Circuit Court for Anne Arundel County
Case No. C-02-CR-22-001137

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 106

September Term, 2023

CARLOS HUMB BARRERA-HERNANDEZ

v.

STATE OF MARYLAND

Beachley,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: June 27, 2024

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

Much of this appeal focuses on the admissibility of prior witness statements captured on tape and video recordings. One is a 911 call. Two are body-worn-camera video clips.[1] This appeal highlights some of the challenges of using (or attempting to use) such statements at trial, particularly when the witnesses who gave the recorded statements testify inconsistently.

Here, a jury in the Circuit Court for Anne Arundel County convicted Appellant, Carlos Humb Barrera-Hernandez, of first-degree assault (Count 1), second-degree assault (Count 2), reckless endangerment (Count 3), and use of a firearm in the commission of a felony or crime of violence (Count 4).[2] For first-degree assault, Mr. Barrera-Hernandez was sentenced to eight years' incarceration, with all but five years suspended. For use of

[1] A third body-worn-camera video clip, State's Exhibit 2, was admitted into evidence but not challenged on appeal.

[2] Mr. Barrera-Hernandez was initially charged with the following eight offenses: first-degree assault (Count 1); second-degree assault (Count 2); reckless endangerment of Henry Barrera-Gonzalez (Count 3); use of a firearm in the commission of a felony or crime of violence (Count 4); wearing and carrying a dangerous weapon with intent to injure (Count 5); reckless endangerment of Mr. Guerra-Mendez (Count 6); intoxicated endangerment of Mr. Barrera-Gonzalez (Count 7); and intoxicated endangerment of Mr. Guerra-Mendez (Count 8). The State entered *nolle prosequi* on the charge of wearing and carrying a dangerous weapon with intent to injure (Count 5) before trial, and the trial court granted Mr. Barrera-Hernandez's motion for judgment of acquittal for the reckless endangerment and intoxicated endangerment charges related to Mr. Guerra-Mendez (Counts 5 and 8). The jury found Mr. Barrera-Hernandez not guilty of intoxicated endangerment of Mr. Barrera-Gonzalez (Count 7).

a firearm in the commission of a felony or crime of violence, he received a concurrent sentence of five years.[3] This is Mr. Barrera-Hernandez's timely appeal.

On appeal, Mr. Barrera-Hernandez raises five questions for our review, which we have consolidated and reordered as follows:[4]

1. Did the trial court err in admitting recordings of prior witness statements into evidence?

2. Was the evidence sufficient to sustain Mr. Barrera-Hernandez's first-degree assault conviction?[5]

For the reasons explained below, we affirm the circuit court's judgments.

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[3] Mr. Barrera-Hernandez's second-degree assault (Count 2) and reckless endangerment (Count 3) convictions were merged into his first-degree assault conviction for sentencing purposes.

[4] Mr. Barrera-Hernandez presents the following questions for our review:

1. Did the trial court err in ruling that the Appellant had a criminal intent which triggered first-degree assault analysis?

2. Did the trial court err in ruling that Appellant intended to frighten his brother?

3. Did the trial court err in admitting the 911 call into evidence?

4. Did the trial court err in admitting the body camera footage?

5. Did the trial court err in admitting State's Witness #3's body camera footage?

[5] Under a separate heading in his brief titled "Specific Intent Crimes and the Defense of Intoxication," Mr. Barrera-Hernandez also attempts (for the first time) to introduce the defense of intoxication on appeal. Accordingly, we decline to address this issue.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Night of the Shooting[6]

On the rainy night of August 4, 2022, Anne Arundel County Police received a 911 call about a shooting in Brooklyn Park, Maryland. The caller, who identified himself as "Jose," reported that a man named Carlos Barrera had "showed up" and "shoot [*sic*] a gun straight to" him and his co-worker, Henry, about ten minutes earlier. When asked if the shooter aimed at someone in particular, the caller identified Henry as the target. The caller also stated that the shooter drove away from the scene in a red Ford F-250 truck.

Following the 911 call, police officers went to the outdoor parking lot where the shooting was reported and spoke with Jose Guerra-Mendez ("Jose"), the caller, and Henry Barrera-Gonzalez ("Henry"), Mr. Barrera-Hernandez's brother.[7] The two reported that Mr. Barrera-Hernandez had threatened to shoot Henry, aimed the shotgun towards him, and then fired one round.[8] They also described the events leading up to and

[6] The following facts are drawn from the evidence presented at Mr. Barrera-Hernandez's trial. *See, e.g.*, *Madrid v. State*, 247 Md. App. 693, 703 (2020) (providing factual background based on the evidence presented at trial).

