Circuit Court for Baltimore City
Case Nos. 120181010, 120181011, 120181008

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

CONSOLIDATED CASES

No. 2161, September Term 2022
No. 2254, September Term 2022
No. 2145, September Term 2022

KEVIN CLEVELAND
JABEZ DIGIORNO JOHNSON
ANTOINE D'ANDRE TRENT

v.

STATE OF MARYLAND

Nazarian,
Zic,
Harrell, Glenn T.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Nazarian, J.

Filed: May 14, 2024

Kevin Cleveland, Jabez Digiorno Johnson, and Antoine D'Andre Trent are three of four co-defendants who faced charges in connection with a 2020 bus stop shooting that resulted in the death of two men and injuries to a third. After a joint trial in the Circuit Court for Baltimore City, a jury convicted all four men of various crimes, including first-degree murder, conspiracy to commit murder, and related firearm offenses. The entirety of the shooting, which occurred in broad daylight just after 4:00 p.m., was captured by surveillance cameras mounted at several nearby businesses.

The State's case against the four co-defendants turned on identifying them as the men depicted in the surveillance video. In this consolidated appeal,[1] the three co-defendants raise multiple issues, some that overlap and some they raise individually. They challenge in part the circuit court's admission of the surveillance video showing the shooting and the sufficiency of the evidence supporting their convictions for conspiracy to commit first-degree murder, and they ask us as well to review a number of issues for plain error. We affirm their convictions with one exception: Messrs. Cleveland's and Johnson's duplicate conspiracy convictions must merge, and remand their cases to the trial court for resentencing.

[1] The fourth co-defendant, Damien Mickens, also had his appeal consolidated for consideration before the appellants in this opinion. The evidence against him differed from those of his co-defendants and he raised discrete contentions, so we resolved his appeal in a separate opinion. *See Mickens v. State*, No. 1359, Sept. Term 2022 (filed Mar. 25, 2024) (reversing his convictions and remanding for a new trial based on the erroneous admission of unreliable ballistics evidence).

I. BACKGROUND[2]

A. The Shooting & Investigation.

On the afternoon of April 10, 2020, a shooting near a Baltimore bus stop led to the deaths of Kendrick Brown and William Barrett and the seemingly unintended assault of Thanh Nguyen Ha, a passerby whose arm was grazed by a stray bullet as he drove through a nearby intersection. The event, which took place in broad daylight, was captured on surveillance video by cameras mounted at several nearby businesses, including Michaelangelo's Pizza, Sweet Home Jamaica Restaurant, Brooklyn Grocery, Bank of America, and Concerted Care (a drug-rehabilitation clinic). The State's case against the four co-defendants hinged on identifying them as the men depicted in the surveillance videos, which captured the incident at multiple angles.

The silent video recordings first show the murder victims, Messrs. Brown and Barrett, walking up to the bus stop together from South Hanover Street over a period of twenty minutes before the shooting. Both victims milled around the area and eventually crossed the intersection and stood along South Hanover Street near Sweet Home Jamaica. They remained across the street for about ten minutes when the four suspects first arrived

[2] We recount the facts in the light most favorable to the State as the prevailing party. *See generally State v. Krikstan*, 483 Md. 43, 63–64 (2023) ("Our role is not to review the record in a manner that would constitute a figurative retrial of the case" and we defer to "reasonable inferences drawn by the fact-finder . . . ."); *Estate of Blair by Blair v. Austin*, 469 Md. 1, 17 (2020) (the appellate court lacks authority to substitute its own factual findings for those of the jury after its independent review of video evidence).

in the area, all wearing face coverings[3] but each in distinctive clothing.[4] A short time later, Mr. Barrett walked away with the group of suspects, out of the camera's view. Eventually, Messrs. Mickens and Johnson reappeared and walked to the corner of the intersection. Then Mr. Barrett reappeared and he and Mr. Brown walked together back across the intersection to the bus stop, where they would remain until the shooting.

Once Messrs. Brown and Barrett arrived at the bus stop, the four suspects reunited and were visible together on the other side of the intersection. They appeared to be speaking to one another when at one point, Mr. Cleveland pointed down South Hanover Street (in the direction opposite the victims) and then jogged away in the same direction. The other three suspects followed him for a short distance, then turned around abruptly and strolled to the corner of the intersection. After waiting about a minute, they walked across the intersection and headed toward the bus stop where Messrs. Brown and Barrett were standing.

The three men approached Mr. Barrett and appeared to speak to him while Mr. Brown stood off to the side, closer to the street. An item and money were exchanged in

[3] April 10th was the beginning of the COVID-19 outbreak when the public had been instructed by the government to wear face-coverings in public, including outdoors. The victims were not wearing face coverings, however.

[4] The State alleged that Mr. Cleveland wore a black North Face jacket and black trousers. Mr. Johnson wore a grey hooded sweatshirt and dark blue jeans with a distinctive "H" belt buckle. Mr. Trent wore a black hooded sweatshirt with a white gear design on the back and distressed light blue jeans. Mr. Mickens wore a blue "puff" coat with black sweatpants.

an apparent drug transaction. Three minutes after jogging out of view, Mr. Cleveland reappeared from the direction of 2nd Street. The camera view from Concerted Care's surveillance showed him being dropped off in a black Honda Accord, and he walked immediately up to the group, put his arm around Mr. Mickens, and spoke to him briefly. Messrs. Cleveland and Mickens walked away from the others for a few steps, then returned to the group.

Next, a male in a grey hooded sweatshirt (later identified as eyewitness Sean Clark) crossed Patapsco Avenue and walked in between the group of men. He fist-bumped Mr. Johnson, who was leaning against the bus stop shelter, and then greeted Mr. Cleveland with another fist bump.

Moments later, Mr. Trent reached into his pants, drew a pistol, and shot Mr. Brown (who was still standing in front of the bus stop, largely away from the group). This prompted the rest of the men to run away. Mr. Clark and other onlookers dove to the ground. Mr. Mickens chased Mr. Barrett down and across the street, around cars, while shooting at him from behind. Mr. Barrett fell to the ground directly across the street from where Mr. Brown had fallen. The shooter's left pinky finger was visibly bandaged (as Mr. Mickens's was when detectives interrogated him later).

The other three suspects all ran in the direction of 2nd Street. Mr. Trent and Mr. Cleveland both ran down the alley between Michaelangelo's Pizza and Concerted Care, where the black Honda had dropped off Mr. Cleveland two minutes earlier. Mr. Cleveland turned around at the mouth of the alley with a gun drawn but never discharged

it. Mr. Johnson can be seen discharging his weapon in the direction of the intersection as he fled toward 2nd Street.

A white van (later identified as being driven by Mr. Ha) is visible in the video during the shooting heading northwest through the intersection, stopping and starting abruptly. The van ran the red light toward the direction of a Carroll Fuel gas station, just down the street from the bus stop. The driver of the van, Mr. Ha, called 911 from the Carroll Fuel station and reported to the responding officer that his vehicle had been shot. The officer observed an injury to Mr. Ha's right arm.

Back at the crime scene, police recovered thirty cartridge casings as well as eight metal fragments, two projectiles, and one package of suspected controlled dangerous substance. They determined that three different firearms had been used during the shooting, which corresponded with the movements of the suspects in the video. Police were unable to collect fingerprints from any of the items.

The investigation led police to question Mr. Clark, who was seen in the videos greeting two of the suspects. Mr. Clark was questioned by police formally on April 22, 2020, and he identified Messrs. Cleveland, Trent, and Johnson, whom he knew from the neighborhood, from still images taken from the videos. Mr. Clark was unfamiliar with the gunman with the bandaged pinky and did not identify Mr. Mickens. Mr. Clark insisted that he didn't witness the actual shooting, but when asked who was involved, Mr. Clark implicated three of the co-defendants and stated that Mr. Cleveland was "just there."

The investigation led eventually to three search warrants that police executed simultaneously on the morning of April 25, 2020. At Mr. Mickens's residence, police seized clothing similar to that worn in the video by Mr. Barrett's shooter along with ammunition and a loaded .40 caliber handgun. Police also searched 3618 Fifth Street in Baltimore, where Mr. Trent was found on the first floor along with twelve other people. From that house, police recovered a box of .38 caliber ammunition in the basement and a box of .22 caliber long rifle ammunition under a TV stand, but did not connect any ammunition to the shooting. The third search occurred at 3427 Sixth Street, where police found Mr. Johnson along with several other people in the residence and searched what they believed to be his bedroom. They recovered several clothing items, including a black sweatshirt with a gear on the back that appeared to be the same one Mr. Trent wore in the videos. Other clothing items that the State connected to suspects in the videos were recovered as well.

Mr. Mickens was arrested at his home, taken to the police station, and interviewed. During the interrogation, Mr. Mickens confessed to his involvement in the shooting and that the gun seized was the one used in the crime. He also discussed possible motives behind the shooting but didn't identify any co-defendants.

The other three co-defendants, all appellants here, were charged with two counts each of first-degree murder, conspiracy to commit first-degree murder, and use of a firearm during the commission of a crime of violence (counts 1–3 for Mr. Brown and counts 4–6 for Mr. Barrett). They also were charged with first- and second-degree

assault, and use of a firearm during the commission of a crime of violence (counts 7–9 for Mr. Ha). In addition, Mr. Trent and Mr. Johnson were charged with possession of a firearm by a person under twenty-one (count 10).

