UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2259

September Term, 2012

WILLIE WRIGHT

v.

STATE OF MARYLAND

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Nazarian, J.

Filed: March 16, 2015

After assaulting his then-fiancé Nicarsia Jackson on two separate occasions, Willie Wright was convicted in the Circuit Court for Prince George's County of two counts of second-degree assault and one count of reckless endangerment. On appeal, Mr. Wright challenges the circuit court's decision to admit portions of three phone calls he made while in jail awaiting trial. The state of the trial court record leaves some doubt as to which portions of which phone calls were actually played for the jury, despite extensive efforts on the part of the parties to reconstruct it. For present purposes, we resolve those mechanical doubts in Mr. Wright's favor—that is, we assume, notwithstanding real doubts, that the jury heard the challenged excerpts. Even so, we find that any alleged errors were harmless beyond a reasonable doubt, and so we affirm Mr. Wright's convictions.

I. BACKGROUND

Mr. Wright and Ms. Jackson were involved in a romantic relationship for two-and-a-half years until February 2012. This appeal concerns two incidents in which Mr. Wright allegedly assaulted Ms. Jackson during the course of their relationship.

A. The March 2011 Incident

One evening in March 2011,[1] Mr. Wright and Ms. Jackson were alone together at Ms. Jackson's condominium in Laurel. They began to argue after Ms. Jackson discovered that Mr. Wright had been having an affair with a married woman, then threatened to disclose the affair to the woman's husband. During the argument, Mr. Wright became very

[1] The record is unclear as to the exact date in March the incident occurred.

angry and repeatedly cursed at Ms. Jackson to be quiet. When Ms. Jackson refused, Mr. Wright "reached forward with his elbow and rammed it back into [her] face [which] severed [her] lip into two pieces." Ms. Jackson began to bleed profusely, and ultimately Mr. Wright decided to take her to the hospital, where she received stiches. Ms. Jackson did not call the police that night because she did not want to get Mr. Wright in trouble, and she continued to see Mr. Wright romantically. For his part, Mr. Wright claimed that he did not intend to hit Ms. Jackson and that she "made [him] do what [he] did because she kept grabbing [him]."

B. The October 2011 Incident

Mr. Wright and Ms. Jackson were again alone in Ms. Jackson's apartment on the evening of October 29, 2011. Mr. Wright had been drinking heavily and was talking with Ms. Jackson at her dining room table. At some point, Mr. Wright began to talk about physically harming Ms. Jackson's son, which prompted Ms. Jackson to attempt to get up and leave the table. Mr. Wright grabbed Ms. Jackson to prevent her from leaving. He asked her to turn over her keys to a rental car so that he could leave. Ms. Jackson refused. Mr. Wright then picked up a large butcher knife from the kitchen and pointed it at Ms. Jackson while he recounted the story of how his sister's father killed his wife over a dispute about car keys. When Ms. Jackson continued to refuse to turn over the keys, Mr. Wright hit her with the butt of the knife and punched her in the stomach. Ms. Jackson dropped to her knees in pain and Mr. Wright retrieved her keys.

According to Mr. Wright, he did not hit Ms. Jackson for refusing to turn over the car keys. Instead, he claimed that he swung a knife in Ms. Jackson's direction to scare her and to get her to move out of his way. Mr. Wright was adamant that he never actually hit Ms. Jackson during the incident and only used the knife to "scar[e] her because she had thrown herself down the stairs saying [he] pushed her to keep [him] from leaving." Ms. Jackson did not sustain any injuries as a result of the incident and again did not call the police that night because she did not want to get Mr. Wright in trouble.

C. Procedural History

After her relationship with Mr. Wright ended in February 2012, Ms. Jackson reported the two incidents to the police, and Mr. Wright was charged with two counts of second-degree assault and two counts of reckless endangerment. A jury trial was held in the circuit court on September 4, 2012. The State's sole witness was Ms. Jackson.

During the State's direct examination of Ms. Jackson, the State sought to play for the jury a number of phone calls Mr. Wright made from jail in which he discussed the incidents. Six of the phone calls were between Ms. Jackson and Mr. Wright and Mr. Wright's counsel did not object to those calls. Mr. Wright's counsel did object to the admission of telephone calls between Mr. Wright and someone other than Ms. Jackson. The circuit court reserved its ruling on the objection until after the six phone calls between Mr. Wright and Ms. Jackson were played for the jury.