[7] Throughout the record, Mr. Guerra-Mendez and Mr. Barrera-Gonzalez are referred to as "Jose" and "Henry" respectively. For purposes of consistency, we shall refer to Mr. Guerra-Mendez and Mr. Barrera-Gonzalez by their first names as well. We mean no disrespect in doing so.

[8] The statement of probable cause prepared by POFC Simpson also provides that Mr. Barrera-Hernandez threatened Henry not to move before aiming the shotgun at him, stating, "Don[']t move or I[']ll kill you."

following the shooting. The conversation between the police, Jose, and Henry was recorded by body-worn camera.

On the same night, the police arrested Mr. Barrera-Hernandez at his residence in Baltimore. Mr. Barrera-Hernandez's Ford truck was found in a nearby alley, which belonged to his neighbor, Mr. Gamaiel Beteton.[9] The police officers spoke with Mr. Beteton, and this conversation was also recorded by body-worn camera.

Following Mr. Barrera-Hernandez's arrest, the police searched his Ford truck. The police also executed a search warrant at his home.

II. The Trial

A three-day trial ensued. At the trial, the State called seven witnesses: Henry, Jose, Mr. Beteton, Crime Scene Technician Katie Ladue, Police Officer First Class (POFC) Jonathan Simpson, Corporal Gary Jones, and Detective Matthew Huppmann.[10] Mr. Barrera-Hernandez did not testify or call any witnesses. Mr. Barrera-Hernandez also exercised his right not to testify.

Henry testified about the events on August 4, 2022 leading up to the shooting that night. He stated that he and his co-workers, including Jose, were drinking beers together (starting around 3:00 pm) in a corner of a parking lot. The parking lot, which Jose was

[9] Although the statement of probable cause provides his name as "Gamaliel Belteton Ruano," the neighbor identified himself as "Gamaiel Beteton" at trial. We refer to him as Mr. Beteton.

[10] At trial, Henry, Jose, and Mr. Beteton testified in Spanish. All quotations derived from their testimony are translations rendered by sworn court interpreters.

renting for his business trucks, was approximately the size of "two football fields." Mr. Barrera-Hernandez joined the group later in the afternoon. When everybody except Jose, Henry, and Mr. Barrera-Hernandez had left, Henry and Mr. Barrera-Hernandez began discussing a family member. Henry testified that Mr. Barrera-Hernandez left the parking lot thereafter.

When Mr. Barrera-Hernandez returned in his truck, Henry and Jose approached him to ask if he had brought more beers. Mr. Barrera-Hernandez was standing behind his truck's door. At that point, Henry heard a "detonation," and "assumed that it was a gun," although he denied seeing a gun and could not explain why he believed it was a gunshot. After the "detonation," Mr. Barrera-Hernandez said he did not want to be bothered and left the scene again. Henry explained that he and Jose decided to call the police because Jose did not want any issues with the landlord. Henry denied speaking to the police that night, testifying, ". . . [I]n fact, I never spoke to the police. The one who spoke to the police was my friend [Jose]."

The State introduced State's Exhibit 1, a 23-second body-worn-camera video clip of Henry's statements to the police on August 4, 2022, as a prior inconsistent statement under Rule 5-802.1(a).[11] Over Mr. Barrera-Hernandez's objection, the trial court admitted the video clip into evidence.

Jose also testified that he and Henry were drinking beers with other co-workers in

[11] The time stamp on the video clip indicates that this conversation was recorded from 9:33:18 pm to 9:33:45 pm on August 4, 2022.

the parking lot that afternoon. Mr. Barrera-Hernandez later joined the group with more beers, but Jose was working on his trucks and "wasn't paying attention to who arrived and what time." Still, Jose testified that he drank about seven "Modelo" beers, while Mr. Barrera-Hernandez "didn't drink much . . . maybe four or five[.]" As others started leaving, Jose noticed Mr. Barrera-Hernandez and Henry arguing. Mr. Barrera-Hernandez also left, but he returned later in the evening.