B. The Jury Trial.

The joint trial began on June 1, 2022 and lasted nine days. The State's case included testimony from ten witnesses, the surveillance videos (and corresponding still images) that captured the shooting, Mr. Clark's identification of the appellants, the ballistics evidence, and the seized items of clothing that the State claimed the co-defendants wore during the incident. The defense for each of the appellants called no witnesses.[5]

Detective Eric Perez testified that he was assigned to canvass the area of the shooting for closed circuit television (CCTV) footage of the incident. The area had been marked off by patrol officers for a block-and-a-half in each direction after the shooting. Ultimately, Detective Perez recovered video from the external cameras and they were admitted (with the exception of the Bank of America footage) through his testimony as State's Exhibits 3 through 7. We discuss this part in more detail below.

Detective Perez also testified that he encountered Mr. Clark within two hours of the shooting in the alley in between Michaelangelo's and Concerted Care. Detective

[5] Mr. Mickens called an expert witness to contest the voluntariness of his confession, which remained a factual issue for the jury despite the circuit court's ruling that the confession was admissible.

Perez said that Mr. Clark seemed "very coherent" and left with the understanding that officers "would follow up with him at a later time for an interview." Detective Perez and another officer picked Mr. Clark up and transported him back to Homicide to be interviewed, and the interview was recorded. Detective Perez conceded that Mr. Clark appeared to be nodding off during the interview, but in Detective Perez's opinion, Mr. Clark "was coherent."

The State called Mr. Clark next and, to put it mildly, he was uncooperative. He said that in 2020 he would walk to the methadone clinic on Patapsco every day and was familiar with the area where the shooting occurred. Mr. Clark stated that he only "[v]aguely" recalled the incident; he walked by on the street and then a bunch of gunshots went off fifty or one-hundred yards behind him. He remembered interacting with two people about a minute before the gunshots and "dapped" someone as he walked by the bus stop. When he heard shots, he dove to the ground, stayed there for about ten seconds, then got up and saw one person lying on the ground by the bus stop. He said that he did not see anything, including any shooting, while he was on the ground.

Mr. Clark remembered police officers coming and talking to him later that day and telling him they'd seen him in the video. He testified that he didn't recognize any of the four co-defendants in court, and he only identified the co-defendants during his prior interview to get away from police, who kept "harassing" him. He said that he was on drugs and police told him what to say, and that he feared he would be arrested for having heroin, so he "went along with their charade."

Mr. Clark stated that the police showed him photos of people at the bus stop and that he wrote whatever police told him to write on the photos, which were admitted. From the still photos taken of the incident, he identified all three appellants by their street names, but said this information also came from the police. Mr. Clark said the police told him whom to identify in the photos before they turned on the camera during his police interview.

The video recording of Mr. Clark's April 22, 2020 interview with Detectives Perez and Ragland was admitted as a prior inconsistent statement.[6] In Mr. Clark's statement, which lasted approximately forty-five minutes, he said he knew the appellants from the neighborhood and identified them in still images from the surveillance videos. He confirmed that on the date of the shooting he walked to the bus stop where he saw some people whom he knew, and interacted briefly with Messrs. Johnson and Cleveland, as the video showed. When he turned, he heard gunshots after his back was to them. Mr. Clark expressed concern about testifying and his safety several times during the interview.

The State also called Crime Lab Technician Erika Harden. She testified that she had processed the scene of the shooting after arriving just after 5:00 p.m. Photos and a sketch of the scene were admitted into evidence. She collected thirty cartridge casings at

[6] Maryland Rule 5-802.1(a) provides that "[a] statement that is inconsistent with the declarant's testimony . . . [that was] recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement" is not hearsay. Prior inconsistent statements may be used as substantive evidence and not merely impeachment evidence. *See Corbett v. State*, 130 Md. App. 408, 421 (2000).

various places on the scene, as well as eight metal fragments, two projectiles, and one package of suspected controlled dangerous substance.

Patrol Officer Curtis Boggess testified that he arrived on the scene shortly after the shooting. He found the two men lying on each side of the street, both with gunshot wounds. He then responded to a Carroll Fuel station down Patapsco, where he found a white van and Mr. Ha, who said his vehicle had been shot. Mr. Ha had a gunshot injury to his right arm. Officer Boggess testified that a bullet had entered the back of Mr. Ha's van, came out the front driver's headrest, and exited the van's front windshield. Mr. Ha did not testify at trial and no medical records concerning Mr. Ha's injury were offered as evidence. There were, however, photographs admitted that showed the bullet holes in the van, and Mr. Ha's injury.

Detective James Deasel testified that he had worked in the Southern District for five years and could identify all four co-defendants as people he was familiar with from his time working in the neighborhood. He testified over objection that he saw the four co-defendants together on April 14, 2020, four days after the incident, on Fifth Street, a couple blocks from the scene of the shooting. Photographs he took of the men together, some of them wearing similar articles of clothing to the shooting suspects in the video, were admitted into evidence. He acknowledged that at a pretrial hearing he had misidentified Mr. Johnson as Mr. Trent.

Expert Firearms Examiner Jessica Kennedy testified that she analyzed Mr. Mickens's handgun (recovered during the search of his residence), thirty spent cartridge

casings, and eighteen bullets or bullet fragments. The handgun was a .40 caliber semiautomatic capable of firing ten rounds. She testified (over Mr. Mickens's objection) that eleven casings were fired from Mr. Mickens's handgun,[7] seven from a different .40 caliber gun, and twelve from a single 9 mm gun.

Detective Thomas Young told the jury about the search warrant he helped execute at 3618 Fifth Street in Baltimore on April 25, 2020, where police found Mr. Trent and ammunition unrelated to the shooting. Detective Eric Ohmstede participated in the simultaneous execution of a search warrant at 3427 Sixth Street, where police found Mr. Johnson and several clothing items.

Detective Eric Ragland testified as the primary homicide detective in the investigation. He canvassed the area looking for witnesses based on stills from the CCTV footage and encountered Mr. Clark at the intersection of Patapsco and Hanover. He said that Mr. Clark appeared "disheveled" but "alert and attentive," seemed willing to help, and was provided with contact information. He stated that detectives later had to go out and find Mr. Clark, including using information from a confidential source, to talk with him again.

Viewing video from five different sources, Detective Ragland created flyers and spoke to "departmental resources in the Southern District," including Detective Deasel, to develop the appellants and Mr. Mickens as suspects. He had officers from his unit bring

[7] We reversed Mr. Mickens's convictions on this issue. *See Mickens*, slip op. at 34–38.

Mr. Clark to Homicide and show him three photo arrays. Through surveillance, Detective Ragland obtained the search warrants for the residence of Mr. Johnson, the residence of Mr. Mickens, and an address "associated with the targets of the investigation."

During Detective Ragland's testimony, a redacted version of Mr. Mickens's confession was played for the jury over Mr. Mickens's objection.[8] Counsel for Mr. Trent moved for a mistrial due to certain references during Mr. Mickens's statement that she believed would be redacted. The Court denied that motion, and we'll discuss it in more detail below.

The jury convicted Mr. Trent of first-degree murder of Mr. Brown, conspiracy to commit first-degree murder of Mr. Brown, conspiracy to commit first-degree murder of Mr. Barrett, two counts of use of a firearm during the commission of a crime of violence (against Messrs. Brown and Barrett), and possession of a firearm by a person under twenty-one. He was acquitted of first- and second-degree murder of Mr. Barrett and first- and second-degree assault of Mr. Ha and was sentenced to life imprisonment.

Mr. Johnson was convicted of conspiracy to commit first-degree murder of Mr. Brown, second-degree murder of Mr. Barrett, conspiracy to commit first-degree murder of Mr. Barrett, use of a firearm in the commission of a crime of violence against Mr. Barrett, first-degree assault of Mr. Ha, use of a firearm in the commission of a crime of

[8] Mr. Mickens challenged the admission of his confession again on appeal, but we affirmed the trial court's ruling. *See Mickens*, slip op. at 19–23. The jury was later instructed they could only consider Mr. Mickens's statement against Mr. Mickens.

violence against Mr. Ha, and possession of a firearm by a person under twenty-one years of age. Mr. Johnson was sentenced to an aggregate term of seventy-five years imprisonment, followed by a five-year term of supervised probation.

The jury acquitted Mr. Cleveland of all counts but the two counts of conspiracy to commit first-degree murder of Messrs. Brown and Barrett. He was sentenced to two consecutive life sentences, suspending all but twenty years, followed by five years of supervised probation. The aggregate sentence of active incarceration was forty years.

Timely appeals followed. Additional facts will be supplied as necessary below.

II. DISCUSSION

The appellants raise a number of overlapping and discrete claims of error which we have combined, reordered, and reworded as follows:[9] *first*, whether the surveillance footage of the shooting was authenticated sufficiently; *second*, whether the evidence was sufficient to support the challenged convictions for conspiracy, second-degree murder, first-degree assault, and use of a firearm during the commission of a crime of violence; *third*, whether this Court must merge the conspiracy convictions because there was only evidence of one conspiracy; *fourth*, whether the circuit court abused its discretion by denying Mr. Trent's motion for mistrial; *fifth*, whether to consider the unpreserved challenges to convictions for unlawfully possessing a firearm as a person under twenty-one years of age for violating the Second Amendment of the U.S. Constitution;

[9] We include the specific issues presented by each party as contained in their briefs in the Appendix to this opinion.

sixth, whether to consider Mr. Cleveland's unpreserved challenge to expert testimony that casings found at the crime scene were fired by Mr. Mickens's gun; and *seventh*, whether to consider Mr. Johnson's unpreserved challenge that the trial court's jury instruction for "beyond a reasonable doubt" was erroneous.

For the reasons that follow, we affirm the convictions except for Messrs. Cleveland and Johnson's duplicate conspiracy convictions, which must be merged. We vacate one conspiracy conviction for Mr. Cleveland and one conspiracy conviction for Mr. Johnson and remand their cases to the trial court for resentencing.

