Circuit Court for Carroll County
Case No. C-06-CR-22-000157

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2149

September Term, 2022

BRANDON LEON SHIELDS

v.

STATE OF MARYLAND

Leahy,
Zic,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 13, 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).

A jury in the Circuit Court for Carroll County found the appellant, Brandon Leon Shields, guilty of possession with the intent to distribute cocaine, possession of cocaine, and possession of fentanyl. The court sentenced Appellant to fifteen years of incarceration for possession with the intent to distribute cocaine and one year, concurrent, for possession of fentanyl.[1]

Appellant presents one several-faceted question for our review, which we shall parse in our discussion. For clarity, we rephrase his question as follows: [2]

> Did the trial court err or abuse its discretion in admitting four aspects of Appellant's recorded statement to police investigators?

For the reasons to follow, we shall affirm the judgments of the circuit court.

BACKGROUND

Appellant was the target of an investigation conducted by the Carroll County Drug and Firearms Trafficking Task Force. Ultimately, police obtained and executed a search warrant at an apartment where Appellant was staying and from which he had been seen leaving. Appellant was searched and police found in his pocket "some cash, as well as a short red straw[,]" and "[i]nside that straw was like a residue of a white powder."

[1] For sentencing purposes, the possession of cocaine count merged into the conviction for possession of cocaine with the intent to distribute.

[2] Appellant phrased his issue as follows:

> Did the trial court err or abuse[] its discretion in allowing evidence of other instances of Appellant selling drugs, evidence that Appellant did not want to cooperate with the State, and evidence of what Appellant would hypothetically do with a large quantity of drugs?

Appellant was taken into custody and transported to the local jail in a patrol car. After Appellant exited the patrol car, police recovered two plastic bags containing suspected cocaine and fentanyl from the seat where Appellant had been sitting. Appellant stated that the bags contained crack cocaine and fentanyl.

A crime scene technician seized evidence from the apartment where the search warrant had been executed, including plastic bags, glass smoking devices, and a piece of mail. From the kitchen, police recovered "digital scales, empty capsules, [and] empty small plastic bags like we had been seeing around the house." The crime scene technician also seized the items taken from Appellant: his wallet, $620 in cash, and "a packet of Suboxone."

After he was advised of his rights under *Miranda*, Shields made a statement to police that was recorded by an officer's body-worn camera. A forensic scientist analyzed the suspected controlled dangerous substances (CDS) by testing three specimens from eleven bags with a net weight of 17.562 grams that tested positive for cocaine. The analyst tested a capsule that weighed .078 grams and tested positive for para-fluorofentanyl and fentanyl.

At trial, Detective Christopher Youman, admitted as an expert in CDS detection, observation, packaging, manufacturing, and street level distribution, opined that the physical evidence, together with Appellant's recorded statement to police, indicated that Appellant possessed cocaine with the intent to distribute. Detective Youman, however, opined that the quantity of fentanyl recovered was indicative of Appellant's personal use.

Additional facts will be included as they become relevant to the issues.

DISCUSSION

Appellant argues that the court erred in denying his motion *in limine* to exclude four portions of his recorded interview with police. He contends that two portions of his statement were inadmissible other crimes evidence under Md. Rule 5-404(b) and that two additional portions of his statement were inadmissible under Md. Rule 5-403 as unduly prejudicial. The State responds that "these evidentiary complaints lack merit because the statements were relevant to the issue of intent, and their probative value was not substantially outweighed by the danger of unfair prejudice."

A. Appellant's motion *in limine* to exclude two statements under Md. Rule 5-404(b).

First, Appellant moved to redact the following statement given to Deputy Darren Metzler and Detective Youman:

DEP. METZLER:	So what you're saying is that if you get out from this case, this is your life and you're going to do it again?
[APPELLANT]:	Yes. Yeah. Just because I -- like, it's money, like --
DEP. METZLER:	Because it's all you know?
[APPELLANT]:	-- I -- money, that's only -- that's all I know. I don't know nothing else. That's -- none of that shit. Then I got -- that's all I know.
DEP. METZLER:	How much -- how much can you make in a day?
[APPELLANT]:	Generally, most out here I make, like, five in a day.
DEP. METZLER:	In a day?

[APPELLANT]: Yeah.

DET. YOUMAN: Five hundred or five grand?

[APPELLANT]: Five grand.

DEP. METZLER: How much you got to sell for that?

[APPELLANT]: (Inaudible, 7:55 elapsed time)

DEP. METZLER: What do you do, like 50 rocks?

[APPELLANT]: I don't know -- I don't know where they at -- it's your town, you all know your town. They all -- these people like their shit, and they don't want to go in the City, and if it's right there --

Defense counsel argued that that portion of the interview amounted to inadmissible other-crimes evidence because it included "prior bad acts unrelated to the offense charged here."

Second, Appellant's trial counsel moved to redact the following statement made by Appellant during his interview:

[APPELLANT]: I ain't teaching nothing, there's no way you're locking me up, there's still five more motherfuckers like me on the streets.

DET. YOUMAN: Uh-huh. That's right.