After the six phone calls were played, the State renewed its request to have five phone calls between Mr. Wright and unknown parties played as well. The five calls were

labeled with abbreviated versions of the numbers given to each recording: (1) Call 0979; (2) Call 7060; (3) Call 1780; (4) Call 7476; and (5) Call 2165. After considering the parties' arguments, the circuit court denied the State's request to have the calls played before the jury during Ms. Jackson's direct examination. However, the State reserved the right to renew its request during its cross-examination of Mr. Wright, if he elected to take the stand.

And he did, against the advice of counsel. During cross-examination, the State offered, and the court admitted, a certified copy of Mr. Wright's criminal history record that disclosed twenty-one convictions: five counts of theft, five counts of uttering, one count of conspiracy to commit theft, five counts of forgery, and five counts of counterfeiting. In addition, the State asked to play portions of Call 0979, Call 7060, and Call 1780 to impeach Mr. Wright's testimony. The defense objected to Call 0979 and Call 7060, but not Call 1780. The circuit court overruled the objections and all three calls were played.

Mr. Wright was ultimately convicted of both counts of second-degree assault and one count of reckless endangerment and acquitted of the other count of reckless endangerment. This timely appeal followed.

After noting his appeal, Mr. Wright requested the transcripts of the circuit court proceedings. The trial transcript did not contain the portions of Call 0979, Call 7060, and Call 1780 played for the jury—the transcript merely states "[a]udio being played" during the time the calls were played. As a result, Mr. Wright's appellate counsel contacted the

official court reporter for the circuit court (the "Reporter") to determine whether an audio recording of the trial was available. Unfortunately, the Reporter advised counsel that an audio recording of the trial was not available.

Consequently, appellate counsel contacted the trial judge, Mr. Wright's trial counsel, and the prosecutor who tried the case (the "Prosecutor"), to determine what recollections, if any, they had as to what portions of the calls were played in open court. The trial judge and trial counsel both indicated that they had no personal recollection of the portions of the calls played for the jury. The Prosecutor, on the other hand, submitted an affidavit on May 29, 2014 ("May 29, 2014 Affidavit") indicating that, based on her review of her file, she believed she played (1) from 01:09-10:09 and 10:37-10:54 of Call 1780; and (2) from 2:30-2:53 and 3:13-3:45 of Call 0979. With respect to Call 7060, the Prosecutor indicated that she was unsure of the exact time frame she played, but that she believed she played the portion of the call "concerning Mr. Wright telling the victim, that his life is in her hands." On September 3, 2014, the Prosecutor submitted another affidavit (the "September 3, 2014 Affidavit"), that included additions, corrections, and clarifications to her May 29, 2014 Affidavit.[2] With respect to Call 7060, the affidavit stated the following:

> As to the call identified at trial and in my May 29, 2014 affidavit as "call 7060," I recently realized that there are two

[2] The State moved to have the September 3, 2014 Affidavit made a part of the record through an unopposed motion to correct the record. We grant the motion and have considered this affidavit in our analysis.

> calls that end in 7060 . . . I did not realize this at trial or when I made my affidavit of May 29, 2014. After reviewing my trial notes, the trial transcript and the recordings of both calls, I am certain that the call I played during cross-examination of the defendant was call 238394487597060 (hereinafter Call 97060) made from March 25-26, 2012 between the defendant and an unidentified female. I know this because (1) after reading the trial transcript, I remember that the calls I played in cross-examination were calls between the defendant and an unidentified female; Call 97060 is a call between the defendant and an unidentified female, whereas Call 237156597677060 (hereinafter Call 77060) is a call between the defendant and Ms. Jackson (who goes by the nickname "Nicki"); (2) my notes reflect that the call I played was a call made from March 25-26, 2012; Call 97060 is a call made from March 25-26, 2012, as reflected in the records pertaining to that call whereas Call 77060 was made on March 9, 2012, as reflected in the records pertaining to that call; and (3) my notes also reflect that the parts of the call that I played during cross-examination occurred more than 10 minutes into the call and pertained to the "knife" and "split lip" incidents; Call 77060 only lasted seven minutes long and there is no discussion of either incident in the call. I did *not* play any part of Call 77060.