A. The Surveillance Footage Was Admitted Properly.

All three appellants challenge the circuit court's admission of the surveillance footage,[10] which was the foundation of the State's case. At trial, all four co-defendants objected to the admission of the State's Exhibits 3 through 6, the surveillance footage, for lack of proper authentication.[11] The appellants assert that the State "needed to show the accuracy of [the CCTV] equipment and the reliability of that equipment[,] as well as the

[10] Mr. Cleveland challenged the admission and Messrs. Johnson and Trent adopted Mr. Cleveland's arguments pursuant to Maryland Rule 8-503(f) ("In a case involving more than one appellant . . . , any appellant . . . may adopt by reference any part of the brief of another.").

[11] The State argues that certain appellants failed to preserve objections to the videos and still images coming in. The circuit court noted in ruling each surveillance video exhibit (Exhibits 3 through 6) that "[a]ll defendants" or "all counsel" joined in on the objections when it overruled them. The lack of objection to the still images does not negate the initial objections to the original evidence. We agree with the appellants that the circuit court decided the issue. *See* Md. Rule 8-131(a) (an issue is preserved when "it plainly appears by the record to have been raised in or decided by the trial court").

process involved with producing the evidence shown to the jury." They argue further that the State needed testimony about the "reliability of the processes used to transfer" the videos and about the process used to "compile[] the spliced versions shown to the jury or the method of creating the still photographs." The State responds that it "satisf[ied] its slight burden" and that there was no abuse of the trial court's discretion in admitting either the videos or the still images. We agree with the State.

The authentication standard is, in fact, a "slight burden," as defined in Maryland Rule 5-901, which states, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied *by evidence sufficient to support a finding that the matter in question is what its proponent claims*." (Emphasis added.) What is "sufficient"? We know that "[t]he threshold of admissibility is slight," *Covel v. State*, 258 Md. App. 308, 323 (2023), and the rule provides some examples for context, including "[t]estimony of a witness with knowledge," "[c]omparison . . . with specimens that have been authenticated," and "[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be." Md. Rule 5-901(b)(1)–(4).

We review rulings on the admissibility of evidence under an abuse of discretion standard. *See Prince v. State*, 255 Md. App. 640, 651 (2022). "A trial court abuses its discretion when 'no reasonable person would take the view adopted by the trial court,' or when the ruling is 'clearly against the logic and effect of facts and inferences before the court.'" *Id.* at 652 (*quoting King v. State*, 407 Md. 682, 697 (2009)).

1. State's Exhibit 3: Michaelangelo's Pizza surveillance.

The State admitted the videos through the testimony of Detective Perez, starting with State's Exhibit 3, the surveillance from Michaelangelo's Pizza, the business closest to the bus stop where the shooting took place. Detective Perez testified that when he arrived at the scene, he knew the area had many businesses and began working to obtain surveillance video. He could see exterior cameras at Michaelangelo's Pizza and found that the business had a "DVR system . . . behind a secure counter . . . . [I]t was a propriety-based DVR system which utilizes a USB thumb drive to initially extract the data from the system." He explained that a "proprietary system" is "just like a Samsung or a generic DVR system or a Night Owl DVR system, something that's proprietary based towards that system and that brand." It was the first time he had retrieved footage from Michaelangelo's Pizza but he was able to access the system:

> [THE STATE:] Were you familiar with the system that they were using?
>
> [DETECTIVE PEREZ:] Yes, ma'am. I'm familiar with pretty much most systems that are out there, from my past expertise with computer crimes.
>
> [THE STATE:] So what was the first thing that you did once you got access to the system, what's the first thing that you did to make sure you understood how the system worked?
>
> [DETECTIVE PEREZ:] We do a playback just to make sure the footage is there that's needed, that's required for the date and time in question, I compare the accuracy of the date and time with actual time to see if I have to compensate for the retrieval time frame if it is off by, you know, ahead or behind, and then I go ahead and retrieve what I need.
>
> [THE STATE:] Now, you said that you check to see if the date and the time were accurate, how do you do that?

> [DETECTIVE PEREZ:] So you on the live feed, you see what the date and time is on the live feed and compare it to your phone is normally the best way, your phone's accuracy, date and time and that's how you would cross-reference to see the accuracy.
>
> [THE STATE:] And did the video from Michaelangelo's at 100 East Patapsco—
>
> [DETECTIVE PEREZ:] Yes, ma'am, that date and time was accurate.
>
> [THE STATE:] And how did you know when to play back to find what you were looking for?
>
> [DETECTIVE PEREZ:] Well, being that the case, the incident just occurred, we just went off the time out of the incident and I already knew that so I didn't need Detective Ragland to tell me that, I already had that information at hand and I was able to find what we needed.

The State asked how Detective Perez recovered and saved the actual footage into the video that became State's Exhibit 3:

> [DETECTIVE PEREZ:] . . . [Y]ou would just go to the menu and look for the back up or download feature and put in the parameters that you need date and time wise for what you needed and check off the cameras that you wanted to go into that download and just make sure everything is accurate for your download and you just go ahead and back it up to your thumb drive and it's on there once you back it up.
>
> [THE STATE:] So basically are you just dragging the file from—or saving the file from the system to your—a drive that you bring with you?
>
> [DETECTIVE PEREZ:] Yes, ma'am.
>
> [THE STATE:] And when you save the files from the system to your drive, is there any way for you to manipulate the footage in any way?
>
> [DETECTIVE PEREZ:] No, way, no ma'am. In no way, shape or form can you manipulate any of that data.

Once back in his office, Detective Perez "plugged it up to [his] desktop and review[ed] it for accuracy" to "make sure the download data was accurately obtained and retrieved" and then gave it to Detective Ragland, the primary homicide detective. During the examination, Detective Perez was shown the video footage from Exhibit 3 and he recognized the contents as those he retrieved from Michaelangelo's Pizza's surveillance system.

Defense counsel objected and argued that the State failed to prove that the video evidence "was created under a generally reliable method," and that "it hadn't been tampered with . . . ." The appellants contended that the State was required to present testimony from someone with prior familiarity with the system that it produces a generally reliable result. The circuit court disagreed, citing *Washington v. State*, 406 Md. 642 (2008), and finding that "[t]he Detective testified about what he did to ensure that the equipment was working properly." State's Exhibit 3 was admitted over the objection.

2. State's Exhibit 4: Concerted Care surveillance.

The day after the shooting, Detective Perez went to Concerted Care, the drug rehab clinic located near Michaelangelo's Pizza. When he arrived, the security agent had heard about the incident and assisted detectives in obtaining surveillance video of the shooting, which was secured behind the security agent's workstation. Once given access, Detective Perez "took control of the system" and reviewed and downloaded what he needed himself. Detective Perez explained it was "another proprietary-based system," but

couldn't recall the brand. He did say that he was familiar with the type of surveillance system Concerted Care used, which operated by motion sensor:

> [DETECTIVE PEREZ:] It's 24/7, 24 hours seven days a week video surveillance but it's also—it's motion sensored.
>
> * * *
>
> [THE STATE:] And how would that affect if you were to try to retrieve 30 minutes worth of footage from 4:00 to 4:30, how might that affect how the footage looks when you view it?
>
> [DETECTIVE PEREZ:] So on a windy day, it could be a little hinky, it could be a little jumpy due to the fact that the motion is not smart enough to know what are actual people, vehicles, things of that nature, it's just moving on an object moving or swaying in one direction or another.

Detective Perez explained that he "knew the time frame we were looking for . . . because we already had footage from the previous day of that incident." He stated that Concerted Care's system had an accurate date and time. The State showed Detective Perez four still images taken from videos and he affirmed that they "accurately reflect[ed] what could be viewed from the cameras at Concerted Care." The still images were admitted without objection. Defense counsel again objected to the video's admission, but the court overruled it and allowed the State to play a redacted portion to the jury.

3. State's Exhibit 5: Brooklyn Grocery surveillance.

The testimony about the Brooklyn Grocery surveillance video was similar. Detective Perez stated that the system sat behind the register in a locked, secured location. Detective Perez had retrieved footage from Brooklyn Grocery before and he was familiar with the system, "another proprietary based system, that system was seven

minutes behind actual time." He determined the time difference by checking the live footage time and date against his cell phone. His method of obtaining the evidence was also similar to the other videos: he used "a USB thumb drive, I reviewed it initially on the actual system, already deciphered what I needed as far as time and date, and then I went to the back up menu and recovered and downloaded it to my thumb drive." Again, Detective Perez was shown a still image of the camera footage, which he stated he recognized, and the photo was admitted into evidence without objection. Defense counsel objected and the Court overruled it. A redacted portion of the video was admitted over objection and played for the jury the following day.

4. State's Exhibit 6: Sweet Home Jamaica surveillance.

Detective Perez testified that he obtained Sweet Home Jamaica's surveillance footage by meeting with the owner, who gave him "access to the system which was located actually in a bathroom closet of the restaurant." At that point, Detective Perez already had viewed footage of other surveillance and was hoping "for some possible foot traffic of the suspects involved in this case that they might have passed by to or from, in route to that location." He explained again how he retrieved the footage:

> [THE STATE:] And what kind of a system did Sweet Home Jamaica at 3712 South Hanover Street have?
>
> [DETECTIVE PEREZ:] That was another—I believe that was a generic DVR system, just one of those proprietary systems I discussed yesterday.
>
> [THE STATE:] And so how were you able to get into the system itself?
>
> [DETECTIVE PEREZ:] Same way, he did have a password which he provided for me, went to the playback menu,

> viewed what we needed and that system was actually five minutes ahead of actual time so once I reviewed what I needed, I put the parameters of the date and time that I needed into the back up menu side of the system and downloaded it the same way with a thumb drive.
>
> [THE STATE:] And did you view the times that you had you put into the system before you downloaded them or after?
>
> [DETECTIVE PEREZ:] No, I viewed the times before.
>
> [THE STATE:] Okay. And in order to download them onto your external drive, what is that process like?
>
> [DETECTIVE PEREZ:] Once again you just go to the main menu and find out where the download or back up option is, put in the date and time that you need and the cameras you need and you begin the download and once it's complete, you're done.
>
> * * *
>
> [THE STATE:] Detective, I'm opening up what is on the disk marked as State's Exhibit Number 6-A, do you recognize this application?
>
> [DETECTIVE PEREZ:] Yes, ma'am.
>
> [THE STATE:] Do you recognize the application and the player?
>
> [DETECTIVE PEREZ:] Yes, I do.
>
> [THE STATE:] Is this what the system looked like when you went into it?
>
> [DETECTIVE PEREZ:] Yes, ma'am, it did.
>
> [THE STATE:] And is this the only camera that you downloaded footage from?
>
> [DETECTIVE PEREZ:] Yes, ma'am, the only one.

