In the Circuit Court for Prince George's County
Case No. CT140631X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 272

September Term, 2015

DEMARCO GREGORY JAMES

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 9, 2017

Following a jury trial in the Circuit Court for Prince George's County, Demarco Gregory James was convicted of murder in the first degree, felony murder, first-degree assault, unlawful possession of a regulated firearm, burglary, conspiracy to commit burglary, and use of a firearm in the commission of a crime of violence. The court sentenced James to incarceration for life for the murder, a consecutive twenty years of incarceration for the unlawful possession of a firearm, and to two concurrent twenty-year terms of incarceration for the conspiracy to commit burglary and use of a firearm counts. James appealed, presenting us with three questions:

> 1. Did the trial court err in failing to propound to the venire two of James's requested voir dire questions?
>
> 2. Did the trial court err in admitting hearsay evidence?
>
> 3. Did the trial court err in permitting the State to present highly prejudicial evidence of other crimes?

Finding no error, we shall affirm.

FACTUAL BACKGROUND

On August 11, 2013, at approximately 5:45 a.m., James arrived at the home of Faith Taylor, accompanied by James's brother Vincent Martin. Residents of Faith Taylor's home included Marietta Taylor (Faith Taylor's 28-year old daughter, who was the mother of James's child) and Vincent Martin (who was James's brother). Faith Taylor attempted to prevent James from entering the home by blocking the door, but James pushed past her and immediately proceeded upstairs to Marietta's bedroom. When James entered the bedroom, Marietta was in bed with her current love interest, Michael Reese. James woke Marietta

Taylor by tapping her shoulder. He then said to her, "I told you," before shooting Reese once above the collarbone and once in the chest.

James then ran downstairs and left, with Martin, in Marietta Taylor's vehicle. Reese died from his wounds.

Additional facts will be provided in the discussion below.

DISCUSSION

I.

Proposed Voir Dire Questions

James first contends that the trial court erred by failing to propound to the venire two of his requested voir dire questions. But only one of the objections was preserved. At the conclusion of voir dire, the following colloquy occurred:

> THE COURT: That is it for the questions I intend to pose on voir dire. Any exceptions to the court's voir dire?
>
> [DEFENSE COUNSEL]: Your Honor, **I would be asking for the standard question of victim to a crime,** witness ---
>
> THE COURT: It is no longer standard. The court --- yes, **you are requesting the victim question?**
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: In the ancient form.
>
> [DEFENSE COUNSEL]: I still feel it is a good appropriate form. I would be asking for that question.
>
> THE COURT: I am not going to give the question in the former form. **You need to articulate whatever it is that may be. Here is a copy of your voir dire.**

[DEFENSE COUNSEL]: **Question number 11**.

THE COURT: Let me see.

[DEFENSE COUNSEL]: I just feel like tons of people have been listening to Serial, the Podcast. It is all about whether someone is innocent or guilty.

THE COURT: **I'm not giving that in that form. Your exception to me not giving it is noted**.

[THE STATE]: No exceptions from the State.

Although James identified only question number 11 when the trial court asked him to "articulate" whatever he was objecting to, James argues on appeal that he also preserved an exception to the court's failure to ask question 6, a multi-part question which reads:

a) Have any of you, your close family or friends ever been a victim of a crime?
b) Have any of you, your relatives or friends ever witnessed a crime?
c) Have any of you, your relatives or friends ever testified in a criminal trial?
d) Have any of you, your relatives or friends ever been convicted of a crime?

The State contends that the argument James makes on appeal, as to subpart 6(d) only, was not preserved because, as the colloquy above makes plain, James asked the court to inquire about *victims* of crime; James did not articulate an objection to the court's failure to inquire whether any of the prospective jurors had been *convicted of* a crime. And the trial court was correct in asserting that the Court of Appeals had expressly held that "a trial court need not ask during *voir dire* whether any prospective juror has ever been the victim of a crime." *Pearson v. State*, 437 Md. 350, 359 (2014).

The State points to Maryland Rule 4-323(c), which governs objections during jury selection, and requires a modicum of specificity. *See Marquardt v. State*, 164 Md. App. 95, 142–43 (2005). That Rule provides:

> (c) Objections to other rulings or orders. 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. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs. . . .