(Emphasis in original.) The affidavit further stated that the Prosecutor played from 10:10 to 10:42 and 10:54 to 11:03 of Call 97060, which she referred to at trial as Call 7060. The Prosecutor also corrected a typographical error in her May 29, 2014 Affidavit:

> With respect to Call 1780, upon further review of my May 29, 2014 affidavit and my trial notes, I realize that my affidavit of May 29, 2014 contains a typographical error. My prior affidavit indicates that I played from 1:09 to 10:09 of Call 1780. This is incorrect. I actually played from 10:09 to 10:09[3].

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[3] Although it may appear that the Prosecutor made a typographical error when she claimed that she played from 10:09 to 10:09 of Call 1780, the Prosecutor in fact played a one-second segment of Call 1780 during the trial. It is not clear why the Prosecutor decided to

In further effort to reconstruct the record, appellate counsel obtained transcripts of Call 0979, Call 7060, and Call 1780, which have been included in the record. The circuit court's decision to play portions of these calls for the jury—against the lingering questions about what portions were in fact played—forms the basis of Mr. Wright's appeal.

II. DISCUSSION

Mr. Wright challenges the circuit court's decision to allow the State to play portions of Call 0979, Call 7060, and Call 1780 for the jury. The State counters that Mr. Wright's contentions are moot because the relevant portions of the calls were not, in fact, played for the jury. Despite the parties' best reconstruction efforts, the absence of the calls from the trial transcript and of notations about which calls were played from the trial record leave us with some doubt about what the jury actually heard. Ultimately, though, we need not resolve the factual dispute: for our purposes, we will assume that the jury heard the contested portions of the phone calls. And in each instance, we find that if there was any error in allowing the jury to hear them, that error was harmless beyond a reasonable doubt.[4]

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play such a small segment of the call, but, in any event, it is of no consequence to this appeal.

[4] Mr. Wright presents the following questions for our review:

> 1. Did the trial court err in permitting the playing of recorded phone calls during cross examination of Appellant?
>
> 2. Assuming, *arguendo*, that it is impossible to determine whether or not the trial court erred in playing the recorded

A. Call 0979

Mr. Wright *first* challenges the circuit court's decision to permit the State to play a portion of Call 0979, which featured Mr. Wright and an unidentified woman:

> [FEMALE VOICE]: Have you talked to [Ms. Jackson]?
>
> [MR. WRIGHT]: Yeah.
>
> [FEMALE VOICE]: You called her?
>
> [MR. WRIGHT]: Yeah.
>
> [FEMALE VOICE]: And what happened?
>
> [MR. WRIGHT]: She is—she's still holding on to—the same thing she's done. She's done this before but not far as jail. If I don't come back to her, she going to put me in jail. I'm not going back.
>
> * * *
>
> [MR. WRIGHT]: —I want to file false charges against her. I'm waiting for the paperwork, just like I was doing at home. I was filling this paperwork against her for stealing my shit and all of that. But I want you, as a witness, to her texting me until 3:00 o'clock in the morning. Because the reason –
>
> [FEMALE VOICE]: Right.
>
> [MR. WRIGHT]: – why she's doing this is because I have a new woman. And I – and I –
>
> [FEMALE VOICE]: Oh we're going – right.

> phone calls at issue, does the absence of an adequate record deprive Appellant of meaningful appellate review and require a new trial?

[MR. WRIGHT]: Huh?

[FEMALE VOICE]: I said we already know that.

[MR. WRIGHT]: Yeah. But, you know, and you can—you—I—I want you to be a witness that that's what she did. And two days later—two days after that, she—she filed these charges. You hear me?

[FEMALE VOICE]: You said what?

[MR. WRIGHT]: Two days after that night, she filed these charges.

[FEMALE VOICE]: Yeah, you was telling me that when you called.

* * *

[FEMALE VOICE]: So—well, when I looked up your case, it said you go to court on the 29th of this month.

[MR. WRIGHT]: That's for the other one, the hotel. And this one is for the 5th of next month . . .

* * *

[FEMALE VOICE]: Let's talk about how you going to get the fuck up out of this.

[MR. WRIGHT]: Well, you—you're one witness . . .

* * *

[MR. WRIGHT]: And get—tell him that—I'm going to tell him the same thing to get, so he can have it ready for you. And I want this real thick stack of papers that's my transcript from the case I'm on parole for. I'm going to work on that while I'm in . . . If I win both of these cases, they still going to pull me on violation of parole and I'm going to have to go—

> [FEMALE VOICE]: Right.
>
> [MR. WRIGHT]: —up DOC and fight my way out of there. This is where I need you more than any other time. I'm going to need you to write the Parole Board and let them know . . .