Defense counsel objected to the admission of the video and the court overruled it. On cross, Mr. Trent's counsel questioned Detective Perez's knowledge of the surveillance systems by asking what the frames per second of each system was, but Detective Perez didn't know or document it.

5. The circuit court admitted the videos properly.

The appellants contend that more was needed to authenticate the videos. They're wrong. It's true that the Maryland Supreme Court in *Washington v. State* recognized that "movies and tapes are easily manipulated, through such means as editing and changes of speed, to produce a misleading effect," 406 Md. at 651 (cleaned up), and that a party offering video and photographs must "lay an adequate foundation to enable the court to find that the videotape and photographs reliably depicted the events" at issue. *Id.* at 655. But Rule 5-901 erects a low barrier, *see Covel*, 258 Md. App. at 323 ("The threshold of admissibility is slight."), and the State surmounted it here.

Videos can be authenticated either through the pictorial testimony theory of authentication or the "silent witness" theory of authentication. *Prince*, 255 Md. App. at 652. The pictorial testimony theory "allows photographic evidence to be authenticated through the testimony of a witness with personal knowledge" and the "silent witness" theory "authenticates a photograph as a mute or silent independent photographic witness because the photograph speaks with its own probative effect." *Id.* (cleaned up). Under the "silent witness" theory, a party can authenticate video evidence through "presentation of evidence describing a process or system that produces an accurate result. *Id.* Maryland courts have not adopted "any rigid, fixed foundational requirements for admission of evidence under the silent witness theory." *Jackson v. State*, 460 Md. 107, 117 (2018) (cleaned up).

This case really is no different than *Covel v. State*, 258 Md. App. at 308. In *Covel*, we held that testimony properly authenticated CCTV surveillance video under the silent witness theory. *Id.* at 324. The appellant raised similar challenges to the foundational testimony by arguing a lack of explanation of the "technical aspects of the system's recording and storage capabilities," that the witness "saw only a replay of the shooting and did not see the event live," and that the witness's "statement of reliability [w]as merely conclusory." *Id.* at 319–20. Emphasizing that appellate courts "are loath to reverse'" a trial court's evidentiary findings, *id.* at 323 (*quoting Merbacher v. State*, 346 Md. 391, 404–05 (1997)), we found no abuse of discretion. It was enough that the State presented "testimony address[ing] the general reliability of the system" including "the scope of the system and the method used in recording" as well as "view[ing] the events directly after the shooting live." *Id.* (cleaned up). And there was no need to have "knowledge regarding the technical aspects of the video's operation," *id.* at 323, the exact burden the appellants seek to impose on the State in this case.

The State established in this case that Detective Perez was familiar with the types of surveillance systems at issue. Like the witness in *Covel*, Detective Perez physically went to the crime scene, knew the area, and could see that the recording displayed the area accurately. He testified that each surveillance system was secured, which negated any inference that the videos had been tampered with. He checked the time and date stamps to check each system's reliability. He was familiar with each surveillance system and downloaded each video himself. Detective Perez was knowledgeable about the

process of obtaining the surveillance footage, which "consisted of footage from the viewpoint of one camera" and "took the form of a 'simple videotape' and required a less detailed foundation than the more complicated footage at issue in *Washington*." *Prince* 255 Md. App. at 654 (*citing Washington*, 406 Md. at 655). And importantly, once Detective Perez had already, as he testified, watched "footage from the previous day of that incident" he was able to use the other footage to assess the reliability of each new video.

Washington is the only recent case in which either of our appellate courts found that the State failed to authenticate video evidence properly and that case is distinguishable. 406 Md. at 646. The footage there was "compiled from the various cameras and was transferred to a VHS tape" by a technician, a process unknown to the testifying witness. *Id.* The Maryland Supreme Court held that there was insufficient foundation as to "the process used, the manner of operation of the cameras, the reliability or authenticity of the images, or the chain of custody of the pictures." *Id.* at 655. Because the recording was "made from eight surveillance cameras, was created by some unknown person, who through some unknown process, compiled images from the various cameras to a CD," the Court held that the foundation was insufficient. *Id.* Nothing of the sort happened here. The circuit court did not abuse its discretion in admitting the video surveillance and corresponding still images.

B. There Was Sufficient Evidence Of Each Of The Challenged Convictions.

We *next* consider the sufficiency of the evidence underlying certain convictions challenged by Messrs. Cleveland and Johnson. Both argue that there was insufficient evidence to support the jury's conclusion that they conspired to commit first-degree murder.[12] Mr. Johnson contends as well that there was insufficient evidence to sustain his convictions for second-degree murder of Mr. Barrett, use of a firearm in the commission of a crime of violence against Mr. Barrett, first-degree assault of Mr. Ha, and use of a firearm in the commission of a crime of violence against Mr. Ha.

The sole question in each instance is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We don't "'undertake a review of the record that would amount to a retrial of the case,'" nor do we test the verdict to see if it accords with the weight of the evidence. *Handy v. State*, 175 Md. App. 538, 562 (2007) (*quoting State v. Pagotto*, 361 Md. 528, 533 (2000), *then citing Jones v. State*, 343 Md. 448, 465 (1996)). "Circumstantial evidence alone is sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced

[12] Because the State concedes there was only one conspiracy and we merge those separate conspiracy convictions (*see* Part II-C below), we address the sufficiency of the evidence to support only one conspiracy.

beyond a reasonable doubt of the guilt of the accused." *Handy*, 175 Md. App. at 562 (cleaned up).

1. The evidence was sufficient to support the convictions for conspiracy to commit murder.

Messrs. Cleveland and Johnson both challenge their convictions for conspiracy to commit murder on the grounds that the evidence was insufficient as a matter of law. At their core, the evidence to support these conspiracies needed to establish an agreement among these defendants to murder either Mr. Brown or Mr. Barrett. And because there is no direct evidence of an advance agreement among them, the question here is whether the jury was entitled to infer a meeting of the minds among Messrs. Cleveland and Johnson with each other or one or more of their co-defendants.[13]

"In Maryland, conspiracy remains a common law crime." *Mitchell v. State*, 363 Md. 130, 145 (2001). The offense is, stated most succinctly, an "unlawful agreement":

> A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The essence of a criminal conspiracy is an unlawful agreement. The

[13] Mr. Cleveland argues in his reply brief that the indictment required the State to prove Mr. Cleveland conspired with all three co-defendants, but this assertion is waived. The jury was instructed, without objection, that "the State must prove, first, that . . . the defendant agreed *with at least one other person* to commit the crime of first degree murder and that the defendant entered into the agreement with the intent that the crime of first degree murder be committed and that Kendrick Brown or William Barrett died as a result of the conspiracy." (Emphasis added.) The jury was instructed further that "[i]f two or more persons act in what appears to be a coordinated manner to commit a crime, you may, but need not, . . . infer an agreement by them to commit such a crime."

> agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown.

Id. (*quoting Townes v. State*, 314 Md. 71, 75 (1988)). In this case, there was no testimony about any agreement at trial, so to find an agreement, the jury would have to infer it from the co-defendants' behavior. An agreement can manifest through a "concert of action," *Darling v. State*, 232 Md. App. 430, 467 (2017) (cleaned up), that "gives rise at least to a permitted inference" of a prior agreement. *Jones v. State*, 132 Md. App. 657, 661 (2000). A jury can see this through "[c]oordinated action":

> If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may, but need not, infer a prior agreement by them to act in such a way. From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence.

Darling, 232 Md. App. at 466–67. The State asserts that "[t]he jury could watch the four videos and assess for itself whether [the appellants'] conduct reflected a concert of action." It's a question that we probed closely at oral argument, and answering it required a careful review of the video evidence, but ultimately we do find sufficient evidence of behavior from which a jury rationally could find via inference that these defendants agreed to murder one or both of these victims.

a. <u>The State's conspiracy theory at trial.</u>

During its closing argument, the State called attention to evidence that the group was together before the shooting and the circumstances leading up to it. The State pointed

to behavior that, it argued, demonstrated a prior agreement to commit the murders:

> Defense counsel wants you to believe that because there were no text messages provided to you in evidence and no phone calls produced to you in evidence that that means that there's no way that Kevin Cleveland could have conspired with these people. He was with them. He didn't have to call them. He was there with them. Why would he text somebody who he saw five minutes earlier outside the Sweet Home Jamaica? They'd be, like, hey, man, the guys that we want to kill, they're at the bus stop. He didn't need to send that text message. They could see them together. He left, got a car, brought the car to the scene and committed the crime.
>
> * * *
>
> [Counsel for Mr. Cleveland] would like you to believe that this was a spontaneous act, right? That he just happened to be there. He happened to see people he knows. He happened to agree to engage in some sort of hand-to-hand transaction with them. And then all four of them happen to be armed at the same time. That is not a spontaneous act. That is a planned act.
>
> * * *
>
> . . . You are able to watch these videos in their entirety in the jury room. We've showed you in court two minutes of clips from each video. Those videos are probably a half an hour long each. If you want to go back and see how long before the murder Kevin Cleveland was standing on the street over by Sweet Home Jamaica at 3612 South Hanover with those other three, it was not two minutes. It was probably closer to 12 minutes before the murder that he was first meeting up with them. This was premeditation.

