granting an unfair award for damages. Because of these errors, Mr. White asks this Court to grant a new trial.

We find Mr. White's arguments unpersuasive and will affirm the judgment.

A. Mr. White's Post-Accident Conduct

We accept for purposes of analysis that the trial court should have granted Mr. White's motion in limine to prohibit the introduction of evidence of Mr. White fleeing the scene of the accident. Maryland caselaw is clear that "post-accident conduct" is inadmissible "in a negligence action brought to recover damages for physical injuries and other legally cognizable elements of damage caused by the accident." *Alban v. Fiels*, 210 Md. App. 1, 15–16 (2013); *see also Hendrix v. Burns*, 205 Md. App. 1, 37 (2012) (commenting that a tortfeasor's conduct before or after an accident is not admissible to prove negligence or damages). Evidence of Mr. White's post-accident conduct should not

[2] Rule 5-403 states:

> **Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time**
>
> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

have been admitted to show that Ms. James was distressed because she was abandoned on the side of the road after the collision.

However, the problem confronting Mr. White as to this issue is preservation, not relevancy. As we have explained, the topic of Mr. White fleeing the scene was presented to the jury on five separate occasions. Of those five occasions, Mr. White objected three times. The court sustained each objection and instructed the jury to disregard the question. At the trial, Mr. White did not suggest that the limiting instructions were insufficient nor did he ask for any additional relief. The trial court did not err by not granting Mr. White relief that he did not ask for.

But on two occasions, Mr. White did not object to testimony regarding his post-accident conduct. It is well-established that, absent a contemporaneous objection, a contention as to the admissibility of evidence is not preserved for appellate review. Md. Rule 2-517 states, in pertinent part:

> **Method of making objections**
> (a) **Objections to evidence**. — An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.

*See also Burks v. Allen*, 238 Md. App. 418, 474 (2018) ("During the entire line of questioning . . . which spans thirteen pages of the trial transcript, counsel for Dr. Burks did not lodge any objections directed at the substance of the questions and never argued to the court that, in his view, the subject of the questions was irrelevant and prejudicial.

Having failed to object to the challenged testimony, Dr. Burks has waived this contention of error. *See* Md. Rule 2-517(a)[.]").

To avoid this result, Mr. White argues that the objection raised in his motion in limine hearing prior to the trial carried over to at least the opening statements, and therefore the issue was not waived. We disagree. In general, "when a motion in limine to exclude evidence is denied, the issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg v. State*, 355 Md. 528, 539 (1999); *see also* Joseph F. Murphy, Jr., MARYLAND EVIDENCE HANDBOOK, § 107[A], at 45 (4th ed., 2010) ("If you move in limine for exclusion of certain evidence, and the court either denies your request or declines to rule on it, you must object when this evidence is formally offered at trial.").

B. Evidence of Insurance

We now turn to the issue of insurance. Mr. White argues that Ms. James and her counsel improperly mentioned insurance during trial which prejudiced the jury's consideration of damages. As we have explained, this issue arose twice during the trial. On the first occasion, Mr. White did not object. His contention that this was prejudicial is not preserved for appellate review. *See* Md. Rule 2-517; *Burks*, 238 Md. App. at 474.

On the second occasion, Mr. White did object and the court gave a curative instruction to the jury. Mr. White asked for no further relief.

Mr. White's contention that the trial court erred by admitting evidence as to his insurance is not preserved for appellate review. *Patriot Constr., LLC v. VK Elec. Servs., LLC*, 257 Md. App. 245, 268 (2023) ("A claim of error in the admission of evidence is waived if, at another point during the trial, evidence on the same point is admitted without objection." (cleaned up)); *see also DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.").

For these reasons, we affirm the judgment of the circuit court.

**THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.**