Mr. Wright claims that the jury should not have heard this portion of Call 0979 because (1) it contained evidence of "other crimes, wrongs, or acts" committed by Mr. Wright, and therefore violated Md. Rule 5-404(b); (2) its probative value was substantially outweighed by the danger of unfair prejudice, which violated Md. Rule 5-403; and (3) it contained inadmissible hearsay.

As a preliminary matter, we doubt the jury ever heard the challenged portion of Call 0979. In both the May 29, 2014 Affidavit and the September 3, 2014 Affidavit, the Prosecutor stated that she played the sections from 2:30-2:53 and 3:13-3:45. As Mr. Wright acknowledges in his brief, these two time frames of Call 0979 include the following statements by Mr. Wright himself, to which he did not (and does not) object:

> [MR. WRIGHT]: [S]he just started talking in my ear, right. And I just—I got pissed and the third—and the fourth night, she woke me up and just started snatching. And every night she grabs me and just turns me around in the middle – and, you know, I'm asleep. And she just turns me around. And this fourth night, she just kept doing it and I—and I just said stop and I turned around real fast and shot a[n] elbow and it caught her in the lip and split her lip.
>
> * * *
>
> This particular night, I had packed all my bags and she was standing in front of the steps. And if I tried to go out, she'd grab me and she was close to the steps that I backed off. I put all my bags down. I went in the kitchen and I got a knife and

> I came at her like I was going to stab her. And I swung it, but I turned the blade around and—and just, you know, like I was going to stab her in the stomach and she fell on the floor. I threw—and—and I called her a punk and threw the knife on the floor, grabbed my bags; and ran out the house but she was trying to catch me.

Moreover, the trial transcript corroborates the Prosecutor's recollection regarding the portion of Call 0979 played for the jury. Before playing Call 0979, the Prosecutor made the following proffer to the circuit court about the contents of the call:

> Your Honor, the next phone call I would have, happened on March 12th. In that phone call the defendant both acknowledges elbowing [the] victim and then, talks about at length what happened. That he went to the kitchen, got a knife in the other incident, pretended to stab her, laughed about it, she dropped the keys, then he walked out. That would be call 0979.

This proffer is consistent with the portion of Call 0979 that the Prosecutor identified in her affidavit. Nevertheless, we will assume from here that the jury heard the portion of Call 0979 that Mr. Wright challenges.

Mr. Wright's *first* contention with respect to Call 0979 is that it included evidence of "other crimes, wrongs, or acts" he committed, which violates Md. Rule 5-404(b). Prior acts evidence requires an initial finding of "special relevance" before the usual balancing of probativity and prejudice:

> Maryland Rule 5-404(b) limits evidence of a defendant's prior "bad act[s]," and specifically precludes bad acts evidence offered for the purpose of proving that the defendant's character "in order to show action in conformity therewith." Md. Rule 5-404(b); *Klauenberg v. State*, 355 Md. 528, 546 (1999). A "bad act" is an act or conduct "that tends to impugn

> or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit." *Klauenberg*, 355 Md. at 549. This rule plays a role similar to the prohibition against unfairly prejudicial evidence, *i.e.*, to prevent the jury from "'developing a predisposition of guilt'" based on unrelated conduct of the defendant. *Sinclair v. State*, 214 Md. App. 309, 334 (2013) (quoting *State v. Faulkner*, 314 Md. 630, 633 (1989)).
>
> Although "bad act" evidence is inadmissible to prove a defendant's criminal character, Rule 5-404(b) does allow "bad act" evidence that has "special relevance—that it 'is substantially relevant to some contested issue.'" *Wynn v. State*, 351 Md. 307, 316 (1998) (quoting S*tate v. Taylor*, 347 Md. 363, 368 (1997)). "Bad act" evidence has a "special relevance if it shows notice, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Id.*; Md. Rule 5-404(b). Whether "bad act" evidence demonstrates one of these alternate purposes is a "'legal determination and does not involve any exercise of discretion'" by the trial court; we review this determination *de novo*. *Wynn*, 351 Md. at 317 (quoting *Faulkner*, 314 Md. at 634).
>
> This leads to a two-step analysis. If we determine that the "bad act" evidence in question has special relevance, then we balance the probative value of and need for the evidence against the likelihood of undue prejudice. "'This segment of the analysis implicates the exercise of the trial court's discretion,'" and we will only reverse the court's balancing determination if the court abused its discretion. *Id.* (quoting *Faulkner*, 314 Md. at 634-35).