Aside from the meeting beforehand and leaving to "g[e]t a car," the State also pointed to Mr. Cleveland's behavior after the shooting and claimed that it too supported a finding that there was an earlier agreement:

> You see the aftermath of how Kevin Cleveland reacted to Antoine Trent pulling his weapon and starting this whole thing off. And he could have walked away. He could have run

> away. He could have ducked like every other person at that bus stop. But he didn't. He provided cover to the four of them so that they could get away.

The State argued the same with respect to Mr. Johnson:

> Jabez Johnson was not an innocent bystander at this bus stop who did not participate in this crime. You can see him running with the gun in his hand—and it would be a lot faster for him to just run, but he doesn't. He stops and he turns and he fires the weapon. If he just wanted to get away, he would have just ran. But he didn't just want to get away. He wanted to make sure that William Barrett did not get away. And that is why he pulled his gun while he was running and he fired it, multiple times . . . .

The State points in its brief to additional facts that, it argues, support the inference of a conspiracy, including that each co-defendant arrived with a "firearm secreted on their person," and that at the bus stop, Mr. Cleveland chatted and put his arm around Mr. Mickens, "indicative of camaraderie." The State argues that Mr. Johnson "did not point [his] gun at [Mr.] Trent or [Mr.] Mickens and . . . his failure to do so was indicative of the conspiratorial agreement." The State also points to Messrs. Cleveland and Johnson "providing cover" for the other co-defendants, which it characterizes as "sufficient to permit a rational jury to infer a concurrence of action." Finally, the State points to evidence that the men were seen together a few days after the shooting in a nearby neighborhood.

b. <u>There was sufficient evidence that Messrs. Johnson and Cleveland conspired to murder.</u>

Mr. Cleveland contends that the State's evidence was insufficient to support an inference of conspiracy to commit murder, and that there was no "evidence of anything

more than [him] being at the scene." Mr. Johnson argues likewise that his behavior in the video is consistent with someone who was "not even expecting [Mr.] Trent's actions" of suddenly pulling out his gun and shooting Mr. Brown. Mr. Johnson also points to his actions after the shooting, that he retrieved his pistol "as he was running away" rather than before and that he ran in a different direction than the other co-defendants. He contends that the mere fact that all four men possessed firearms cannot support a conspiracy because "firearms are 'tools of the trade' of illegal drug-trafficking."

Jones v. State, 132 Md. App. at 661, is a particularly instructive example of what can qualify as evidence sufficient to allow a jury to infer an agreement to murder. In that case, "[t]hree separate witnesses, all family members, described how two men emerged from an adjacent alley together and how one of the two produced a silver-plated revolver and fired several shots." *Id.* We held that "[t]he circumstances of the approach and of the shooting were such that it was a reasonable inference that the two men were acting in concert." *Id.* According to witnesses, both men were "'stooped down'" as they emerged from the alley, the appellant stood near the shooter, and "immediately after the shooting, turned and ran together 'back down the alley.'" *Id.* at 661–62. Additional testimony "gave the assailants a common motive and a common purpose" by discussion of a "gang war." *Id.* at 663. One witness "believed that . . . the 'guys he was warring with went to the wrong corner and shot the wrong kid.'" *Id.* Therefore, the testimony "inferentially established that on the night of June 24 the gunman and his accomplice or accomplices were acting with a clear purpose to shoot and kill someone." *Id.* at 664.

Jordan v. State, 246 Md. App. 561, 601 (2020), has similar facts, too. There, the conspirators drove together, got out of their car, and approached a building with "no apparent business there." *Id.* We explained that the subsequent "concert of action" between the co-conspirators supported a "tacit agreement between them":

> As the murder victim approached on his bicycle, however, [the co-defendant] deliberately went to the car and turned on the ignition. The appellant stepped out and shot the victim at least three times. The appellant then jumped in the waiting car and . . . proceeded immediately "to get out of Dodge." As a predicate for a reasonable inference, that concert of action speaks for itself. The conduct would have been inexplicable without some at least tacit agreement between them.

Id.

Mr. Cleveland cites *Sequeira v. State*, 250 Md. App. 161, 204 (2021), because, he argues, "this Court reversed the conviction of conspiracy on the basis of the case that was tried." But we reversed Mr. Sequeira's convictions because of an error with the verdict sheet and jury instructions. *Id.* at 201–02. In fact, we found in that case that there *was* sufficient evidence of conspiracy for use of a firearm to commit first-degree assaults because reasonable jurors could find "that this was not a random or spontaneous series of events." *Id.* at 205–06. The evidence included co-defendants arriving at a restaurant, threatening victims, and leaving together only to remain in Mr. Sequeira's car, facing the restaurant, for fifteen minutes before Mr. Sequeira drove down the sidewalk as one of his passengers shot a gun out of the car window. *Id.* at 205–06.

Messrs. Cleveland and Johnson characterize what they believe to be reasonable inferences based on the videos of the shooting, but the jury here was permitted to draw

the opposite inferences, even if appellants' inferences could also be viewed as reasonable. And both largely ignore the evidence of the group's meeting beforehand and the State's theory that Mr. Cleveland left to retrieve a getaway car, crucial pieces in the State's theory during its closing argument that come into sharper relief in the videos the jury saw.

As in *Jones*, "[t]he circumstances of the approach and of the shooting were such that it was a reasonable inference that the . . . men were acting in concert." 132 Md. App. at 661. These appellants and Mr. Mickens were seen on the surveillance video meeting up beforehand with one another and with Mr. Barrett near Sweet Home Jamaica Restaurant. When Mr. Barrett left and re-joined Mr. Brown, the four co-defendants spoke with one another, at which point Mr. Cleveland pointed down South Hanover Street and jogged away in the same direction. He arrived minutes later from the opposite direction in a black Honda Accord, found the group immediately, and put his arm around Mr. Mickens. When the shooting started, he ran back to the alley where he was dropped off two minutes before and drew his firearm at the mouth of the alley before fleeing in the same direction as Mr. Trent. As for Mr. Johnson, he also was involved in the conversation on South Hanover Street before Mr. Cleveland jogged away. He approached Mr. Barrett at the bus stop with Messrs. Trent and Mickens. After Mr. Trent started shooting, Mr. Johnson retrieved and discharged his firearm in the direction of the victims.

The question isn't whether the evidence is unassailable or airtight—the question is whether the evidence was legally sufficient to support a reasonable inference that Messrs.

Johnson and Cleveland entered into an agreement to kill either victim. It was. The evidence revealed behavior from which a reasonable jury could conclude that they made an agreement to commit murder and we affirm the conspiracy convictions.

2. The evidence was legally sufficient to support a finding that Mr. Johnson committed second-degree murder and used a firearm in the commission of a crime of violence against Mr. Barrett.

Mr. Johnson also challenges the sufficiency of the evidence to support his conviction for the second-degree murder of Mr. Barrett. He contends that "[n]o ballistics evidence (or any other evidence) proves beyond a reasonable doubt that [Mr. Johnson] fired one or more of the fatal bullets that struck [Mr.] Barrett," or that Mr. Johnson "aided or abetted any other codefendant responsible for [Mr.] Barrett's death (either [Mr.] Mickens or [Mr.] Trent)." But just as the evidence supported a finding that there was a prior agreement to commit murder, the evidence was sufficient to allow the jury to infer that Mr. Johnson participated in Mr. Barrett's murder.

a. Mr. Johnson preserved his challenge under Maryland Rule 4-324(a).

The State argues that we should decline even to address Mr. Johnson's sufficiency claim on this count because, it claims, his challenge is unpreserved because he failed to make a motion for judgment of acquittal raising the specific ground that the State's proof failed to establish that he "aided or abetted" any co-defendant responsible for Mr. Barrett's death. Maryland Rule 4-324(a) requires a defendant who moves for a judgment of acquittal to "state with particularity all reasons why the motion should be granted." "'The language of the rule is mandatory, and review of a claim of insufficiency is

available only for reasons given by the defendant in his motion for judgment of acquittal.'" *Peters v. State*, 224 Md. App. 306, 353 (2015) (*quoting Whiting v. State*, 160 Md. App. 285, 308 (2004)) (cleaned up).

On our review of the record, however, we find that Mr. Johnson raised the issue in his motion for judgment of acquittal sufficiently. When Mr. Johnson made his motion for judgment of acquittal, he argued on the second-degree murder charge that Mr. Johnson did not "participat[e]" in Mr. Barrett's murder and it was "a spontaneous act by individual people." To that point, Mr. Johnson argues that "there is insufficient proof that [his] actions were part of a 'community or purpose or intent'" with Mr. Mickens or Mr. Trent because he "was *running away* from the place where they were firing" at Mr. Barrett. Mr. Johnson characterizes this as evidence that he "did not intend to aid or abet his codefendants who remained near the bus-stop and, instead, [Mr. Johnson] was acting on his own." That is good enough.

b. There was sufficient evidence that Mr. Johnson participated in Mr. Barrett's murder.

Mr. Johnson contends that the evidence is insufficient to support a finding that he committed any offense against Mr. Barrett, either as a principal or as an accomplice. He cites the absence of any ballistics or physical evidence that he fired a shot and the absence of evidence that he "intended to aid or abet his codefendants who were contemporaneously chasing or firing at" Mr. Barrett. But this overstates the State's burden on this charge. For one thing, second-degree murder does not require deliberation or premeditation. *Williams v. State*, 251 Md. App. 523, 543, *aff'd*, 478 Md. 99 (2022).