The State asserts that, when asked by the trial judge to articulate whatever additional questions he was requesting, counsel for James addressed only question number 11, and never asked the court to ask about convictions. James argues on appeal that his reference to the "standard question about victim to a crime, witness" adequately brought to the court's attention his request for the court to ask question 6(d), and, by failing to ask question 6(d), the court failed to comply with our holding in *Benton v. State*, 224 Md. App. 612 (2015). We do not agree that the objection James articulated during jury selection was adequate to apprise the judge that the court was being asked to ask subpart d of question 6.

In *Benton*, defense counsel proposed the following voir dire questions: (1) "Has any member of the jury or a close personal friend or relative been charged with or convicted of a serious offense, other than a traffic offense?" and (2) "Has any member of the jury or a family member or a close personal friend, been a victim of a criminal offense?" *Id.* at 618.

During voir dire in *Benton*, The following colloquy occurred:

THE COURT: That's it for the questions I intend to pose to them on voir dire. Any exceptions to the Court's voir dire[?]

[PROSECUTOR]: The State would ask for the standard three part --- charged with, **convicted of**, victim of **a crime**.

THE COURT: I am not doing it. Case law says no.

[PROSECUTOR]: No?

[DEFENSE]: Going to ask.

THE COURT: Not doing it. Case law says no.

[DEFENSE]: **Ask for the same thing** in addition. Court's indulgence.

[DEFENSE]: My question 23, which was ---

THE COURT: Which is, charged, must be guilty of something. I already asked the jurors. I was going to give them instructions that are going to be binding, and would they be able to follow the Court's instructions. They said yes. They will be instructed as to presumption of innocence.

[DEFENSE]: Okay. Beyond that, the only hesitation I have is the Court saying they are not going to ask the question about whether a family member, close friend, or themselves have been a victim of a criminal offense.

THE COURT: Well, you [ex]cept to my not asking that question?

[DEFENSE]: Yes, I do. Based upon the responses we've gotten so far from some of the jurors, indicated some of them, in fact, have been victims or have had close friends or relatives who are victims that has severely affected their ability to listen to the evidence and be impartial.

THE COURT: I certainly do not feel myself willing, capable to challenge the wisdom of the Court of Appeals who have spoken in this matter.

Id. at 618-19 (emphasis added) (footnote omitted).

We rejected the State's argument that Benton had not preserved the issue, reasoning:

> Before trial, Benton submitted a written request that the court ask potential jurors whether they had ever "been charged with or convicted of a serious offense[.]" **During voir dire, defense counsel joined in the State's request for a three-part "charged with, convicted of, victim of" question at the close of the court's voir dire, indicating that he was, "going to ask . . . for the same thing in addition" to the State's request. These efforts were sufficient to let the court know that the defense wanted the court to ask the proposed question and that the defense objected to the court's refusal to ask the question.**
>
> * * *
>
> **Defense counsel let the trial court know, both in writing and in an oral request, that he wanted the court to ask a voir dire question that included the "charged with, convicted of**, victim of" **language. The trial court made a clear ruling denying that request, without directing Benton to state the grounds for his request**. At no point did defense counsel subsequently withdraw that request, or limit his request to only the "victim of" portion of the proposed voir dire question. **Therefore, Benton preserved his arguments for appellate review.**

Id. at 620-23 (emphasis added) (alterations in original) (footnote omitted).

In contrast to the colloquy in *Benton*, defense counsel in the present case did *not* articulate to the trial judge a specific request to ask whether any juror had been convicted of a disqualifying crime. Instead, when asked to provide specificity for his objection, counsel said nothing further about convictions. When the trial court sought clarification as to what question defense counsel was requesting, the response focused on question 11, which was a question related to the burden of proof. Under the circumstances, James did not adequately apprise the trial judge that he was objecting to the court's failure to ask about convictions, and James's present argument as to his proposed question 6(d) is unpreserved.

Question 11

Question 11, as proposed in James's written requests, reads:

> Some of you may have listened to the Serial podcast, which evaluates the outcome of a trial in a journalistic fashion. A trial is different, though. **In a trial, the prosecutor has the "burden of proof." The prosecutor must prove Mr. James guilty.** In contrast, **Mr. James does not need to prove that he is innocent and his attorneys are not required to call a single witness. Do any of you have a problem with the burden of proof?**

(Emphasis added).