Smith v. State, 218 Md. App. 689, 709-10 (2014) (footnote omitted).

The portion of Call 0979 that Mr. Wright challenges reveals that Mr. Wright was on parole and had other open criminal cases, which definitely qualifies as prior bad acts evidence. Consequently, "[u]nless the [call] has an additional quality of special relevance to an issue in the case, then, it should have been excluded under Rule 5-404(b)." *Id.* at 711.

But we need not decide whether the call had "special relevance" to this case because it is clear that, to the extent it was error to admit this portion of Call 0979, the error was harmless.

"A defendant in a criminal case is entitled to a fair trial, but not necessarily a perfect one." *Gutierrez v. State*, 423 Md. 476, 499 (2011) (citation omitted). The question is whether an error could have influenced the verdict:

> [W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed "harmless" and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.

Dorsey v. State, 276 Md. 638, 659 (1976) (footnote omitted). In this instance, we have no doubt that the challenged portion of Call 0979 "would not have persuaded the jury to render a guilty verdict when it would not have otherwise done so." *Gutierrez*, 423 Md. at 500. This is because the prior bad acts to which the call excerpt alludes were overwhelmed by the certified copy of Mr. Wright's criminal history record that had already been admitted, a document that disclosed convictions for more than *twenty crimes* bearing adversely on his truthfulness. Mr. Wright did not object to the admission of these convictions at trial, nor does he challenge the admission of these convictions on appeal. Moreover, to the extent Call 0979 indicated that Mr. Wright was on parole and had other open criminal cases, it offered no details about the crimes with which Mr. Wright was charged or had

previously been convicted. At worst, then, any prior bad acts evidence that came in through Call 0979 was cumulative to Mr. Wright's extensive criminal history record, and only marginally so.[5] *See id.* (holding that admission of testimony, in violation of Md. Rule 5-404(b), indicating that the gang with which defendant was affiliated was responsible for the most violence in the past four years was harmless in gang-related murder prosecution because admissible evidence established that (1) defendant was affiliated with the gang and had traveled into rival gang territory looking for someone to kill as part of his initiation; and (2) he opened fire after being insulted by one individual's "false flagging" that he, too, was affiliated with that gang).

Mr. Wright contends *second* that Call 0979 contained inadmissible hearsay that prejudiced him by tending to show that he wanted the unknown female to be a witness at his trial:

> [MR. WRIGHT]: —I want to file false charges against her. I'm waiting for the paperwork, just like I was doing at home. I was filling this paperwork against her for stealing my shit and all of that. But I want you, as a witness, to her texting me until 3:00 o'clock in the morning. Because the reason—
>
> [FEMALE VOICE]: *Right.*

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[5] We reach the same conclusion with regard to Mr. Wright's contention that the other crimes evidence contained in Call 0979 was more prejudicial than probative in violation of Md. Rule 5-403. *See Snyder v. State*, 210 Md. App. 370, 395, *cert. denied*, 432 Md. 470 (2013) (holding that the defendant was not unfairly prejudiced in a prosecution for destruction of property by testimony indicating that police had found guns in his home, which was a crime due to his status as a convicted felon, because there was admissible testimony indicating that the defendant had fired several gunshots).

> [MR. WRIGHT]: —why she's doing this is because I have a new woman. And I—and I—
>
> [FEMALE VOICE]: *Oh we're going—right.*
>
> [MR. WRIGHT]: Huh?
>
> [FEMALE VOICE]: *I said we already know that.*
>
> [MR. WRIGHT]: Yeah. But, you know, and you can—you—I—I want you to be a witness that that's what she did. And two days later—two days after that, she—she filed these charges. You hear me?
>
> [FEMALE VOICE]: *You said what?*
>
> [MR. WRIGHT]: Two days after that night, she filed these charges.
>
> [FEMALE VOICE]: *Yeah, you was telling me that when you called.*

(Emphasis added.)