And nobody ever argued that Mr. Johnson shot Mr. Barrett himself—his liability here flows from his participation in the overall crime. And for accomplice liability for the second-degree murder of Mr. Barrett, the State needed only to prove that Mr. Johnson "participated in the principal offense":

> **In order to establish complicity for other crimes committed during the course of the criminal episode, the State must prove that the accused participated in the principal offense either as a principal in the first degree (perpetrator), a principal in the second degree (aider and abettor) or as an accessory before the fact (inciter)** and, in addition, the State must establish that the charged offense was done in furtherance of the commission of the principal offense or the escape therefrom.

Owens v. State, 161 Md. App. 91, 105–06 (2005) (*quoting Sheppard v. State*, 312 Md. 118, 121–22 (1988)).

For reasons similar to those underlying our conclusion that he and Mr. Cleveland are guilty of conspiracy, we find ample evidence that Mr. Johnson "participated" in the murder of Mr. Barrett and, thus, that this evidence was sufficient to support his conviction for second-degree murder. In addition to the evidence that Mr. Johnson conspired to murder the victims, the ballistics evidence and video surveillance showed Mr. Johnson discharging his weapon in the direction of the victims as he fled. And because there was sufficient evidence to convict Mr. Johnson of the predicate offense of second-degree murder, his attack on his conviction for using a firearm in the commission of a crime of violence fails as well. *See* CR § 4-204 (prohibiting a person from "us[ing] a firearm in the commission of a crime of violence . . . whether the firearm is operable or

inoperable at the time of the crime.").

3. There was legally sufficient evidence that Mr. Johnson assaulted and used a firearm in the commission of a crime of violence against Mr. Ha.

Mr. Johnson contends similarly that there was insufficient evidence that he committed any offense against Mr. Ha. The State responds that there was "an adequate basis to rationally conclude that [Mr.] Johnson or his accomplice shot [Mr.] Ha." The State points to the three bullet holes in Mr. Ha's van, the graze wound, the videos showing Mr. Ha's van driving through the intersection at the time of the shooting and showing Mr. Johnson discharging his firearm in the same direction, and the ballistics evidence consisting of discharged casings that corresponded with Mr. Johnson's movements in the surveillance videos.

In order to prove first-degree assault, the State had to demonstrate that Mr. Johnson committed an assault, *i.e.*, that he "caus[ed] offensive physical contact to another person," with a firearm. CR § 3-202. For the same reasons we found the evidence sufficient to uphold Mr. Johnson's conviction for the second-degree murder of Mr. Barrett, we uphold his conviction for the first-degree assault of Mr. Ha. There was ample evidence from which a jury could conclude that Mr. Johnson committed the assault against Mr. Ha, including the surveillance footage, which showed a van at the intersection at the same time Mr. Johnson discharged his weapon in that direction, the photograph of the bullet holes to Mr. Ha's van, and Mr. Ha's injury itself. And again, because there was sufficient evidence to convict Mr. Johnson of the predicate offense of

first-degree assault, his attack on his conviction for using a firearm in the commission of a crime of violence fails too.

C. The State Concedes That The Two Conspiracy Convictions Must Be Merged.

Mr. Cleveland, joined again by Mr. Johnson, asserts that their conspiracy convictions must merge because there was only one overarching conspiracy. The State concedes that the convictions must merge and requests a remand for resentencing on the remaining counts. *See Wilson v. State*, 148 Md. App. 601, 640–41 (2002) (multiple murders are treated as objects of single conspiracy despite multiple counts charging conspiracy). We agree and vacate one conspiracy conviction for Mr. Cleveland and one conspiracy conviction for Mr. Johnson and remand their cases for resentencing on the remaining conspiracy count under *Twigg v. State*, 447 Md. 1 (2016).

D. The Circuit Court Did Not Abuse Its Discretion When It Denied Mr. Trent's Motion For Mistrial.

We *next* address the contention, raised solely by Mr. Trent, that the circuit court abused its discretion when it denied his motion for mistrial. Mr. Trent argues that the circuit court denied his motion improperly because the court, in his view, admitted "incredibly prejudicial and confusing other crimes evidence," and points to certain portions of Mr. Mickens's redacted confession that was played for the jury.[14] The State

[14] The parties disagree over the precise content of the portions of Mr. Mickens's confession that were played for the jury. Nevertheless, we agree with the State that even assuming the jury heard the entirety of State's Exhibit 54 (Mr. Mickens's

Continued . . .

argues that Mr. Mickens's redacted statement "did not inject impermissible other crimes evidence regarding [Mr.] Trent." We agree with the State that the circuit court didn't abuse its discretion in this regard.

We review the denial of Mr. Trent's motion for abuse of discretion. *Rutherford v. State*, 160 Md. App. 311, 323 (2004). "The grant of a mistrial is an extreme sanction that courts generally resort to only when no other remedy will suffice to cure prejudice" to a defendant. *Id.* (cleaned up). Moreover, we acknowledge that the trial court is in a superior position to judge the effect of any alleged improper remarks, *Wilhelm v. State*, 272 Md. 404, 429 (1974), and look to whether the circuit court's exercise of discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Stabb v. State*, 423 Md. 454, 465 (2011) (cleaned up). Finally, an abuse of discretion occurs where the decision under consideration is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *King*, 407 Md. at 697.

1. Background.

Mr. Trent argues that the court became aware of potentially prejudicial testimony about the April 14th fight (where the appellants were present but not involved) during the pretrial phase of litigation. There was a motion *in limine* to preclude Detectives Deasel and Winston from identifying the four co-defendants in the videos of the shooting

redacted confession), the trial court did not abuse its discretion in refusing to grant Mr. Trent's motion for mistrial.

because the State couldn't show they were "intimately familiar" with the co-defendants such that they could give reliable opinion testimony about their identities. At the hearing, Detective Deasel testified that he had observed and interacted with the four co-defendants many times over several years of patrolling the area of 5th Street and Patapsco. He had taken pictures of the appellants together a few days after the incident when he was in the area and observed "two individuals known to [him] . . . in a heated argument and it looked like they were attempting to fight each other." Even though Mr. Trent was not involved in the fight, the four suspects were present and their photos were taken. After taking the photos, Detective Deasel was asked to look at the surveillance video of the shooting and when he did, he recognized the four co-defendants, as well as one of the victims and Mr. Clark.

The State acknowledged the defense's concern about prejudice stemming from the Detectives' testimony about seeing the defendants together in reference to investigating "illegal activity," but explained "the officers can very neutrally explain they're in that area because it's part of their district." The court was "less focused on that issue" but granted the defense motion *in limine* precluding the detectives' identifications of the four co-defendants in the surveillance videos nevertheless, noting that Detective Deasel had misidentified Mr. Johnson as Mr. Trent and Detective Winston had taken a long time to identify the appellants in court. The court only limited the detectives "from giving their opinion [of] the identity of each person in the video."

Mr. Trent asserts that "[t]he issue arose again" while litigating the admission of Mr. Mickens's confession. Mr. Trent sought additional redactions to the video "in reference to the possible motive for the shooting and the fight that occurred on 5th Street":

> The portion of the video that I did ask to be redacted . . . is Mr. Mickens . . . talking about "we" and there's a group of people and obviously we're sitting at a trial table with a group of people and the inference that will happen. . . .
>
> I recognize that a little of that has been weakened but I still think in this situation, that Mr. Mickens'[s] discussion of the fight and the fact that there are multiple people involved in the fight is just going to give it an improper inference that [Mr. Trent] was somehow involved in the fight as well.

The State argued that it wasn't a "proper redaction" because Mr. Mickens "doesn't name anyone else, and the detectives were certainly allowed to ask [Mr. Mickens] what he thinks the motive for the shooting was, and he tells them that they're wrong in their theory about that motive." The State announced that it would introduce the April 14th photos into evidence:

> [The State] intend[s] to call Detective Deasel to enter into evidence the photographs that were taken on April 14th that shows all four of the defendants associating with each other on 5th Street. That is the day that there was a fight, none of them were participating in it but that testimony will still be coming in to show that Detective Deasel knows who they are and has seen them with each other. Not that he's identifying them from the video.

Mr. Trent objected and the court stated he should lodge his objection when the evidence was offered.

At trial, the State called Detective Deasel as planned. When the State asked if he had observed the appellants on April 14th, counsel for Mr. Trent objected and argued that there was "undue prejudice that comes to our clients [that] far outweighs any probative value" and that it was not relevant "that they and a bunch of other people were together in a neighborhood when the Court just allowed the officer to testify to the fact that he's seen them in combination together frequently." The court overruled the objection, noting that it was relevant if the co-defendants "[w]ere together within a short time of the alleged incident." Detective Deasel went on to testify that he observed the appellants together on April 14th and the State admitted five photographs, over objection, that Detective Deasel took of the men, including one photograph of Mr. Trent. Detective Deasel never testified about a fight and none of the photographs show any fight in progress.

Mr. Mickens's confession video also was admitted. And the following day, his redacted statement was played to the jury, prompting Mr. Trent's motion for mistrial. During the video interview, detectives asked Mr. Mickens to identify himself in a photograph (one taken by Detective Deasel on April 14th), asking "[w]hat was going on that day? Where are you at? You remember?" Mr. Mickens replied that he was on 5th Street and he wore the outfit and stood in that area "a lot." Detective Ragland asked if he remembered that day, stating "[o]ne of your homeboys was fighting somebody." Mr. Mickens just replied that he remembered and "that was funny."

