Circuit Court for Baltimore County
Case No. 03-K-19-000100

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 594

September Term, 2021

KHIRY DEVON JONES

v.

STATE OF MARYLAND

Reed,
Friedman,
Albright,

JJ.

Opinion by Albright, J.

Filed: May 20, 2022

A jury, in the Circuit Court for Baltimore County, convicted Khiry Jones, appellant, of second-degree felony murder. The Court sentenced Mr. Jones to a term of 40 years' imprisonment, with all but 30 years suspended. In this appeal, Mr. Jones presents three questions for our review:

1. Did the circuit court abuse its discretion in denying Mr. Jones' request for a postponement?

2. Was the evidence adduced at trial sufficient to sustain Mr. Jones' conviction?

3. Did the trial court err in allowing the jury to learn that Mr. Jones was in custody prior to trial?

For the reasons to follow, we hold that the circuit court did not err in denying Mr. Jones' request for a postponement. We also hold that Mr. Jones' sufficiency argument was not preserved for our review. Finally, we hold that the trial court did not err in permitting the jury to learn that Mr. Jones was in custody prior to trial. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

In the early morning hours of October 7, 2018, Andy Connelly and Heather Harding were in a vehicle travelling to a location so that Mr. Connelly could purchase MDMA[1], also known as Ecstasy or Molly. Ms. Harding was driving while Mr. Connelly rode in the vehicle's front passenger seat. Upon arriving at the location, Ms. Harding

[1] MDMA stands for 3,4-methylenedioxy-methamphetamine. *MDMA (Ecstasy/Molly) Drugfacts*, National Institute on Drug Abuse (Jun. 2020) https://nida.nih.gov/publications/drugfacts/mdma-ecstasymolly.

observed an unknown individual standing on the side of the street. Ms. Harding believed that the individual was the person from whom Mr. Connelly intended to purchase Molly. Ms. Harding then stopped the vehicle, and the unknown individual approached. As he did, the unknown individual pulled out a gun and shot Mr. Connelly in the hand and face. After being shot, Mr. Connelly got out of the vehicle, ran a short distance, and collapsed. Mr. Connelly ultimately died from the gunshot wounds.

Mr. Jones, appellant, was later arrested and charged as the shooter. Another individual, Kara Johnson, was also arrested and charged in connection with the shooting. Mr. Jones' trial was eventually scheduled for May 6, 2021, and was expected to last seven days.

Motion for Postponement

On May 4, 2021, two days before Mr. Jones' trial was to start, the parties appeared before the circuit court's administrative judge for a hearing on a postponement request by Mr. Jones. At that hearing, defense counsel stated that Mr. Jones' co-defendant, Kara Johnson, had recently provided a statement to the police in conjunction with a plea agreement, and that she was planning to testify against Mr. Jones. When the administrative judge asked for "background" about the case, the State said Ms. Johnson was "texting [Mr. Connelly] in order to purchase drugs[,]" and "put[] [Mr. Connelly] in touch with [Mr. Jones.]" After acknowledging that the State was going to "try to tie Mr. Jones to the scene" with other "information" that "wasn't largely testimony," defense counsel stated that Ms. Johnson would testify about "a number of issues, one of which is

motive" and "a number of other things," including "a prior incident that she's alleging initiated or led to this shooting." Defense counsel stated that he was asking for a postponement because he did not believe he could "adequately prepare to confront Ms. Johnson on behalf of Mr. Jones in cross-examination in this short period of time." Defense counsel stated that he also needed more time to subpoena potential rebuttal witnesses and discuss plea options with Mr. Jones in light of the new evidence. Defense counsel argued that Ms. Johnson's testimony would "drastically alter" Mr. Jones' defense in that her testimony would "place him at the scene and also provide a motive that was lacking in the case."

The State did not oppose the postponement. The State added that the late disclosure was due to the fact that Ms. Johnson had given the statement only a week prior, and the State needed time to finalize the plea agreement with Ms. Johnson.

Ultimately, the administrative judge denied Mr. Jones' postponement request, finding no good cause to postpone the case. The judge explained that all parties should have anticipated that Mr. Jones' co-defendant would have agreed to testify against him.

On May 6, 2021, Mr. Jones' trial began. Mr. Jones was charged with first-degree murder, second-degree murder, second-degree felony murder, use of a firearm in a crime of violence, and possession of a firearm by a disqualified person.