Hearsay is an out-of-court statement, offered by someone other than the declarant, to prove the truth of the matter asserted. *See* Md. Rule 5-801(c). As a general rule, hearsay is inadmissible. *See* Md. Rule 5-802. An out-of-court-statement may be admissible, though, "if it is not being offered for the truth of the matter asserted or if it falls within one of the recognized exceptions to the hearsay rule." *Conyers v. State*, 354 Md. 132, 158 (1999). A ruling involving the admission of hearsay ordinarily is an issue of law that we review *de novo*. *See In re Matthew S.*, 199 Md. App. 436, 461 (2011).

Even if we were to hold that the unknown female's statements were inadmissible hearsay, though, any error in admitting the statements was harmless. According to Mr.

Wright, her statements tend to show that he wanted her to be a witness at his trial. In Mr. Wright's estimation, this prejudiced him unfairly because the unknown female ultimately did not appear at trial. But Mr. Wright concedes in his brief, "the statements made by [him in Call 0979] would . . . be admissible as statements by a party opponent." *See Aetna Cas. & Sur. Co. v. Kuhl*, 296 Md. 446, 455 (1983); Md. Rule 5-803(a)(1) ("The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . A statement that is offered against a party and is: (1) The party's own statement, in either an individual or representative capacity."). During Call 0979, Mr. Wright explicitly tells the unknown female that "I want you, as a witness." Her statements at most acknowledge the request and suggest that they were working together to shape testimony that never materialized. But to the extent that the prejudice Mr. Wright perceives comes in reality from *his* statements on the call, the admission of the interstitial hearsay in this exchange (if it even is hearsay) added no prejudice and could not have contributed to a guilty verdict.

B. Call 7060

Mr. Wright argues *second* that the circuit court erred in allowing the State to play the following portion of Call 7060 for the jury:

> [MR. WRIGHT]: Well, actually the judge ordered me not to talk to you.
>
> [MS. JACKSON]: Well, don't do it.
>
> * * *
>
> [MR. WRIGHT]: —I can only tell you one thing.
>
> [MS. JACKSON]: What?

[MR. WRIGHT]: That—like I said, my life is in your hands and you hold them and when I say you holding my life in your hands, there's a possibility I'll never see the streets again. And it's up to you to make good decisions.

[MS. JACKSON]: But that's not—that's not what I want.

[MR. WRIGHT]: And the other thing is we'll never see each other again because of the charges against you, they won't let you come in here. They ain't going to let you come see me. So you'll never—

[MS. JACKSON]: How do you know –

[MR. WRIGHT]: —see me again. What?

[MS. JACKSON]: How do you know that?

[MR. WRIGHT]: Because they got a court order. The court ordered you—they're going to put your name on anything about visiting and anything. And you will not be able to come see me. So we'll never see each other again.

* * *

[MS. JACKSON]: You call me tomorrow?

[MR. WRIGHT]: Yeah, if I can get out, yeah. They got me locked down. I can't get out.

[MS. JACKSON]: What do you mean?

[MR. WRIGHT]: I'm in – I'm in segregation. Bye.

[MS. JACKSON]: All right. Bye.

Mr. Wright argues that this exchange revealed that he was segregated from other jail inmates and that there was a court order preventing Ms. Jackson from visiting him, revelations that violated Rules 5-403 and 5-404(b).

Again, we doubt the jury ever heard this exchange. In her September 3, 2014 Affidavit, the Prosecutor indicated that the call labeled initially as Call 7060 could potentially refer to two different calls, Call 97060 or Call 77060, only one of which was played. Call 97060 was a call between Mr. Wright and an unknown female that occurred on March 25-26, 2012 and pertained to the two incidents at dispute in this case. Call 77060 is a call between Mr. Wright and Ms. Jackson that occurred on March 9, 2012 and did not pertain to the two incidents. The Prosecutor's affidavit narrowed her earlier statement to clarify that Call 97060, as opposed to Call 77060, was the one that was played and that Call 77060 was never played for the jury. Moreover, it appears that the exchange Mr. Wright is challenging is a part of Call 77060, and not a part of Call 97060, because it contains communications between Mr. Wright and Ms. Jackson and does not discuss the two incidents. Thus, based on the Prosecutor's (undisputed) affidavit, it appears that the jury never heard the exchange of which Mr. Wright complains. But again, we will resolve the doubt in favor of assuming that the alleged error occurred.