In essence, James wanted the court to ask whether the jurors would comply with the court's instructions regarding the presumption of innocence and the State's burden of proof. He now contends that the trial court abused its discretion when it refused to ask question 11 because, he argues, it was "aimed at exposing disqualifying juror bias [and] was reasonably likely to result in the disqualification for cause of one or more prospective jurors." James concedes in his brief that "the Court of Appeals held in *Twining v. State*, 234 Md. 97 (1964), that the trial judge did not abuse his discretion in refusing to propound a *voir dire* question relating to the presumption of innocence and the burden of proof." But James urges us to hold that "*Twining* is no longer controlling." He insists that the trial court was required to ask the proposed question about burden of proof because "prospective jurors who are unable or unwilling to hold the State to its burden of proof must be excused for cause." He asserts that, "[a]s a result of the trial judge's refusal to ask a *voir dire* question relating to the State's burden of proof, appellant was denied the opportunity to discover and challenge such jurors for cause," and that the trial court "abused its discretion when it refused to ask the question at issue." We disagree.

The Court of Appeals has repeatedly held that, in Maryland, "the sole purpose of voir dire 'is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification[.]'" *Pearson v. State*, 437 Md. 350, 356 (2014) (quoting *Washington v. State*, 425 Md. 306, 312 (2012)). Therefore, a trial court is required to ask a proposed voir dire question "if and only if the voir dire question is 'reasonably likely to reveal [specific] cause for disqualification[.]'" *Id.* at 357 (quoting *Washington*, 425 Md. at 313).

The Court of Appeals has identified two types of inquiry suitable for uncovering a specific cause for disqualification: 1) questions designed to determine whether a prospective juror meets the minimum statutory qualifications for jury service; and 2) questions designed to discover a prospective juror's state of mind regarding any matter reasonably likely to have undue influence over him. *Washington*, 425 Md. at 313. Although the breadth of matters "reasonably likely to have undue influence" over a juror is, in theory, rather broad, the Court of Appeals has indicated that such inquiries should be limited to those biases "directly related to the crime, the witnesses, or the defendant[.]" *Dingle v. State*, 361 Md. 1, 10 (2000).

A trial court does not abuse its discretion by refusing to ask voir dire questions that are not directed at a specific ground for disqualification, that merely fish for information to assist in the exercise of peremptory challenges, that probe the prospective juror's knowledge of the law, that ask a juror to make a specific commitment, or that address

sentencing considerations. *Pearson, supra*, 437 Md. at 357; *State v. Shim*, 418 Md. 37, 44-45 (2011); *Stewart v. State*, 399 Md. 146, 162 (2007).

In *Twining*, 234 Md. at 100, the Court of Appeals considered whether the trial court abused its discretion by refusing to ask prospective jurors whether they would give the defendant the benefit of the presumption of innocence and the State's burden of proof beyond a reasonable doubt. The *Twining* Court concluded that the trial court did not abuse its discretion, and stated: "**It is generally recognized that it is inappropriate to instruct on law at this stage of the case or to question the jury as to whether or not they would be disposed to follow or apply stated rules of law**." *Id*. (emphasis added). The *Twining* Court further noted that the principles that the defendant sought to highlight in the requested voir dire questions were "fully and fairly covered in subsequent instructions to the jury." *Id*.

In his brief, James acknowledges that his arguments are at odds with the Court of Appeals's holding in *Twining* and numerous cases that have cited *Twining*. He nonetheless urges us to hold that his proposed voir dire question fit into the now-required areas of inquiry designed to discover "potential biases or predispositions that prospective jurors may hold, which, if present, would hinder their ability objectively to resolve the matter before them." In addition, he argues that the 1964 holding in *Twining* rested on the premise that jury instructions, at that point in history, were merely advisory, which is no longer the law. He notes that, subsequent to the ruling in *Twining*, the Court of Appeals made clear "[i]n *Stevenson v. State*, 289 Md. 167, 188 (1980), and *Montgomery v. State*, 292 Md. 84,

91 (1981), . . . that instructions on the presumption of innocence and burden of proof are 'binding' on the jury and 'not advisory.'" (Parallel citations omitted.)