Trial Testimony

At trial, Erica Ribeiro testified that, in the late evening hours of October 6, 2018, she, Heather Harding, and Andy Connelly were "hanging out" at a hotel in Catonsville.

At some point during the evening, Mr. Connelly began "calling around looking for . . . Molly." Eventually, Mr. Connelly made plans for someone to come to the hotel, but the person never showed up. Mr. Connelly then left the hotel with Ms. Harding.

Heather Harding testified that, after she and Mr. Connelly left the hotel, they got into Ms. Ribeiro's vehicle, and Ms. Harding drove Mr. Connelly to a nearby gas station so that he could "get some Molly." After waiting at the gas station for "less than [five] minutes," Mr. Connelly directed Ms. Harding to drive to another location that was "down Dorchester to Queen Anne's." Upon arriving at that location, Ms. Harding observed "a guy standing on the corner," whom she assumed was "the person that [they were] supposed to be meeting." Ms. Harding then stopped the vehicle in front of that individual and "rolled down the window." As she did, Ms. Harding observed the individual lift up his shirt, brandish a gun, and shoot Mr. Connelly. Mr. Connelly then exited the vehicle and ran away. Ms. Harding drove away, but quickly returned to the scene of the shooting, where she found Mr. Connelly laying in the driveway of a nearby home. Ms. Harding attempted to get Mr. Connelly in the vehicle but was unable, so she drove back to the hotel to get Ms. Ribeiro. Upon retrieving Ms. Ribeiro and another friend, Ms. Harding drove back to the area of the shooting.

Around that time, the police were called. A short time later, the police arrived on the scene and discovered Mr. Connelly, dead. The cause of death was later determined to be gunshot wounds to the hand and face.

Kara Johnson testified that, on the day of the shooting, she and a group of friends, including Mr. Jones, had gathered in the area of Dorchester Street and Queen Anne Street. Ms. Johnson testified that, at the time, she was involved in a text conversation with Mr. Connelly regarding "a drug deal." According to Ms. Johnson, she was planning on purchasing cocaine from Mr. Connelly, and Mr. Connelly was planning on purchasing Molly from Mr. Jones. Ms. Johnson testified that she sent Mr. Jones' phone number to Mr. Connelly so that he could "get Molly." Ms. Johnson testified that, at some point during the gathering, she and another friend, Brittany Nock, walked away from the group. A few minutes later, Ms. Johnson heard gunshots, and she and Ms. Nock started running toward her vehicle, which was parked nearby. After getting into the vehicle with Ms. Nock, Ms. Johnson drove down Dorchester Street and encountered three of her friends, including Mr. Jones, who were running up Queen Anne Street. Ms. Johnson stopped, and the group got into the vehicle. While Ms. Johnson was driving away, Mr. Jones stated: "It was either him or me."

Brittany Nock also testified, providing a similar account as Ms. Johnson. Ms. Nock testified that she, Ms. Johnson, Mr. Jones, and several other individuals had travelled to the intersection of Queen Anne and Dorchester on the day of the shooting to effectuate a drug deal. Ms. Nock testified that Mr. Connelly had contacted Ms. Johnson to obtain Molly and that, while they were waiting for Mr. Connelly to arrive, she and Ms. Johnson walked away from the group. Shortly thereafter, Ms. Nock heard gunshots. Ms. Nock and Ms. Johnson then ran to Ms. Johnson's vehicle and got inside, and Ms. Johnson

drove away. As Ms. Johnson was driving away, Ms. Nock saw her group of friends, Mr. Jones included, running toward the vehicle. The group got in the vehicle, and Ms. Johnson drove away. Ms. Nock testified that, as they were driving away, Mr. Jones and another friend stated that "the boy had a gun and pulled it out on them" and that "he got shot."[2]

Detective Scott Young, the primary detective on the case, testified that he gathered call detail records for cell phones used by individuals involved in the case, among other investigative steps. Detective Young provided these records to Special Agent Matthew Wilde of the Federal Bureau of Investigation. After being qualified as an expert in cellular telephone record analysis, Special Agent Wilde testified that he analyzed the call detail records from around the time of the shooting, and determined that a cell number associated with Mr. Jones was in the area, among other cell numbers. Also admitted into evidence were text messages between Ms. Johnson and Mr. Connelly and between Mr. Connelly and Mr. Jones.