It was raining and dark when Mr. Barrera-Hernandez came back to the parking lot. Jose and Henry stepped out of a trailer where they had been sheltering. Mr. Barrera-Hernandez and Henry began walking towards Mr. Barrera-Hernandez's truck, while Jose walked towards the opposite end of the parking lot. Despite this, Jose stated that he could hear Mr. Barrera-Hernandez and Henry "speaking softly." He then heard "something that seemed to be like a shot, an explosion." At that time, Jose was about 30 feet away from Henry and Mr. Barrera-Hernandez. Jose denied seeing Mr. Barrera-Hernandez shooting at Henry because "[i]t was very hard to see somebody" in the rain.

Jose testified that Mr. Barrera-Hernandez drove away after the "explosion," but he could not recall whether Mr. Barrera-Hernandez had said anything before leaving. The State refreshed Jose's recollection by showing him another body-worn-camera video clip from the night of August 4, 2022. In the clip, Jose told the police that Mr. Barrera-Hernandez threatened to shoot him if he (Jose) took out his phone. Jose also described to the police how Mr. Barrera-Hernandez pointed his gun towards Henry. After viewing the clip, Jose admitted that Mr. Barrera-Hernandez (before driving away) told him not to take

out his cellphone. On the State's offer, the video clip was admitted as State's Exhibit 2, a decision that Mr. Barrera-Hernandez does not challenge.

The State also introduced the recording of Jose's 911 call from the night of August 4, 2022 marked as State's Exhibit 3. Mr. Barrera-Hernandez again objected, but the trial court, after listening to the entire recording outside the jury's presence, overruled the objection and admitted it under Rule 5-802.1(a).[12] The State and Mr. Barrera-Hernandez then agreed to redact certain statements from the video clip. The redacted recording, marked as State's Exhibit 3C, was admitted into evidence and played to the jury.[13]

Mr. Beteton testified that he had little recollection of the night of August 4, 2022, because he was "really drunk" at the time. Mr. Beteton recalled that Mr. Barrera-Hernandez came over to ask if he could park his truck at Mr. Beteton's home. He testified that Mr. Barrera-Hernandez had been his neighbor for about two years but they "barely sp[o]k[e]." Mr. Beteton also recalled that the police came to his house and inquired about Mr. Barrera-Hernandez's truck parked outside, but he denied remembering any statement he made to the police that night.

In an attempt to refresh Mr. Beteton's memory, the State showed him a body-worn-camera video clip containing his statements to the police. However, Mr. Beteton

[12] In the discussion that follows, we address in greater detail the basis of Mr. Barrera-Hernandez's objection and the trial court's ruling.

[13] The unredacted recording was stricken and reintroduced as State's Exhibit 3A only for identification purposes. Exhibit 3B, the certificate of authenticity, was also admitted.

still could not recall "what's shown in the video," and did not "remember what [the police officer] said or where I came up with [my answer]." The State then moved the video clip, marked as State's Exhibit 4, into evidence, but it was not admitted. The State also asked Mr. Beteton several questions about his statements to the police, but he maintained that he could not remember them.

Technician Ladue testified that she responded to a reported shooting in Brooklyn Park on the night of August 4, 2022. Technician Ladue stated that she photographed the crime scene and a shotgun shell found there. In one such photograph, she identified "a yellow cylinder" at the center of the picture as "the shot shell that was collected."

POFC Simpson testified that, after receiving the report of the shooting that night, he and several other officers went to the scene, which he described as "a rear parking area of a trucking zone." Upon arrival, POFC Simpson spoke with Jose and Henry. There, he also found a shotgun shell and "what appeared to be an impact of a . . . shotgun blast" on the pavement. POFC Simpson explained that he was able to discern the point of impact because it was much lighter in color than the surrounding black pavement. POFC Simpson testified that the point of impact was "approximately 30 feet" from where he found the shotgun shell.

Corporal Jones testified that he received Mr. Barrera-Hernandez's potential home address in Baltimore from the officers at the shooting scene and, along with other officers from the Anne Arundel County Police Department, went to Baltimore City to arrest Mr. Barrera-Hernandez. Corporal Jones stated that he located a "maroon/red" Ford truck in a

nearby alley that matched the description of the truck Mr. Barrera-Hernandez was allegedly driving when he left the scene. Corporal Jones searched the truck and recovered "one yellow shotgun shell" on the floor right behind the driver's seat.[14] The shotgun shell appeared to have been discharged, but Corporal Jones could not determine when the shotgun shell had been fired. Other than the shotgun shell, Corporal Jones could not find anything that would be related to a firearm.