DEP. METZLER: Yup.

[APPELLANT]: Doing all they moving. The only thing that I know I wasn't put out there, it's that fentanyl shit.

The trial court ruled that both statements were admissible as other-crimes evidence under Md. Rule 5-404(b). The court further ruled that "a juror, a reasonable person . . .

would understand [Appellant] to be talking about what is happening at this point in time, at the time that the statements were made. Or relatively contemporaneous with that."

Md. Rule 5-404(b) provides:

> Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

As a preliminary matter, we conclude that Appellant's statements did not amount to evidence of *other* bad acts within the meaning of Md. Rule 5-404(b).

In *Odum v. State*, 412 Md. 593 (2010), the Supreme Court of Maryland explained that "the strictures of 'other crimes' evidence law, now embodied in Rule 5-404(b), do not apply to evidence of crimes (or other bad acts or wrongs) that arise during the same transaction and are intrinsic to the charged crime or crimes." *Id*. at 611. Indeed, "[a]cts that are part of the alleged crime itself (such as acts in furtherance of an alleged conspiracy), or put in its immediate context, are not 'other acts' and thus do not have to comply with Md. Rule 5-404(b)." *Id*. (quoting Prof. Lynn McLain, *Maryland Evidence, State and Federal* § 404.5 (2009 Supp.)). The Court defined "intrinsic" to include, "at a minimum, other crimes that are so connected or blended in point of time or circumstances with the crime or crimes charged that they form a single transaction, and the crime or crimes charged cannot be fully shown or explained without evidence of the other crimes." *Id*.

Here, Appellant's statements about his income from drug distribution and the type of substances that he "put out there" were intrinsic to the charged offense: possession with

the intent to distribute cocaine. *Id*. Moreover, the context of Appellant's statement about his income from drug distribution shows that Appellant was discussing the same cocaine at issue during trial, which formed the basis of the possession with the intent to distribute charge:

DET. YOUMAN:	So how much -- how much was there?
[APPELLANT]:	(Inaudible, 6:26 elapsed time) quarter.
DET. YOUMAN:	Quarter ounce?
[APPELLANT]:	Yeah.
DET. YOUMAN:	I haven't seen it yet, so I'm asking --
[APPELLANT]:	It was seven grams, about seven grams.
DEP. METZLER:	Seven grams?
[APPELLANT]:	Seven, yeah.
DEP. METZLER:	I would guess it'd probably be at least double that.
[APPELLANT]:	Double that?
DEP. METZLER:	It's a lot more than seven grams that was in my car.
DET. YOUMAN:	It doesn't matter, we're going to have to weigh it anyway.
DEP. METZLER:	I would say -- we're going to weigh it and it will be on your charging documents, but I would say at minimum, at minimum, it's a half ounce.
[APPELLANT]:	I don't -- I don't --

DEP. METZLER: So what you're saying is that if you get out from this case, this is your life and you're going to do it again?

That context demonstrates that Appellant was discussing his income from distribution of the cocaine that was recovered in this case. Thus, the statement is intrinsic to the charged offense of possession with the intent to distribute cocaine.

Dovetailing with that analysis, in the second phase of Appellant's statement he admitted that other individuals were, like himself, also distributing drugs. In addition, in that second phase, Appellant revealed that he was not, however, distributing fentanyl, but possessing it for his personal use. Accordingly, the second phase of the statement involves actions that are intrinsic to the charged offenses of both possession with the intent to distribute cocaine and simple possession of fentanyl. *See Silver v. State*, 420 Md. 415, 436 (2011) (stating that evidence that was "intertwined and part of the same criminal episode" did not "engage the gears of 'other crimes' evidence law" even where it may show "some possible crime in addition to the one literally charged" (further quotation marks omitted) (quoting *Odum*, 412 Md. at 611)).

For all these reasons, those two statements did not amount to evidence of *other* bad acts under Md. Rule 5-404(b) and thus do not invoke other-crimes analysis.

Even had those statements constituted evidence of other bad acts, we would determine that the court did not err in ruling that they were admissible. Recently, the Supreme Court of Maryland reaffirmed the standard for determining the admissibility of evidence of other bad acts under Md. Rule 5-404(b):

> [E]vidence of a defendant's other bad acts is admissible if (and only if): (a) the evidence is offered for a non-propensity purpose that is relevant to a genuinely disputed issue in the case; (b) the defendant's involvement in the other bad acts is established by clear and convincing evidence; and (c) the need for and probative value of the evidence is not substantially outweighed by any unfair prejudice likely to result from its admission.

Browne v. State, 486 Md. 169, 178 (2023). *See also State v. Faulkner*, 314 Md. 630, 633-35 (1989).

Appellant takes issue with the court's ruling as to the first and third portions of the *Browne* standard, arguing that the statements lacked special relevance and that any potential probative value was outweighed by the risk of unfair prejudice. The State responds that Appellant's challenge to the special relevance of these statements is unpreserved because Appellant's trial counsel conceded that the statements were probative.