Testimony Regarding Mr. Jones' Incarceration

During her direct examination, Ms. Johnson testified that, a few months prior to trial, she had been incarcerated at the Baltimore County Detention Center. Defense counsel objected and requested a bench conference.

[2] During her testimony, Ms. Nock attributed these two statements to Mr. Jones and the friend.

At the ensuing bench conference, defense counsel argued that the State was about to elicit testimony about a statement that Mr. Jones had made to Ms. Johnson while they were both incarcerated at the detention center following the shooting.[3] Defense counsel argued that the testimony had minimal probative value and was highly prejudicial. After the trial court asked about the substance of the statement, the prosecutor proffered that Mr. Jones had told Ms. Johnson that "he did it for Brittany and [her]." The prosecutor argued that he did not "think that anyone's gonna be surprised that someone charged with first-degree murder is incarcerated." The court agreed and overruled the objection.

Ms. Johnson then testified that, three months prior to trial, she was at the Baltimore County Detention Center with Mr. Jones. Ms. Johnson testified that she had a conversation with Mr. Jones through a vent in the wall at the detention center. During that conversation, Mr. Jones stated: "I did this for you and Brittany."

Motion for Judgment of Acquittal and Verdict

At the conclusion of the State's case, defense counsel moved for judgment of acquittal, but argued nothing specific about the charges other than first-degree murder. Specifically, defense counsel said:

> [DEFENSE COUNSEL]: All good? I make a Motion for Judgment of Acquittal on behalf of Mr. Jones. I'll submit without argument as to all of the Counts, except for first degree murder. I don't think there's been any evidence generated of premeditation. There's no motive. There's no—ah, Mr. Jones is not—no witness even says that he had a weapon on the night in question. The testimony is that he was in a good mood. He was happy. There's just been, literally, no evidence whatsoever, of premeditation of deliberate intent that was formed prior to the act. So, I would ask the Court

[3] Mr. Jones was incarcerated at the Baltimore County Detention Center from the time he was arrested at least until he was sentenced.

to render a judgment of acquittal as to first degree murder, and, and for all the Counts. But I'll submit without argument as to the remaining Counts.

[THE COURT]: All right. Thank you.

[The STATE]: Um, Your Honor, the Defendant—there's been testimony that he—20 minutes prior to the murder set up a Pinger app in order to lure the [Mr. Connelly] to the scene. That he then waited for him. The [car] pulled up. The window was open. There was no discussion. He shot him in the face. That Heather Harding, based on her identifying all of—stating that all other individuals were not responsible; and therefore, this Defendant is the only one left that the responsible party. That based on motives that came in reference to his actions toward Brittany Nock, as well as Kara Johnson, that the State believes and can go into more detail if it's necessary, Your Honor. But that is enough for premeditation.

[THE COURT]: You wanna put all your reasons on the record?

. . .

[THE STATE]: (Inaudible). (Inaudible). Sorry, Your Honor. That he—in fact—so, (inaudible)—the fact that he knew ahead of time as to the actions (inaudible) Brittany and Kara by the Defendant. He knew the Defendant was known to carry firearms (inaudible) Brittany. Additionally, Your Honor, the arranged drug deal (inaudible) in advance. The Pinger app was set up in advance. He—everyone else walked away from the scene and all of those individuals are clearly involved and comfortable with the distribution of controlled, dangerous substances. There'd be no reason for them not to be present (inaudible). He then—without having any conversation with the victim, has a round in the chamber and shoots him as soon as the window was pulled down.

[THE COURT]: Okay. Thanks. Anything else, [defense counsel]?

[DEFENSE COUNSEL]: Just I, you know, a lot of what I've heard from the State and their position on this Motion for first degree murder deals with—I mean, just really, really large leaps in terms of—and not reasonable inferences and not inferences that can be drawn in the light most favorable to the State, which, as I know, is how the Court needs to consider this. There's describing their own speculative reasons for these things, not reasonable inferences drawn from the totality of the evidence. And I think the evidence is clear that there is no case here for first degree murder.

> [THE COURT]: All right. Well, I think that there's enough for it to be decided by the jury. So, I'm gonna respectfully deny your Motion.