Detective Matthew Huppmann testified that he executed a search warrant on Mr. Barrera-Hernandez's home. During the search, he found a black nylon firearm case "in the master bedroom closet" of Mr. Barrera-Hernandez's apartment. The firearm case was admitted into evidence and shown to the jury. Detective Huppmann explained that he recognized it as a shotgun case based on its design and size, which would not fit a handgun. Detective Huppman testified that he had experience with shotguns but had never received specific training on them. He also acknowledged that rifles, air rifles, and paintball guns could fit into the firearm case he recovered.

DISCUSSION

Admissibility of Prior Inconsistent Statements by Witnesses

On appeal, Mr. Barrera-Hernandez challenges the admissibility of three exhibits under Maryland Rule 5-802.1. These are (1) the body-worn-camera video clip showing the conversation between Henry, Jose, and police officers following the officers' arrival

[14] There is no testimony that the shotgun shell found inside Mr. Barrera-Hernandez's truck was of the same kind as the shotgun shell discovered at the parking lot on August 4, 2022.

at the shooting scene (State's Exhibit 1);[15] (2) the redacted recording of Jose's 911 call (State's Exhibit 3C); and (3) the body-worn-camera video clip containing the conversation between Mr. Beteton and police following Mr. Barrera-Hernandez's arrest (State's Exhibit 4).

I. Standard of Review

Whether evidence is admissible under a hearsay exception is reviewed *de novo* on appeal, but "the factual findings underpinning this legal conclusion necessitate a more deferential standard of review." *Gordon v. State*, 431 Md. 527, 538 (2013). "In that situation . . . , we scrutinize [the trial court's] factual conclusions only for clear error." *Baker v. State*, 223 Md. App. 750, 760 (2015). Under the clear error standard, "[w]e do not second-guess [the trial court's] determination where there are competing rational inferences available." *State v. Manion*, 442 Md. 419, 431 (2015) (citation omitted). Even if evidence was improperly admitted, the error must be prejudicial to warrant reversal. Md. Rule 5-103(a); *Urbanksi v. State*, 256 Md. App. 414 (2022).

[15] In his brief, Mr. Barrera-Hernandez argues that "The Trial Court Erred In Admitting *The* Body Camera Footage Into Evidence," (emphasis added), but does not specify which body-worn-camera video clip's admission he is challenging. Since his argument focuses solely on Henry's statements to the police in State's Exhibit 1 and Mr. Beteton's statements in State's Exhibit 4 (which he addresses separately), our discussion is limited to the admissibility of State's Exhibits 1 and 4, and does not focus on any other video clip exhibits. *See* Md. Rule 8-504(a)(6) (requiring appellate parties to present arguments in support of their positions on each issue); *Diallo v. State*, 413 Md. 678, 692-93 (2010) ("Arguments not presented in a brief or not presented with particularity will not be considered on appeal.") (cleaned up).

II. Relevant Law

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802.

One such exception is Maryland Rule 5-802.1. Under this rule, a witness's prior out-of-court statement may be admitted if it is inconsistent with the same witness's trial testimony and was

> (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
>
> (2) reduced to writing and was signed by the declarant; or
>
> (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement[.]

Md. Rule 5-802.1(a)(1)-(3).

Maryland adopted this Rule following *Nance v. State*, 331 Md. 549 (1993), where our Supreme Court, for the first time, held:[16]

> [T]he factual portion of an inconsistent out-of-court statement is sufficiently trustworthy to be offered as substantive evidence of guilt when the statement is based on the declarant's own knowledge of the facts, is reduced to writing and signed or otherwise adopted by him, and he is subject to cross-examination at the trial where the prior statement is introduced.

[16] Prior to the holding in *Nance*, Maryland's common law allowed admission of prior inconsistent statements only for impeachment purposes. *Wise*, 471 Md. at 453.

Id. at 569 (cleaned up); *see also Wise v. State*, 471 Md. 431, 453 (2020) (explaining that Rule 5-802.1(a) was a codification of the holding in *Nance*). That said, "a prior inconsistent statement must present a material contradiction to be admitted under *Nance* and Md. Rule 5-802.1(a)." *Wise*, 471 Md. at 453. "[I]f a witness tells a story that is impossible to square factually with a prior statement he or she has given, that is enough to satisfy the *Nance* rule." *Wise*, 471 Md. at 455 (citation omitted).