But we are not persuaded that the Court of Appeals's holding regarding voir dire in *Twining* is either inconsistent with more recent precedents from Maryland's appellate courts or that it applied only during the days when jury instructions were said to be advisory only. In *State v. Logan*, 394 Md. 378, 398-99 (2006), the Court of Appeals cited *Twining* for the proposition that "it is 'generally recognized that it is inappropriate . . . to question the jury as to whether or not they would be disposed to follow or apply stated rules of law[.]'" The Court of Appeals further stated in *Logan*: "[V]oir dire is not the appropriate time to instruct the jury on the law applicable to the case." *Id.* at 400.

In *Marquardt v. State*, 164 Md. App. 95, 144 (2005), this Court began its discussion "by stating that this Court has not, nor could it, retreat from *Twining*. We have consistently held that voir dire need not include matters that will be dealt with in the jury instructions." And, in *Thompson v. State*, 229 Md. App. 385, 404 (2016), this Court recognized the continuing validity of the holdings in *Twining* and *Marquardt*, reiterating: "Numerous appellate decisions of this Court and the Court of Appeals have held that propounding *voir dire* questions concerning rules of law covered by jury instructions is inappropriate." *See McFadden v. State*, 197 Md. App. 238, 250 (2011), ("It has been held inappropriate to question the jury [during voir dire] as to whether or not they would be disposed to follow or apply stated rules of law because they are covered in subsequent instructions to the jury." (internal quotation marks omitted)) (*disapproved of on other grounds* by *State v.*

Stringfellow, 425 Md. 461 (2012)); *Baker v. State*, 157 Md. App. 600, 615-18 (2004) (holding that voir dire questions about burden of proof and a defendant's right not to testify were not required, and stating: "In any event, it is up to the Court of Appeals, not this Court, to decide, as appellant suggests, that the reasoning of *Twining* is 'now outmoded.'"); *Wilson v. State*, 148 Md. App. 601, 656-60 (2002) (trial court did not commit an abuse of discretion by refusing to pose requested voir dire questions that "closely resemble[d] jury instructions" and asked whether any member of the panel was "unable or unwilling to uphold and abide by this rule of law"); *Carter v. State*, 66 Md. App. 567, 577 (1986) (applying *Twining*).

Here, the trial judge expressly told the prospective jurors during voir dire that, at the conclusion of the evidence, the court would provide "detailed instructions as to the law that applies to this case," and those "instructions of law will be binding upon you and your fellow jurors." The judge then asked the prospective jurors "whether there is any member of this jury panel who would be either unable or unwilling to follow such instructions for any reason whatsoever." The trial court did not abuse its discretion by declining to also ask James's requested voir dire question that asked whether any prospective juror "ha[d] a problem with the burden of proof."

II.

The 911 Call

James contends that the trial court erred when it permitted the State to play a portion of a 911 call in which Faith Taylor stated that James had shot Reese. During that call, both

Marietta and Faith Taylor identify James as the individual who shot Reese. James asserts that Faith Taylor's statement identifying James as the shooter was inadmissible hearsay because she "admittedly had no first-hand knowledge of the shooting as she was not in her daughter's bedroom when Reese was shot." James argues that the statement by Faith does not fall within any of the recognized exceptions to the hearsay rule, and therefore, the trial court erred in admitting the statement.

That State responds to James's argument regarding that 911 call as follows in its brief:

> Marietta Taylor, "Mike" Martin, and Faith Taylor testified at trial before the 911 call was played. Near the end of the State's direct examination of Faith, the first portion of the 911 call was played and Faith identified Marietta's voice and that of her own. Faith testified that Marietta spoke to the 911 operator and then passed the phone to her because Marietta was upset and screaming. A portion of the 911 call was then played. During the call, Faith identifies "my daughter's baby father" as the shooter. Later in the call, the 911 operator asks, "What's the person's name?" Faith is then heard asking, "What is his name?" and Marietta responds, "Demarco James." Faith then repeats to the 911 operator, "Demarco James," and the 911 operator repeats, "Demarco James."
>
> On appeal, James contends that Faith Taylor's assertion [during the 911 call] that he shot Michael Reese was inadmissible hearsay because, according to James, Faith had no personal knowledge of the identity of the shooter. James's claim raises two issues: (1) whether Faith's statement that her daughter's baby's father was the shooter was inadmissible hearsay; and (2) whether, after Marietta Taylor can be heard in the background of the 911 call saying James's name, it was inadmissible hearsay for Faith to repeat her words.
>
> With respect to the first issue, the statement was not hearsay because Faith's statement identifying the shooter as her daughter's baby's father was based upon her personal knowledge of the identity of the shooter; she was not merely repeating what someone else told her. With respect to the second issue, knowledge of someone's name is not hearsay nor was the name offered

> for a hearsay purpose, and even if it were, the admission of Faith's repetition of Marietta's words was harmless where both Faith and Marietta testified at trial and the statement was cumulative to Faith's earlier non-hearsay statement identifying the shooter.