After the defense case, Mr. Jones rested, and defense counsel renewed his motion for judgment of acquittal, but added nothing new:

> [THE COURT]: Anything changed on your end, [defense counsel]?
>
> [DEFENSE COUNSEL]: Nothing, Your Honor. I, I renew my—make an additional Motion for Judgment of Acquittal now, at the conclusion of all the evidence in the case. I would simply incorporate, by reference, the argument that I made in my earlier Motion. I don't think the stipulation adds a whole lot.
>
> [THE COURT]: Okay. All right. Thanks. And I, I remain firm in my position.
>
> [DEFENSE COUNSEL]: Thank you, Your Honor.
>
> [THE COURT]: So, it's respectfully, denied, sir.

After the court's instructions, which included an instruction on self-defense, Mr. Jones was found guilty of second-degree felony murder and acquitted of all other charges. This timely appeal followed. Additional facts will be supplied below.

DISCUSSION

I.

Mr. Jones first argues that the circuit court erred in denying his request for a postponement. He notes that the basis for the request was the late disclosure of Kara Johnson's cooperation agreement and her statement to the police, which statement she had given approximately one week before the start of trial and which provided a motive

for the shooting. Mr. Jones contends that Ms. Johnson's statement was "new information" and that the late disclosure constituted good cause for a postponement. Mr. Jones argues that the administrative judge's decision to deny the request was "inconsistent with case law standing for the proposition that when new evidence is disclosed on the eve of trial, defense counsel has good cause to request a postponement to review the material."

The State argues that the circuit court properly denied the request. The State maintains that Ms. Johnson's statement did not contain a significant amount of new evidence and was mostly cumulative of other testimony. The State contends that the only piece of "new information" contained in the statement was Ms. Johnson's claim that Mr. Jones had told her that he "did it" for her and Brittany Nock. The State asserts, however, that Mr. Jones failed to present any evidence to show how a postponement would have bolstered his defense in light of that new information. Finally, the State argues that any error the court may have made in denying the postponement request was harmless.

"In Maryland, a criminal defendant has a statutory right to have a trial within 180 days of the earlier of the appearance of counsel or the first appearance in the circuit court." *Thompson v. State*, 229 Md. App. 385, 397 (2016) (citing Md. Code, Crim. Proc. § 6-103(a) and Md. Rule 4-271(a)(1)). The county administrative judge or his designee may, however, change the trial date beyond the 180-day limit "for good cause shown." Md. Code, Crim. Proc. § 6-103(b); *see also* Md. Rule 4-271(a)(1). "The determination as

to what constitutes a good cause, warranting an extension of the trial date beyond the [180-day] limit, is a discretionary one, which … carries a presumption of validity." *Thompson*, 229 Md. App. at 398 (citations and quotations omitted). That is, "[t]he determination that there was or was not good cause for the postponement of a criminal trial has traditionally been viewed as a discretionary matter, rarely subject to reversal upon review." *State v. Frazier*, 298 Md. 422, 451 (1984). "Reversal of a finding of good cause is only warranted where there is '. . . a clear abuse of discretion or a lack of good cause as a matter of law.'" *Marks v. State*, 84 Md. App. 269, 277 (1990) (citing *State v. Toney*, 315 Md. 122, 131 (1989)). The burden of demonstrating error rests with the appellant. *Thompson*, 229 Md. App. at 398.

The parties do not dispute that the "good cause" requirement was implicated here. We must decide, therefore, whether the administrative judge abused his discretion in finding no good cause for the postponement. In reviewing the court's decision, we must look at the circumstances as they existed at the time of the postponement request.[4] *See Morgan v. State*, 299 Md. 480, 488 (1984) ("When the 'good cause' question concerns the need for a postponement, … [appellate] review necessarily relates to what is before the administrative judge or his designee at the time the postponement is ordered.").

On May 4, 2021, two days before his seven-day trial was scheduled to begin, Mr. Jones moved for a postponement. The basis for the motion was the discovery that

[4] For this reason, and as to whether denying Mr. Jones' postponement request was an abuse of discretion, we shall not consider the State's arguments that arise from Ms. Johnson's trial testimony. None of that testimony was available to the administrative judge at the time of his decision.