III. Analysis

i. State's Exhibit 1 (Body-worn-camera video clip of Henry)

Mr. Barrera-Hernandez argues that the body-worn-camera video clip of Henry's statement to the police is inadmissible under Rule 5-802.1(a)(2) because the video clip "is not a written statement, as required in *Wise* [*v. State*, 471 Md. 431, 453 (2020).]" We disagree. Mr. Barrera-Hernandez's claim of error has been waived and, even if it hasn't been, it lacks merit.

In Maryland, admission of evidence is an appealable error only if "a timely objection or motion to strike appears of record, stating the specific ground of objection . . ." Md. Rule 5-103(a)(1). Further, "[i]t is well established that appellate review of an evidentiary ruling, when a specific objection was made, is limited to the ground assigned at the time of the objection." *Grandison v. State*, 341 Md. 175, 221 (1995). Therefore, if "the specific ground for objection asserted here on appeal is not the same as that raised at trial, we will not review the ruling." *Id.*

That is the case here. During the trial, Mr. Barrera-Hernandez never argued that the body-worn-camera video clip failed to meet the "reduced to writing" requirement of Rule 5-802.1(a)(2). Instead, his objection was that the video clip contained the statements of another individual who had already testified.

> [COUNSEL FOR MR. BARRERA-HERNANDEZ:] I don't think this is actually substantive (indiscernible) introduced. I think it's just being used for impeachment purposes. So I'm not sure it's evidence.
>
> [THE STATE:] The State has laid the proper foundation for it to be admitted under 5-802.1. Your Honor, this is an inconsistent statement that was recorded in electronic verbatim fashion. So it would fit that definition and should be admitted as (indiscernible) evidence.
>
> [COUNSEL FOR MR. BARRERA-HERNANDEZ:] (Indiscernible) problem is that there is another individual (indiscernible) also trying to narrate sort of what happened and as we've heard from that witness, the (indiscernible).
>
> [THE STATE:] And in this particular clip, the State was very -- edited the video in such a way that the statements of the other individual cannot be heard. It's limited to Henry specifically. And I'm happy to show the Court.
>
> THE COURT: I will overrule the objection. It's admitted. If for some reason -- however, if for some reason, there's any -- I'm taking your proffer that's only this particular witness. If that changes in any way, stop it immediately. And (indiscernible).
>
> [THE STATE:] There are questions by an officer, but again, the State only included that because they are not hearsay. They are questions as opposed to statements.
>
> THE COURT: Okay. It's admitted.

But even if preserved, Mr. Barrera-Hernandez's claim of error would fail, since Rule 5-802.1(a)(3), not Rule 5-802.1(a)(2), governs the admission of audio- and video-recorded witness statements. Here, Henry's prior statements were recorded while he was speaking with the police. Therefore, the body-worn-camera video clip was "substantially verbatim," recorded by "electronic means," and "contemporaneous" with the making of the statement, meeting all the requirements to admit such a clip under Rule 5-802.1(a)(3). *McClain v. State*, 425 Md. 238 (2012) (holding that an audio-recording of a witness' statement to the police, inconsistent with her trial testimony, was admissible under Rule 5-802.1(a)(3)). The trial court's admission of State's Exhibit 1 was not an error.

ii. State's Exhibit 3C (Redacted 911 call)

Mr. Barrera-Hernandez argues that the redacted recording of Jose's 911 call, marked as State's Exhibit 3C, was inadmissible under Rule 5-802.1(a)(3) because Jose did not witness the events he described to the 911 operator and Jose's statements during the call were translations for Henry, not his own. Below, Mr. Barrera-Hernandez raised the same objection, and the trial court indicated that it would not admit the recording into evidence if "there's any Spanish that we can hear." Outside the presence of the jury, the trial court listened to the recorded call in its entirety and overruled his objection.

We start with the standard of review that applies to the trial court's factual finding, implicit in its overruling of Mr. Barrera-Hernandez's objection, that during the call, Jose was describing the events he had observed. "We review for clear error the trial court's preliminary findings as to the factual circumstances under which the statement was

made." *Curtis v. State*, 259 Md. App. 283, 298 (2023). "A finding is clearly erroneous when . . . the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Kusi v. State*, 438 Md. 362, 383 (2014) (citations omitted). Absent clear error, we do not disturb "factual findings made by the trial court supporting the hearsay ruling." *Wise*, 243 Md. App. at 267 (citations omitted).