(Footnote and references to record omitted.)

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Maryland Rule 5-801(c). In *Gordon v. State*, 431 Md. 527, 538 (2013), the Court of Appeals summarized the "two-dimensional approach" an appellate court must take when reviewing hearsay:

> [T]he trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review. Accordingly, the trial court's legal conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error.

(Internal citations omitted.)

James contends that, because Faith Taylor was not present in the bedroom when Reese was shot, her statements to the 911 operator reporting that James shot Reese must have been based on statements made by Marietta Taylor. His argument fails because Faith Taylor was not simply repeating statements made by another person; rather, Faith Taylor's statements recorded on the 911 call were based upon her own personal knowledge of facts that would lead any reasonable person to conclude that James shot Reese. According to her own testimony, Faith Taylor opened the front door of her home to James and observed James enter the home and rush upstairs. She then heard two gunshot from upstairs and

witnessed James returning downstairs, running and holding a gun at his side. She heard James say to Martin: "[G]et [me] the fuck out of here." Faith then proceeded upstairs and observed Reese's gunshot injuries.

Under the circumstances, Faith Taylor's conclusion that James was the individual who shot Reese was not based on hearing her daughter say so, but was based on her own personal observations. Her conclusion was not a mere repetition of a statement of another, and, therefore, was not hearsay.

But, even if Faith's statement was considered hearsay because she did not see James fire the shots, the admission of her statement to the 911 operator was harmless because, during the same 911 call, Marietta is heard saying that the shooter's name was "Demarco James." There is no question that Marietta was present when James shot Reese. Therefore, we are persuaded that any error in admitting the 911 call was harmless beyond a reasonable doubt.

III.

Other Crimes Evidence

James's final claim of error relates to testimony from Carlauntae Ward --- with whom James was incarcerated and shared a cell at the Prince George's County Department of Corrections following James's arrest for Reese's death. Ward testified that James offered to pay him to prevent Marietta Taylor from testifying. The State elicited the following testimony from Ward:

> [THE STATE]: Did Mr. James speak to you at all about any witnesses in this case, specifically female witnesses?

WARD: Yes.

[THE STATE]: What, if anything, did he say about a female witness?

WARD: The State had a witness which was his child's mother.

[THE STATE]: What, if any, other comments did he make about that witness to you?

WARD: That he was trying to make sure that she didn't come to court.

[THE STATE]: What else did he say to you about making sure she didn't come to court?

WARD: I mean offered [sic] me some money to make sure she didn't go to court.

[THE STATE]: How much did he offer you?

WARD: 10 to $15,000.

[THE STATE]: Did he say anything more specifically than her not coming to court?

WARD: To make sure she didn't come to court.

James contends that "the trial court erred in permitting Ward's highly damaging testimony without applying the three-part process for determining the admissibility of other bad act evidence delineated in *State v. Faulkner*, 314 Md. 630, 633 (1989)." Maryland Rule 5-404(b) provides that "[e]vidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith," but the rule also states that "[s]uch evidence . . . may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident."

In *Faulkner*, the Court of Appeals described three hurdles which must be cleared in order to overcome the general prohibition against admission of other crimes evidence. The *Faulkner* court stated:

> Evidence of other crimes may be admitted . . . if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal.
>
> Thus, there are numerous exceptions to the general rule that other crimes evidence must be suppressed. Evidence of this type may be admitted if it tends to establish motive, intent, absence of mistake, a common scheme or plan, identity, opportunity, preparation, knowledge, absence of mistake or accident . . . .
>
> When a trial court is faced with the need to decide whether to admit evidence of another crime—that is, evidence that relates to an offense separate from that for which the defendant is presently on trial—it first determines whether the evidence fits within one or more of the [special relevancy] exceptions. That is a legal determination and does not involve any exercise of discretion.
>
> If one or more of the exceptions applies, the next step is to decide whether the accused's involvement in the other crimes is established by clear and convincing evidence. We will review this decision to determine whether the evidence was sufficient to support the trial judge's finding.
>
> If this requirement is met, the trial court proceeds to the final step. The necessity for and probative value of the "other crimes" evidence is to be carefully weighed against any undue prejudice likely to result from its admission. This segment of the analysis implicates the exercise of the trial court's discretion.