Mr. Jones' co-defendant, Kara Johnson, had, only a week prior, agreed to testify against Mr. Jones. Mr. Jones' attorney proffered that Ms. Johnson would testify about "a number of issues," including "a prior incident that she's alleging initiated or led to this shooting." Defense counsel argued that Ms. Johnson's testimony would "drastically alter" Mr. Jones' defense because her testimony would "place him at the scene and also provide a motive that was lacking in the case." Defense counsel maintained that a postponement was necessary to prepare for cross-examination, to potentially subpoena rebuttal witnesses, and to discuss plea options with Mr. Jones in light of the new evidence. The administrative judge ultimately denied the motion, finding no good cause and explaining that Mr. Jones should have expected that his co-defendant may have agreed to testify against him.

We hold that the circuit court did not abuse its discretion in denying Mr. Jones' postponement request. Although Mr. Jones argued that further delay was necessary because Ms. Johnson's testimony had drastically altered the case, Mr. Jones already knew of the State's intent to "tie [him] to the scene" through evidence other than Ms. Johnson's testimony, evidence that defense counsel said "wasn't largely testimony." Indeed, in providing "background" to the administrative judge, the State had mentioned Ms. Johnson's text messages with Mr. Connelly and Ms. Johnson's "putting [Mr. Connelly] in touch with [Mr. Jones.]" Moreover, Mr. Jones failed to provide any concrete evidence as to how a postponement would benefit him in light of Ms. Johnson's testimony. Instead, Mr. Jones merely said he needed more time to "adequately prepare" and call

potential witnesses. But, as the administrative judge noted, Mr. Jones should not have been surprised by the fact that Ms. Johnson, his co-defendant, decided to testify against him.

Nevertheless, even if Mr. Jones were surprised, we fail to see how that surprise warranted a postponement. Mr. Jones still had a reasonable time to prepare his defense despite the late discovery, as trial was two days away and was expected to last seven days. Furthermore, there was no allegation that the State's late disclosure constituted a discovery violation. *See Howard v. State*, 440 Md. 427, 444 (2014) (where there has been no discovery violation, the trial court is under even less of an onus to grant a motion to postpone to review discovery materials.). Given these circumstances, we cannot say that the court abused its discretion in finding no good cause to grant Mr. Jones' postponement request.

Nor are we persuaded by Mr. Jones' argument that the administrative judge's decision to deny the postponement was "inconsistent with case law standing for the proposition that when new evidence is disclosed on the eve of trial, defense counsel has good cause to request a postponement to review the material." Mr. Jones cites *Morgan v. State*,[5] *Ashton v. State*,[6] and *Collins v. State*,[7] and while these cases suggest a few

[5] 299 Md. 480 (1984).

[6] 185 Md. App. 607 (2009).

[7] 373 Md. 130 (2003).

parameters for when denial of a postponement could constitute an abuse of discretion, these parameters are not present here.

In *Morgan*, the "new" evidence was more extensive than the "new" evidence here. Mr. Morgan was charged with second degree murder, assault with intent to murder, and use of a handgun in the commission of a felony.[8] The circuit court continued the trial on its own motion after learning that the State intended to call two new witnesses, introduce a handgun, and present "an FBI analysis report" about the handgun, evidence the trial court called "extremely damaging" to Mr. Morgan. *Morgan*, 299 Md. at 483-84. Here, of course, it was one new witness, not two, and that witness (Ms. Johnson) was not sponsoring damaging physical evidence and a forensic report. Instead, Mr. Jones knew that Ms. Johnson was a co-defendant. And when he learned that Ms. Johnson would testify against him, placing him at the scene and describing his motive in shooting Mr. Connelly, Mr. Jones already knew that the State had other evidence tying him to the scene. Thus, as to Mr. Jones' location relative to the crime scene, Ms. Johnson's testimony was cumulative of other evidence and not particularly new. As to Mr. Jones' motive, while Ms. Johnson's testimony was new, Mr. Jones should not have been surprised by the need to prepare for it given that, as the administrative judge recognized, co-defendant testimony was anticipated.

[8] These are the charges of which Mr. Morgan was convicted. *Morgan*, 299 Md. at 482. The opinion does not indicate whether he was charged, but acquitted, of others.