Here, we are not "left with the definite and firm conviction" that the trial court was mistaken about the nature of Jose's statements in the recording. *Kusi*, 438 Md. at 383. During the 911 call, Jose described the shooting from his own perspective, without any indication that he was translating for someone else. He stated that Mr. Barrera-Hernandez "shot a gun straight to *us*," referring to both himself and Henry. He then said that Mr. Barrera-Hernandez "fired in *our* direction," again mentioning both himself and Henry. When asked if Mr. Barrera-Hernandez was "aiming at someone particular," Jose clarified that Mr. Barrera-Hernandez aimed specifically at Henry.

> 911 OPERATOR: Anne Arundel County Police, how can I help you?
>
> [CALLER:] Hey, (indiscernible). Somebody -- I'd like to (indiscernible) and fill out a report. Is that you, or do I have to speak to someone else?
>
> * * *
>
> 911 OPERATOR: So you already have a report in?
>
> [CALLER:] I don't. I would like to make a report. I'm gonna call out [ ] tomorrow.
>
> * * *
>
> 911 OPERATOR: Okay. And what exactly happened?

[CALLER:] I was in my truck, just finishing up things, wrapping up things, and somebody -- well, in the -- related to the person to some of the guys that work with me showed up and they shoot a gun straight to us. And luckily, we're not hurting or anything like that, and he -- just backed up, pulled out and left and -- for no reason.

911 OPERATOR: When did this happen?

[CALLER:] Ten minutes ago.

911 OPERATOR: Okay.

[CALLER:] And I did have –

911 OPERATOR: Do you know who it is?

[CALLER:] Yes, we do. It's actually a relative to one of the guys who work for me.

911 OPERATOR: You said -- did he fire at anyone?

[CALLER:] He fired in our direction but it didn't hurt anybody.

911 OPERATOR: Was he aiming at anyone in particular?

[CALLER:] Yes.

911 OPERATOR: Okay, who? Who was he aiming at?

[CALLER:] Henry.

911 OPERATOR: And he's already gone?

[CALLER:] Henry's still here with me, just --

* * *

911 OPERATOR: What is this person's name? Who fired at you?

[CALLER:] Carlos Barrera.

911 OPERATOR: Spell the last name for me.

[CALLER:] B-a-r-r-e-r-a.

911 OPERATOR: B-a-r-r what?

[CALLER:] Carlos B-a-r-r-e-r-a.

911 OPERATOR: Which direction did he leave?

[CALLER:] (Indiscernible).

911 OPERATOR: What kind of vehicle did he get in?

[CALLER:] It was a Ford F-250.

911 OPERATOR: What color?

[CALLER:] Red.

* * *

911 OPERATOR: Okay. And what is your first name?

[CALLER:] My first name is Jose. But he aimed at somebody else. He aimed at somebody named Henry.

(emphasis added).[17]

We see no clear error in the trial court's finding that Jose's statements to the 911 operator were based on his own observations. Even assuming, without holding, that it was equally reasonable to infer that Jose was translating for Henry, we decline to second-guess the trial court's determination. *Smith*, 415 Md. at 183. As there was no clear error

[17] Per the agreement between Mr. Barrera-Hernandez and the State at trial, only a portion of the recording, marked in bold, was admitted and played to the jury. Mr. Barrera-Hernandez did not raise any further objection to the admissibility of the redacted recording.

in finding that Jose witnessed the events he described during the 911 call, i.e. that the statements on the 911 call were indeed Jose's, the trial court did not err in admitting the recording under Rule 5-802.1(a)(3). *Curtis*, 259 Md. at 298.

iii. State's Exhibit 4 (Body-worn-camera video clip of Mr. Beteton)

Mr. Barrera-Hernandez claims that the trial court erred in admitting State's Exhibit 4, a body-worn-camera video clip containing Mr. Beteton's statements to the police on the night of August 4, 2022.

In fact, the video clip was never admitted or played to the jury. At trial, the State moved the video clip into evidence, but the trial court only allowed the State to "read into evidence" Mr. Beteton's statements from the video clip under Rule 5-802.1(e).[18] Instead of reading Mr. Beteton's statements, the State then asked Mr. Beteton several questions about his statements from the video clip.[19]

[18] At trial, as the State moved the video clip into evidence, Mr. Barrera-Hernandez objected, arguing that Mr. Beteton's inability to recall his prior statements to the police did not render a recording of those statements admissible under Rule 5-802.1(a)(3). Accepting Mr. Barrera-Hernandez's argument, the trial court held that the video clip would not be admitted into evidence because to "not remember is not an inconsistent statement."