Faulkner, 314 Md. at 634–35 (internal quotation marks, citations, and alterations omitted).

In this case, the potential admissibility of the cellmate's testimony was first discussed during a pretrial hearing regarding the State's motion for joinder of James's two cases: the present case arising out of the homicide counts, and a second indictment that

arose out James's alleged efforts to intimidate a witness. Although the trial court ruled only on the joinder issue at the pretrial hearing, counsel for the prosecution and for the defense both discussed the admissibility of Ward's testimony relative to the homicide charges. Counsel for the State argued:

> As far as whether or not the information from the witness intimidation case would be admissible in the murder trial, the State would point out *Byrd v. State* [98 Md. App. 627 (1993)] as well as *Saunder[s] v. State* [28 Md. App. 455 (1975)]. Both of these cases are referenced in the jury instruction which talk[s] about bribery or witness intimidation as consciousness of guilt. That that information is an attempt by an accused to suborn a witness is relevant and may be introduced as an admission by conduct tending to show his guilt.

During that pretrial hearing, defense counsel made reference to *Faulkner* and Rule 5-404(b):

> I would say that Your Honor is supposed to look at the fact that with something so prejudicial, the State has a duty to show by clear and convincing evidence that the prior bad act actually occurred. We're looking at this under the 5-404(b) analysis, which there is some case law that says we're supposed to do that, which is why we were bringing up *Faulkner* and a series of cases.

Immediately prior to trial, the trial court revisited the issue of admitting Ward's testimony. The following colloquy occurred at that point:

> [DEFENSE COUNSEL]: **So my understanding from Your Honor's ruling** [at the motions hearing] **is that [Ward's testimony] cannot come in during this trial, that it will be a separate trial. The issue of consciousness of guilt was outweighed by the prejudicial ---**
>
> THE COURT: **Did the transcript say I said that? I can't imagine I would say that.**
>
> [DEFENSE COUNSEL]: The other thing, if there is the 5-404(b) analysis that would then apply we should have a *Faulkner* hearing. The evidence that Mr. Ward is telling the truth and recounting something that happened is very

thin. That is why especially it is incredibly prejudicial for that to come in against my client.

THE COURT: So is anybody asking me to do something and, if so, what?

[DEFENSE COUNSEL]: I'm just asking, Your Honor, to rule that Carlauntae Ward should not be testifying in this trial.

THE COURT: I'm not ruling on that because I don't have enough information to make an intelligent ruling one way or the other.

[DEFENSE COUNSEL]: The State needs to prove by clear and convincing evidence that this happened and they have not done that.

THE COURT: That what happened?

[DEFENSE COUNSEL]: The State has to prove by clear and convincing evidence according to *Faulkner* and *Streeter* [*sic*] and that whole line of cases that what Mr. Ward is saying about Mr. James is something that actually happened, that it is not something that is a crazy tale that Mr. Ward is coming up with that could prejudice Mr. James because it is multiple accusations then of murder that the jury is hearing beyond what is going on in this case. In addition to all of the reasons under *McKnight*, it can lead to the jury—

THE COURT: No need to sever anything because they are not joined.

[DEFENSE COUNSEL]: The prejudice to the defense still exists, Your Honor.

[THE STATE]: The court has ruled the two matters are not joined. **Mr. Ward is simply testifying to a conversation he had with the defendant while they were both incarcerated together.** The same as any other witness to testify about any conversation that they had if it would be relevant with the defendant, or something that they observed themselves. That's all Mr. Ward would be doing.

THE COURT: Did you tender the substance of whatever it is that the witness may say to defense?

[THE STATE]: Yes.