After admitting to his involvement in the shooting, Mr. Mickens stated, "I was waiting for y'all. . . . I see ya'll every day taking pictures, watching my house. . . . They

comin'. Fuck it. What else can I do?" At that point, Detective Ragland again pursued questioning about the motive for the shootings:

> DETECTIVE RAGLAND: So why did they get killed?
>
> MR. MICKENS: So I'm not saying no names. I'm not saying . . . nobody. . . . So let's say a higher power than me . . . you feel me? [(Gesturing above his head.)]
>
> * * *
>
> Basically, it was like the wrong person got hit. The wrong person got—the wrong person got shot at, so—
>
> DETECTIVE PEREZ: When?
>
> MR. MICKENS: 5th and Cambria.
>
> * * *
>
> Wrong people got shot at. Like, why would you shoot at 5th Street? Don't come to 5th Street because 5th Street going to—you feel me?
>
> DETECTIVE PEREZ: Coming back.
>
> DETECTIVE RAGLAND: Coming back at you.
>
> DETECTIVE PEREZ: They're coming back.
>
> * * *
>
> MR. MICKENS: Yeah. And as y'all can see—yeah. They beat the shit out of that man and—yeah, it was a little bit of retaliation, but that main situation was because of weed.
>
> DETECTIVE RAGLAND: Not because of the guy getting his ass beat?
>
> MR. MICKENS: No. Yeah, it was on our—yeah, it was in our mind, on our temple, you feel me. . . . Would y'all . . . . Say, if one of y'all officers got beat up or—
>
> DETECTIVE RAGLAND: So let me ask you this. Are you saying . . . because this shit happened up on 5th and Cambria and y'all think that the guys that did it came from Hanover Street and now your shit ain't right down here with the weed, y'all like, "Fuck it. They from Hanover."
>
> * * *

MR. MICKENS: 5th Street not even beefin' with nobody.

* * *

Nah. It ain't retaliation.

DETECTIVE RAGLAND: So this wasn't retaliation?

MR. MICKENS: Yeah, yeah. It was not.

* * *

DETECTIVE PEREZ: Well, because they from there too. You're like, "Fuck it. Let's," even though (indiscernible) weed, we just prove a point. They from Hanover anyway. ["]Fuck it."

MR. MICKENS: Mmm. [(Shrugging.)]

DETECTIVE RAGLAND: Mmm?

DETECTIVE PEREZ: That's a yes?

DETECTIVE RAGLAND: Okay.

DETECTIVE PEREZ: Okay.

After Mr. Mickens's statement was played for the jury, Mr. Trent moved for a mistrial:

> Your honor, I understood that the redactions of Mr. Mickens'[s] statement was going to include the proposed redactions that I sent [the prosecutor] on June 3rd. And in the email that I sent to her, I referenced the fight on 5th Street and I gave specific times that included in particular "The wrong person, a higher power than me, the wrong person got shot, by which you shoot at 5th Street, they had the shit beat out of that man, it was on our mind in our temple." The detective says, you're all thinking of someone from Hanover Street and says in retaliation.
>
> In particular, I highlighted that as one of the sections that I believed should be redacted from the statement because of the reference back to the fight that I believe that Detective Deasel may have been referencing.
>
> Obviously, the fight itself is not discussed, but the detective has now introduced photos from April 14th and indicated that

> he's surveilling the area and that these folks were always together. . . .
>
> I think the prejudice of that statement is pretty severe and it's unduly prejudicial and the probative value—because the response back from [the State] was that she was going to listen back to it again, but it was her understanding that these folks weren't involved in that fight so it—it was not pertaining to it. But now when you hear it in the context of what the Court has allowed in with regard to Detective Deasel's testimony, the photographs on April 14th . . . and that statement, I think that the only inference that anybody is going to come to is that these folks, the other defendants at this table, were involved in some sort of 5th Street fight, and the wrong person got shot at and that they were involved with that.

The State responded that the detectives only mentioned the fight during Mr. Mickens's statement to "put Mr. Mickens in a frame of reference of when that photo was taken when he was wearing that outfit." "The second section that we're referring to," the State explained, "is a different section of the video where the detective was asking if there was any more to the motive for this shooting other than weed . . . [a]nd Mr. Mickens said no, this was just about weed." The court denied Mr. Trent's motion for mistrial without explanation.

2. The court did not abuse its discretion in denying Mr. Trent's motion for mistrial.

Mr. Trent asserts that this evidence was prohibited under Rule 5-404(b) and 5-403. Maryland Rule 5-403 provides that "[a]lthough 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." Rule 5-404(b) states further that

"[e]vidence 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, [or] absence of mistake or accident . . . ." *See also Straughn v. State*, 297 Md. 329, 333 (1983) (Evidence of a defendant's other criminal acts may not be introduced to prove that he is guilty of the offense for which he is on trial.); *Smith v. State*, 232 Md. App. 583, 599 (2017) ("Rule 404(b) prohibits other bad acts evidence to protect against the risk that a jury will assume that because a defendant committed other crimes, he is more likely to have committed the crime for which he is on trial.").

On appeal, Mr. Trent argues that "[t]he clear conclusions to be drawn from [Mr. Mickens's] statements were that Mr. Mickens and associates of his were involved in illegal gang activity, including violent altercations with people from other neighborhoods." He argues that the statements confused the jurors because "[m]otive was not part of the case the State presented at trial." But his argument suffers from a few factual issues. *First*, the fight referenced during Mr. Mickens's statement was never linked to State's Exhibits 10-A–E, the photographs from April 14th, nor to Mr. Trent, and so there's no inference to be drawn that—as Mr. Trent contends—"a separate fight led to the shooting in question." *Second*, Mr. Trent doesn't point to any testimony referencing "illegal gang activity" at least with respect to Mr. Mickens's statement or Detective Deasel's testimony. And *third*, Mr. Trent doesn't point to any connection between

himself and Mr. Mickens's reference to "a higher power." Moreover, the challenged references to "beefing" and "retaliation" do not constitute impermissible "other crimes" evidence in any event. *See* Rule 5-404(b) ("Evidence of other . . . wrongs . . . may be admissible for other purposes, such as proof of motive . . . .") Evidence that the appellants acted in retaliation was relevant to the shooters' motive and therefore admissible. *Jackson v. State*, 87 Md. App. 475, 487 (1991) ("evidence tending to show motive is always relevant and admissible where the accused denies the commission of the crime" (cleaned up)). Mr. Trent doesn't point to any case law that supports a finding that the trial court's conclusion fell "beyond the fringe of what that court deems minimally acceptable." *King*, 407 Md. at 697.

The State points us to *State v. Galicia*, 479 Md. 341 (2022), which we agree is helpful in this context. There, a witness testified that a co-defendant told her "'*they* just started shooting.'" *Id.* at 374. Mr. Galicia had argued that he "had been prejudiced by the use of that pronoun" because the testimony "placed that idea in the jury's head that 'they' included Rony Galicia . . . ." *Id.* at 376 (cleaned up). The Supreme Court of Maryland held that "the generic plural pronoun 'they' in recounting [the witness's] description of the shooting" did not prejudice Mr. Galicia because it was "perfectly consistent" with his theory that he was not one of the shooters, and thus he wasn't prejudiced. *Id.* Similarly, Mr. Trent was not prejudiced by Mr. Mickens's vague references to a "higher power" or use of the word "our" (*e.g.*, "in our minds") when he never identified Mr. Trent as a shooter or refuted Mr. Trent's defense theory was that he was not present at the shooting.

Although we don't find that any evidence was admitted impermissibly,[15] any unfair prejudice that might have occurred to Mr. Trent was cured when the court instructed the jury only to consider Mr. Mickens's statement against Mr. Mickens, and there was no manifest necessity for a mistrial. *See Rutherford*, 160 Md. App. at 323 (mistrial is appropriate "only when no other remedy will suffice to cure the prejudice" (cleaned up)). The circuit court didn't abuse its discretion and we affirm its decision to deny Mr. Trent's motion for mistrial.

E. We Decline To Exercise Our Discretion To Review The Appellants' Unpreserved Second Amendment Challenge To Their Convictions Under PS § 5-133(d) And 5-144(a) & (b).

The next three issues are unpreserved. Messrs. Johnson and Trent argue that the statute criminalizing the unlawful possession of a firearm by a person under twenty-one years of age violates the Second Amendment to the U.S. Constitution facially. Maryland Code (2003, 2022 Repl. Vol.), § 5-133(d)(1) of the Public Safety Article ("PS"),[16] together with 5-144(a) and (b), makes it a criminal offense for a person under twenty-one years of age to possess a handgun.

[15] "[T]he curative admission doctrine . . . is triggered only when inadmissible, prejudicial evidence is improperly admitted." *Galicia*, 479 Md. at 376 n.31.

[16] That section states, "Except as provided in paragraph (2) of this subsection, a person who is under the age of 21 years may not possess a regulated firearm." Subsection (2) provides that "[u]nless a person is otherwise prohibited from possessing a regulated firearm, this subsection does not apply to" a number of enumerated exceptions, including lawful transfers, possession "while performing official duties" or "for employment" and "for self-defense or the defense of others against a trespasser into the residence of the person in possession . . . ."

The appellants rely on *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 8 (2022), which was decided after their trial. Mr. Johnson argues that under *Bruen*, PS § "5-133(d)(1) is facially unconstitutional because this country's historical firearm regulation did not prohibit persons under 21 from generally possessing firearms." The appellants concede that the issue was not raised in the circuit court but contend *first* that we should engage in *de novo* review because, in their view, "a criminal defendant cannot waive a challenge to being prosecuted under a facially unconstitutional penal statute." They argue in the alternative that we should review the merits of their argument for plain error and reverse their convictions.