[19] The jury might have gotten the gist of Mr. Beteton's prior statements to the police from the State's questions below, but Mr. Barrera-Hernandez never objected to those questions.

> [THE STATE:] So you don't remember saying, like, 30 minutes before, he came to me, knocked on my door; I was getting ready to go to sleep, you know. I was playing video games. So he was, like, telling me about what happened. He explained to me everything. He got in an argument with his brother, you know. And he got mad. Something like that.

Because the video clip was not admitted into evidence, Mr. Barrera-Hernandez has failed to establish any error, let alone prejudicial error. *State v. Chaney*, 375 Md. 168, 183-84 (2003) ("[O]n appeal, the burden of establishing error in the trial court rests squarely on the appellant."). There is no error for us to review.

Sufficiency of Evidence

We now discuss the sufficiency of the evidence for Mr. Barrera-Hernandez's first-degree assault conviction.[20] A conviction is supported by sufficient evidence when, after viewing the evidence in the light most favorable to the State, "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Bible v. State*, 411 Md. 138, 156 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Our role is not to retry the case, *Koushall v. State*, 479 Md. 124, 148 (2022), but only to

> [MR. BETETON:] No, I don't remember.
>
> [THE STATE:] And you don't remember -- and then he says, he did, he did shoot something. I don't know what kind of, you know, gun it was. But he told me shoot -- he shot at the floor. And then he was telling me he was getting permission to leave the truck right there. He's my friend.
>
> [MR. BETETON:] That is the part that I don't remember.

[20] In his brief, Mr. Barrera-Hernandez appears to separately challenge the sufficiency of the evidence to support his second-degree assault conviction, but he fails to comply with our briefing requirement under Rule 8-504(a) by not presenting a separate question regarding that conviction. *See* Md. Rule 8-504(c) (providing that the failure to comply with Rule 8-504(a) may result in the dismissal of the appeal). Regardless, since our sufficiency discussion for his first-degree assault conviction covers the elements of second-degree assault that Mr. Barrera-Hernandez challenges, we need not address the two convictions separately.

determine "whether the verdict was supported by sufficient evidence, direct or circumstantial[.]" *State v. McGagh*, 472 Md. 168, 194 (2021) (citation omitted). Therefore, we defer to all reasonable inferences drawn by the jury, even if we might have drawn a different inference. *Cox v. State*, 421 Md. 630, 657 (2011).

Under Maryland law, first-degree assault requires proof of all the elements of second-degree assault, along with at least one statutory aggravating factor. *Snyder v. State*, 210 Md. App. 370, 380 (2013); *see also* MD. CODE ANN., CRIM. LAW § 3-202(b) (West 2024).[21] In turn, "second-degree assault encompasses three types of common law assault and battery: (1) the 'intent to frighten' assault, (2) attempted battery and (3) battery." *Snyder v. State*, 210 Md. App. 370, 380 (2013). Here, the trial court instructed the jury only on the intent-to-frighten modality of assault, requiring the State to prove that: (1) the defendant committed an act with the intent to place another in fear of imminent physical harm; (2) at the time of the act, the defendant had the apparent ability to bring about the physical harm; and (3) the victim was reasonably aware of the harm. *Jones v. State*, 440 Md. 450, 455 (2014) (citing *Snyder*, 210 Md. at 382).

In challenging his first-degree assault conviction, Mr. Barrera-Hernandez contends that there was insufficient evidence of second-degree assault. He does not dispute the presence of a firearm (the shotgun) as the aggravating factor in this case.[22] Instead,

[21] Unless otherwise indicated, all subsequent statutory references herein shall be to Maryland's Criminal Law Article.

[22] Section 3-202(b) provides as follows:

focusing on the first and third elements of second-degree assault under *Jones*, 440 Md. at 455, Mr. Barrera-Hernandez argues that the State failed to prove his intent to place Henry in fear of imminent bodily harm or Henry's reasonable fear of such harm. We disagree.

With regard to the first element, Mr. Barrera-Hernandez does not deny that he raised a shotgun at Henry and fired it, but argues that even if he did, "that qualifies as an immediate act generally intended . . . [and] there must be a specific intent for that immediate act to bring about another consequence." In essence, Mr. Barrera-Hernandez claims that even though his actions towards Henry on the night of the shooting were intentional, the evidence is still insufficient to prove his specific intent to place Henry in fear of imminent bodily harm.