Mr. Wright sees in this exchange a similar prejudice to the last one: the jury could glean from the reference to segregation that he had misbehaved while he was in jail, and could draw negative inferences from the fact that he was under a court order not to be in contact with Ms. Jackson. And again, to the extent the court erred in playing this exchange, it was harmless beyond a reasonable doubt, and for the same reasons as before. Any evidence that Mr. Wright was placed in segregation while in jail was merely cumulative to his long conviction record, which was admitted without objection. And it seems

unsurprising that Mr. Wright was under a court order to not be in contact with Ms. Jackson—after all, he was on trial for assaulting Ms. Jackson on two separate occasions. We see no error here that could have influenced the jury's verdict at all.

C. Call 1780

Mr. Wright's *third* and *final* assertion relates to a portion of Call 1780:

> [FEMALE VOICE]: So I called the Public Defender's Office and told them your case numbers and they gave me this phone number to call. So when I called the phone number, I talked to this lady and she looked it up. She could tell me who exactly was your attorney . . . I told her I was your sister, you know what I'm saying. So she – she asked me what was going on with your case. I said, well – I said, the Defendant is a[n] ex-lover who found out that he was moving on in life with a younger woman. So she, you know, can't take rejection so she went and put these bogus charges on him, because she know he is a parolee . . .
>
> * * *
>
> So she told—she gave me the lady['s] number but her—she wasn't at her desk yesterday. Her voicemail was on. So I'm going to try my best to get in contact with her today. So maybe I can fax the call logs over to her or maybe me and her can meet at a mutual place and I can give it to her with the DVD.
>
> * * *
>
> —and my thing is I ain't doing shit to go to jail—
>
> [MR. WRIGHT]: Okay.
>
> [FEMALE VOICE]: —but she can jump out there if she want. I will find her ass and be [sic] the fuck out of her because I don't—
>
> [MR. WRIGHT]: No.

> [FEMALE VOICE]: —give a fuck for real.
>
> [MR. WRIGHT]: Let it alone. Just leave it alone.
>
> * * *
>
> [B]ut I do get scared because these people, you know, they done—they done rigged me once before, you know. They set me up.
>
> * * *
>
> When I get off of that other charge, the one that they keep bothering me about, I—I got married, started my own business, was going to school, everything. And they still bothering me. You just can't win.

Mr. Wright contends that this exchange prejudiced him unfairly, but he failed to object to the admission of Call 1780 at trial and, therefore, failed to preserve this argument for appellate review. Under Maryland Rule 4-323(a), "[a]n 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." *See Nalls v. State*, 437 Md. 674, 691 (2014) ("In other words, if a party fails to raise a particular issue in the trial court, or fails to make a contemporaneous objection, the general rule is that he or she waives that issue on appeal."); *Caviness v. State*, 244 Md. 575, 578 (1966) ("[U]nless a defendant makes timely objections in the lower court or makes his feelings known to that court, he will be considered to have waived them and he can not now raise such objections on appeal."). In his brief, Mr. Wright acknowledges that "[his trial] counsel did not object to the playing of call no. 1780."

Even so, Mr. Wright argues that this challenge is preserved because an objection would have been futile.

It is true that a party *may* be excused from making an objection to the admission of evidence for purposes of preservation if it is clear that such an objection would have been futile. *See Johnson v. State*, 325 Md. 511, 514-15 (1992) (holding that defendant was not required to make a contemporaneous objection to the admission of evidence to preserve the issue for appellate review when "[i]t was apparent that [the circuit court's] ruling on [the] objection would be unfavorable to the defense [and] [p]ersistent objections would only spotlight for the jury the remarks of the prosecutor"). Mr. Wright points here to the fact that the circuit court had overruled his objections to excerpts from Call 0979 and Call 7060. But this is not enough. Call 1780 comes from a completely different phone call from the former two and concerned an entirely different subject. Mr. Wright's reason for objecting to Call 1780—it demonstrates his association with an unknown female who is expressing a desire to beat up someone—are entirely different from his reasons for objecting to Call 0979 and Call 7060. And immediately after the State played Call 1780, it attempted to play another jail phone call, but Mr. Wright objected and the circuit court *sustained* his objection. That demonstrates to us that objections were not futile, and Mr. Wright's failure to object when Call 1780 was played left his objections unpreserved.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.