In general, we do not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." Md. Rule 8-131(a). In the interest of fairness and the orderly administration of justice, counsel must raise their client's position before the trial court so that the court can decide, and possibly correct any errors. *Lopez-Villa v. State*, 478 Md. 1, 19–20 (2022). Despite the appellants' assertion to the contrary, this general rule applies equally to constitutional issues. *Hartman v. State*, 452 Md. 279, 300 (2017) ("our precedents recognize that constitutional issues raised for the first time on appeal, and not raised in the trial court, are not automatically entitled to consideration on the merits under Maryland Rule 8-131(a)"); *see Pietruszewski v. State*, 245 Md. App. 292, 309–10 (2020). Although we may exercise our discretion to review issues that have not been raised at trial "when there is a relevant post-trial [U.S.] Supreme Court or [Supreme Court of Maryland] ruling changing the legal standard concerning the

issue," *see McCain v. State*, 194 Md. App. 252, 278 (2010), we are not required to do so. And we decline to do so here.

For example, the Supreme Court recognized a change in the law regarding certain jury voir dire questions. *Kazadi v. State*, 467 Md. 1, 35–36, 47–48 (2020) (holding that during voir dire, upon request, a trial court must ask whether any potential jurors are unwilling or unable to comply with the jury instructions regarding burden of proof, presumption of innocence, and the right not to testify). The Court also held that this ruling applied retroactively to any case that was then pending on appeal so long as "the relevant question ha[d] been preserved for appellate review." *Id.* at 54. One such appeal that was pending when *Kazadi* was decided involved a trial court's denial of a defendant's proposed voir dire questions related to burden of proof and presumption of innocence. *Lopez-Villa*, 478 Md. at 5–9. In *Lopez-Villa*, defense counsel submitted written, proposed voir dire questions, but did not raise any objection when the court declined to read his proposed questions during voir dire. *Id.* at 5–7. Although the Court acknowledged that the law had changed while his appeal was pending, the Court declined nonetheless to exercise its discretionary review because petitioner failed to preserve his claim, as *Kazadi* required. *Id.* at 8, 19–20.

Here, the appellants concede that no Second Amendment claims were raised or decided in the circuit court. And even though *Bruen* was decided after the trial in this case, this alone does not, as *Lopez-Villa* illustrates, compel us to review the merits of the appellants' Second Amendment claims. Moreover, it's far from clear that *Bruen* helps

them—although the Supreme Court has granted *certiorari* to consider the impact of *Bruen* on Maryland's criminal statutes more broadly, at this point our courts have recognized *Bruen* as applying only to limitations on the Second Amendment rights of law-abiding citizens and not to limit Maryland's criminal statutes at all. *See Fooks v. State*, 255 Md. App. 75, *cert. granted*, 482 Md. 141 (2022). We decline to exercise our discretion to reach an unpreserved facial challenge to PS § 5-133(d) and 5-144(a) & (b) under these circumstances.

F. We Decline To Review For Plain Error Mr. Cleveland's Unpreserved Challenge To The Expert Testimony That Cartridge Casings Were Fired By Mr. Mickens's Gun.

Mr. Cleveland argues, for the first time on appeal, that admitting ballistics evidence that casings found at the scene were fired from Mr. Mickens's gun "vitally affected [his] right to a fair and impartial trial." He recognizes that he never raised this argument in the circuit court, but he contends now that the admission of this argument merits plain error review. The State conceded that Ms. Kennedy's expert testimony should not have been admitted under our Supreme Court's post-trial analysis in *Abruquah v. State*, 483 Md. 637 (2023). In Mr. Mickens's case, we reversed his convictions on this issue because his challenge was preserved, the State conceded the error, and we found that evidence wasn't harmless beyond a reasonable doubt. *See Mickens*, slip op. at 34–38.

Mr. Cleveland, however, stands in a very different position. Plain error review is exceedingly rare and reserved "only for blockbuster errors," *Martin v. State*, 165 Md. App. 189, 196 (2005) (cleaned up), that are "compelling, extraordinary, exceptional or

fundamental to assure the defendant a fair trial," *Gross v. State*, 229 Md. App. 24, 37 (2016) (cleaned up). No gun was recovered from Mr. Cleveland, he was never accused of discharging any firearm, and for him to be convicted of conspiracy, no overt act was required. *See Mitchell*, 363 Md. at 145. We don't believe the error affected the outcome of Mr. Cleveland's proceedings and decline to review his unpreserved claim for plain error.

G. The Circuit Court Gave The Jury The Correct "Beyond a Reasonable Doubt" Instruction.

Finally, Mr. Johnson argues that the circuit court gave an incorrect instruction on reasonable doubt. He is the only one to raise this issue and concedes that it is both unpreserved and foreclosed by *Ruffin v. State*, 394 Md. 355, 373 (2006), but raises it "solely to preserve the issue for potential petitions of writ of certiorari to the Maryland Supreme [Court] and U.S. Supreme Court." Maryland Rule 4-325(f) requires a party to "object[] on the record promptly after the court instructs the jury, [and] stat[e] distinctly the matter to which the party objects and the grounds for the objection." We agree with Mr. Johnson on both scores—that the claim is unpreserved and that *Ruffin* requires us to reject it.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY IN CASE 2161, SEPTEMBER TERM 2022 AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR RESENTENCING. PARTIES TO SPLIT COSTS EQUALLY.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY IN CASE

NUMBER 2254, SEPTEMBER TERM 2022 AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR RESENTENCING. PARTIES TO SPLIT COSTS EQUALLY.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY IN CASE NUMBER 2145, SEPTEMBER TERM 2022 AFFIRMED. APPELLANT TO PAY COSTS.

APPENDIX

Mr. Cleveland's brief listed the Questions Presented as follows:

> I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING THE STATE'S KEY PIECES OF EVIDENCE WITHOUT THE REQUIRED AUTHENTICATION.
>
> II. WHETHER THE EVIDENCE WAS INSUFFICIENT TO SUPPORT ANY CONVICTION FOR CONSPIRACY[.]
>
> III. WHETHER IF THE EVIDENCE IS SUFFICIENT, THIS COURT SHOULD VACA[TE] ONE CONSPIRACY CONVICTION BECAUSE THERE WAS ONLY EVIDENCE PRESENTED OF ONE CONSPIRACY.
>
> IV. WHETHER THE TRIAL COURT ERRED UNDER *ABRUQUAH* IN PERMITTING A FIREARM EXPERT'S OPINION THAT CARTRIDGE CASINGS COLLECTED AT THE CRIME SCENE WERE FIRED BY A SPECIFIC GUN.

The State listed its Questions Presented in Mr. Cleveland's appeal as follows:

> 1. To the extent not waived, did the trial court soundly exercise its discretion in finding that the surveillance footage was sufficiently authenticated?
>
> 2. Was the evidence legally sufficient to sustain Cleveland's convictions for conspiracy to commit first-degree murder of Brown and conspiracy to commit first-degree murder of Barrett?
>
> 3. Should this court vacate one of Cleveland's two convictions for conspiracy to commit first-degree murder and remand for sentencing?
>
> 4. Should this Court decline to review for plain error the trial court's admission the State's firearm examiner's unqualified opinion that 11 of the cartridge cases recovered at the scene had been fired from a known handgun found in the home of Cleveland's co-defendant, Damien Mickens?

Mr. Johnson listed his Questions Presented as follows:

> 1. Whether there is insufficient evidence supporting

appellant's conviction of conspiracy to commit first-degree murder of Kendrick Brown.

2. Whether there is insufficient evidence supporting appellant's related convictions of conspiracy to commit first-degree murder of William Barrett, second-degree murder of Barrett, and use of a firearm in the commission of a crime of violence against Barrett.
3. Whether there is insufficient evidence supporting appellant's related convictions for first-degree assault of Thanh Nguyen Ha and the use of a firearm in the commission of a crime of violence against Ha.
4. Whether appellant's conviction for unlawfully possessing a regulated firearm as a person under 21 years of age violates the Second Amendment.
5. Whether the trial [court] abused its discretion in admitting the evidence of video-recordings and still photographic images taken from the video-recordings.
6. Whether the trial court erroneously failed to merge appellant's two convictions for conspiracy to commit first-degree murder at sentencing.
7. Whether the trial court's definition of "beyond a reasonable doubt" was erroneous.

The State listed the Questions Presented in Mr. Johnson's appeal as follows:

1. Is the evidence legally sufficient to sustain Johnson's convictions?
2. If considered, is Section 5-133(d)(1) of the Public Safety Article of the Maryland Code facially constitutional?
3. Did the trial court soundly exercise its discretion in finding that the surveillance footage was sufficiently authenticated?
4. Should this court vacate one of Johnson's two convictions for conspiracy to commit first-degree murder and remand for resentencing?
5. Should this Court decline to consider Johnson's unpreserved challenge to the trial court's decision to provide the pattern jury instruction defining "beyond a

reasonable doubt" that the Supreme Court of Maryland approved of in *Ruffin*?

(Footnote omitted.)

Mr. Trent listed his Questions Presented as follows:

1. Did the trial court abuse its discretion by denying a mistrial after the admission of confusing and prejudicial evidence that connected Mr. Trent to other criminal activity and presented a misleading picture of the shooting at issue?
2. Did the trial court abuse its discretion by admitting unauthenticated videos?
3. Does Mr. Trent's conviction for unlawfully possessing a regulated firearm as a person under 21 years of age violate the Second Amendment?

The State listed the Questions Presented in Mr. Trent's appeal as follows:

1. Did the trial court properly deny Trent's mistrial motion?
2. To the extent not waived, did the trial court soundly exercise its discretion in finding that the surveillance footage was sufficiently authenticated?
3. If considered, is Section 5-133(d)(1) of the Public Safety Article of the Maryland Code facially constitutional?