When the evidence shows that a defendant made a threatening gesture, *i.e.* pointing a gun, a jury may infer the defendant's specific intent to cause "the natural and probable consequences of his act" from the surrounding circumstances. *Jones v. State*, 213 Md. App. 208, 217-18 (2013) (holding that the defendant's "intentional act of firing

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> (1) A person may not intentionally cause or attempt to cause serious physical injury to another.
>
> (2) A person may not commit an assault with a firearm, including:
>
> > (i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short barreled rifle . . . ;
> > (ii) an assault pistol . . . ;
> > (iii) a machine gun . . . ; and
> > (iv) a regulated firearm. . . .

multiple shots into a residence permitted the jury to infer an intent to frighten every occupant in the house."); *see also Snyder*, 210 Md. App. at 386-87 (holding that the jury could have inferred the defendant's intent to cause physical harm to the victim when the victim's home was lit and the defendant fired multiple rounds into the home).

Here, looking at the surrounding circumstances, a reasonable jury could have inferred that Mr. Barrera-Hernandez intended to cause fear of imminent bodily harm to Henry when he aimed and fired a shotgun at him. Jose testified that Mr. Barrera-Hernandez had an argument with Henry earlier that day. Both Jose and Henry reported to the police that Mr. Barrera-Hernandez aimed the shotgun at Henry and then fired it in that direction. Jose also told the police that Mr. Barrera-Hernandez threatened him, too, after firing the shotgun. Thus, a rational jury could infer that causing fear of bodily harm to Henry was what Mr. Barrera-Hernandez intended specifically. *Jones*, 213 Md. App. at 217-18.

Mr. Barrera-Hernandez argues that if he "intended to place Henry in fear of immediate offensive physical contact or physical harm, he would not have fired one single shot into the pavement, thirty feet away from Henry, and then immediately le[ft]." He also distinguishes this case from *Jones*, *supra*, 440 Md. 450, and *Snyder*, *supra*, 210 Md. App. 370, where the defendants fired multiple shots into a house. However, our role is to ensure that the jury's conclusion is "supported by sufficient evidence, direct or circumstantial," not to reweigh the evidence and reach a different conclusion. *McGagh*, 472 Md. at 194. Since sufficient evidence supports the jury's inference that Mr. Barrera-

Hernandez intended specifically to place Henry in fear of imminent physical harm, it is immaterial that he fired just once, rather than multiple times.

As to the third element under *Jones*, 440 Md. at 455, the victim's reasonable awareness of imminent physical harm, Mr. Barrera-Hernandez claims that the State failed to prove Henry reasonably feared such harm because there was no evidence that he ever "felt frightened or scared." However, for an intent-to-frighten type of assault, "[i]t is not necessary that the victim be actually frightened or placed in fear of an imminent battery." *Hammond v. State*, 257 Md. App. 99, 126 (2023). Rather, "[t]he critical state of mind on the part of the victim is to be placed in *reasonable apprehension* of an impending battery." *Lamb v. State*, 93 Md. App. 422, 437-38 (1997) (emphasis added). "All that is required in terms of perception is an apparent present ability from the viewpoint of the threatened victim." *Id.* at 443.

Here, there was sufficient evidence that, from Henry's perspective, Mr. Barrera-Hernandez had an apparent present ability to inflict physical harm on him. Jose's trial testimony suggested that Mr. Barrera-Hernandez and Henry were at close range in the parking lot before the shooting. In body-worn-camera video clips admitted at trial, Henry described to the police officers how Mr. Barrera-Hernandez held and aimed the shotgun towards him. When a police officer asked if Mr. Barrera-Hernandez threatened to shoot him, Henry also answered in affirmative. Further, Mr. Barrera-Hernandez did not just aim the shotgun at Henry; he also fired it. At trial, Henry acknowledged hearing what he thought was a gunshot as he approached Mr. Barrera-Hernandez that night. Thus, the jury

could infer that Henry was reasonably aware of Mr. Barrera-Hernandez's present ability to inflict bodily harm. *Jones*, 440 Md. 455.

In sum, viewing the evidence in the light most favorable to the State, a rational jury could have found Mr. Barrera-Hernandez guilty, beyond a reasonable doubt, of first-degree assault under the intent-to-frighten modality. *See Bible*, 411 Md. at 156. We therefore affirm his first-degree assault conviction.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.