> [DEFENSE COUNSEL]: The only other thing I will say, this also opens up the can of worms, A [sic], we will need to present that Mr. James is in jail. This gentleman is in jail. It will be the focus then. We will have to mention that Mr. James has a public defender. We will have to mention a bunch of prejudicial stuff that I think, frankly, I'm just concerned about that.
>
> THE COURT: All right.

The trial court deferred ruling on the matter, and later, permitted Ward to testify over defense counsel's renewed objection.

James asserts that the trial court erred by not conducting the required three-prong *Faulkner* analysis on the record. The State counters that James's contention as to the first prong was not preserved for review and that, in any event, the trial court did find on the record that the evidence had special relevance, namely, to show consciousness of guilt. As to the second and third *Faulkner* prongs, the State quotes *Wisenski v. State*, 169 Md. App. 527, 555–56 (2006), and argues that a trial court is "presumed to know the law and apply it properly," and therefore need not "spell out every step in weighing the considerations that culminate in a ruling." The State also contends that the eyewitness testimony (of Ward) regarding witness intimidation had been accepted by a grand jury as the basis for an indictment, and was sufficiently clear and convincing; moreover, the probative value clearly outweighed any undue prejudice.

In *Streater v. State*, 352 Md. 800, 805 (1999), the Court of Appeals reversed a conviction because the circuit court failed to conduct a sufficient "threshold inquiry" on the record regarding the admissibility of other crimes evidence contained in a protective order offered by the State. The Court opined that the "substantive and procedural

protections [laid out in *Faulkner*] are necessary to guard against the potential misuse of other crimes or bad acts evidence and avoid the risk that the evidence will be used improperly by the jury against a defendant." *Id.* at 807. Elsewhere in its opinion, the *Streater* Court "emphasize[d] that, should the trial court allow the admission of other crimes evidence, it should state its reasons for doing so in the record so as to enable a reviewing court to assess whether Md. Rule 5-404(b), as interpreted through the case law, has been applied correctly," and the *Streater* Court quoted from its prior opinion in *Lodowski v. State*, 302 Md. 691 (1985), in which it opined that "it would be better if [the trial court] spread on the record the reasons for [the] ruling on the challenge [to the admissibility of the other crimes evidence]." *Id.* at 810-11 (alterations added in *Streater*). Applying this law to the facts of *Streater*, the Court stated:

> Nothing in the record shows that the trial court carefully assessed the admissibility of the factual findings of other crimes contained within the protective order. Indeed, there is no indication whatsoever that the trial court considered the potential problem related to the admissibility of the other crimes detailed within the order. Thus, . . . we cannot say that it is readily evident from the record in this case that the trial judge was fully aware of the governing rule. Without [the trial court] having spread on the record the reasons for its ruling on the challenge to the admission to the evidence, our role on appeal is reduced to speculation as to the rationale for the trial court's admission of the evidence.

Id. at 811–12 (internal quotation marks, citations, footnote, and brackets omitted).

Although James asserts that *Streater* requires that the trial court's *Faulkner* inquiry must be fully articulated on the record, other cases have been less demanding as to what satisfies this requirement. In *Wilder v. State*, 191 Md. App. 319, 344 (2010), we concluded that a trial court did not err when it admitted other crimes evidence even though "the trial

court did not articulate the basis for its ruling." We reached this conclusion because the trial court "overruled defense counsel's objection [to the admission of the evidence] only after an extensive argument by the State in favor of admissibility," and because "[w]e presume that the trial judge knew the law and properly applied it in overruling the defense objection[.]" *Id.* at 344. *Accord Hill v. State*, 134 Md. App. 327, 354 (2000) ("Although the trial court did not expressly state its reasons on the record [for admitting the other crimes evidence], the record discloses that it was aware of the governing rule and appreciated the importance of the evidence and its impact on the trial.").

Our review of the record in this case persuades us that the circumstances of this case are akin to those in *Wilder*. Although the trial court did not expressly state its reasoning on the record as to why it overruled defense counsel's objection or fully articulate its *Faulkner* analysis, the issue was raised and discussed by counsel multiple times during James's criminal proceedings. Unlike the situation in *Streater*, this is not a case in which the trial court admitted other crimes evidence without any argument regarding its admissibility or the slightest indication that the trial court gave *Faulkner* standards issue any consideration. We are persuaded that the trial court did not abuse its discretion in permitting Ward to testify.

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