However, "[p]reservation for appellate review relates to the issue advanced by a party, not to every legal argument supporting a party's position on such issue." *Smith v. State*, 176 Md. App. 64, 70 n.3 (2007). Appellant's trial counsel's concession as to the general probative nature of these statements does not foreclose Appellant's appellate challenge to the special relevance of these statements. *See also* Md. Rule 4-323(c) ("For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.").

First, we determine whether the statements had special relevance. "When other bad acts evidence has substantial relevance to a contested issue other than propensity, it is said to have 'special relevance.'" *Browne*, 486 Md. at 190 (quoting *Harris v. State*, 324 Md.

490, 500 (1991)). Here, the statements concerned Appellant's income from cocaine distribution — *i.e.*, his intent to distribute cocaine — and his intent to simply possess fentanyl. Thus, these statements had special relevance to Appellant's intent in possessing the contraband for which he was subsequently charged.

Next, we analyze whether the probative value of these statements was substantially outweighed by any unfair prejudice. Here, the court "carefully weighed" "[t]he necessity for and probative value of the 'other crimes' evidence" "against any undue prejudice likely to result from its admission." *Faulkner*, 314 Md. at 635. This analysis "requires the trial court to engage in a Rule 5-403 balancing" because, "[t]o some degree, all evidence admitted under Maryland Rule 5-404(b) is prejudicial." *Cousar v. State*, 198 Md. App. 486, 516 (2011). Appellant's (at least, implied) admission of contemporaneous cocaine distribution and his express admission "that he was willing to engage in a course of [cocaine distribution] in the future" were "highly probative of an intent to distribute [cocaine]." *Skrivanek v. State*, 356 Md. 270, 292 (1999). *Cf. Browne*, 486 Md. at 197-98 (holding that evidence of defendant's prior conviction for child abuse resulting in death of his infant son did not qualify as admissible evidence under Md. Rule 5-404(b) in prosecution for murder and child abuse arising from death of seventeen-month-old child of defendant's girlfriend six years later); *Harris*, 324 Md. at 501 (holding that, in prosecution for possession of cocaine with the intent to distribute, evidence of defendant's convictions for possession of heroin with intent to distribute two and a half years before charged offense was erroneously admitted). Moreover, Appellant's statement made clear that he distributed

cocaine and that he possessed fentanyl for his own personal use. That statement effectively amounted to an admission of guilt.

For all these reasons, the court did not err in admitting these statements under Md. Rule 5-404(b).

B. Appellant's motion *in limine* to exclude two statements under Md. Rule 5-403.

As to those statements, Appellant first moved to redact the following:

DET. YOUMAN:	Well, I mean, the basic I want to know is -- I don't like stopping at one person, I like going up the food chain.
[APPELLANT]:	Oh. That buck stop here, and I feeling like I can't do nobody and I wouldn't anyways.
DET. YOUMAN:	Okay. Fair enough. Like I said, I don't take anything personal, man. I give everyone the opportunity.

Trial counsel argued that that exchange, which included Det. Youman's attempt to gain Appellant's cooperation in the investigation of other drug distributors, lacked probative value and that it "paints him as uncooperative; and therefore, guilty."

Second, Appellant moved to redact the following:

DEP. METZLER:	How much rock you get at a time? Like an O?
DET. YOUMAN:	You an ounce guy?
DEP. METZLER:	A brick?
[APPELLANT]:	A brick, (scoffs.) If I was a brick, I still break it down. (Inaudible, 10:30 elapsed time) make more money. Make more money breaking that shit down. (Inaudible, 10:34 elapsed time.) I at

> least know everything, I'm starting to -- you know, getting to know them. That's all.

Counsel argued that the discussion of what Appellant would do with a "brick"[3] amounted to "a hypothetical situation that is unrelated to these specific charges" and that "there is a danger that the jury may infer an intention there that is not realistic." The court ruled that the statements were admissible, ruling that the probative value of the statements was not outweighed by the danger of unfair prejudice.

Even if legally relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). The court's "ruling on the admissibility of evidence under Rule 5-403 is reviewed for abuse of discretion." *Montague v. State*, 471 Md. 657, 673-74 (2020).

As to Appellant's first challenge, his admission that the "buck stop[s] here" and that he would not implicate other drug distributors could reasonably be understood as confessions of his own drug distribution. Thus, the statement was highly probative. Appellant's unwillingness to proffer the identities of other drug distributors did not render the statement unduly prejudicial.

As to the second phase of that discussion, Appellant's response about his hypothetical possession and distribution of a "brick" evinced his intent to distribute the

[3] Deputy Metzler testified that a "brick" refers to a kilogram.

actual cocaine that was recovered in this case. The trial court properly concluded as follows: "It is simply an answer to a question about what the jury could conclude is the [Appellant's] ongoing sale of drugs or intent to sell drugs, which is directly one of the issues as to the possession with intent to distribute count." Appellant's phrasing of his answer as a hypothetical does not warrant exclusion of the statement. Indeed, the statement was highly probative as to Appellant's intent, and it was not unduly prejudicial under these circumstances.

We find no abuse of discretion in the trial court's admission of these statements under Md. Rule 5-403.

JUDGMENTS OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.