In *Ashton v. State*, 185 Md. App. 607 (2009), it was not the "newness" of late DNA evidence, but rather the statute on procedures for admissibility of DNA,[9] that prompted the circuit court to grant a continuance. *Ashton*, 185 Md. App. at 617-18. Mr. Ashton was convicted of felony murder, robbery, robbery with a dangerous weapon, and the use of a handgun in the commission of a felony.[10] The State timely disclosed its intent to introduce DNA evidence as required by the statute, but Mr. Ashton did not ask the State to provide the related DNA laboratory data at least 30 days before trial, as he could have under the statute.[11] "Shortly before trial," nonetheless, the State provided the data to Mr. Ashton. *Ashton*, 185 Md. App. at 617-18. Granting what Mr. Ashton would later term his "forced" motion,[12] the circuit court continued the trial to afford Mr. Ashton more time to prepare. In affirming Mr. Ashton's convictions, the reviewing court relied on the statute and Mr. Ashton's having consented to the continuance. *Id.* at 619. Here, of course, Ms. Johnson was not offering DNA evidence such that the statute would come

[9] See Md. Code, Cts. & Jud. Proc. § 10-915 (1973, 2006 Repl. Vol.). The statute has not been amended since.

[10] The robbery and robbery with a dangerous weapon convictions merged with felony murder. *Ashton*, 185 Md. App. at 610. The opinion does not fully indicate what Mr. Ashton was charged with.

[11] Md. Code, Cts. & Jud. Proc. §§ 10-915(c)(1) and (c)(2) (1973, 2006 Repl. Vol.).

[12] Mr. Ashton's preferred remedy was exclusion of the evidence. After the court denied this remedy, and indicated it would admit the DNA evidence, Mr. Ashton argued he was "forced" to seek a continuance by the court's "erroneous admission" of the evidence. *Ashton*, 185 Md. App. at 619.

into play. More important, Ms. Johnson's testimony was that of a fact witness and far less complex than the expert testimony one might expect with DNA.

In *Collins v. State*, the "new" evidence was a purported eyewitness' prior inconsistent statement that was discoverable long before the witness testified. Mr. Collins was convicted of first-degree murder and related handgun offenses. *Collins*, 373 Md. at 132. The State, unable to produce the purported eyewitness until after its rebuttal case, requested and received permission to re-open in order to call the witness. After the State disclosed that the witness first told police he "saw nothing because he was too far away,"[13] Mr. Collins asked for the weekend to prepare for cross-examination, a request the court denied. Noting the trial court's failure to recognize, and consider a remedy for, the State's discovery violation, the reviewing court concluded that the trial court erred. *Collins*, 373 Md. at 143-147. Here, of course, Mr. Jones never claimed to the administrative judge that the State's late notice of Ms. Johnson's testimony amounted to a discovery violation or that Ms. Johnson's testimony was somehow inconsistent with other statements she had made.

Finally, even if the circuit court abused its discretion in refusing to grant Mr. Jones' request for a postponement, reversal is not required because any error was harmless. *See Porter v. State*, 455 Md. 220, 234 (2017) ("When we have determined that the trial court erred in a criminal case, reversal is required unless the error did not

[13] *Collins*, 373 Md. at 133.

influence the verdict.") (citations and quotations omitted). Following the circuit court's jury instructions, including an instruction on self-defense, Mr. Jones was acquitted of all charges other than second-degree felony murder. Thus, Mr. Jones was acquitted of all charges requiring proof of intent to kill. Beyond Ms. Nock's testimony, the only notable piece of new evidence presented through Ms. Johnson's testimony was the statement Mr. Jones made to her while the two were in custody at the Baltimore County Detention Center, in which Mr. Jones stated that he "did it" for her and Ms. Nock. But, to the extent that that statement constituted "new information" about an ulterior motive for the shooting, or tended to negate Mr. Jones' self-defense, the jury did not give the evidence weight. Thus, we are convinced beyond a reasonable doubt that any error the court may have made in refusing to grant the postponement had no effect on the jury's verdict.

II.

Mr. Jones next contends that the evidence adduced at trial was insufficient to sustain his conviction of second-degree felony murder. He notes that the crime was specifically predicated on the felony of committing or attempting to commit the crime of possession with intent to distribute MDMA or distribution of MDMA. He contends that the State failed to prove any distribution or attempted distribution of MDMA. He argues, therefore, that the evidence was insufficient to establish second-degree felony murder.

The State argues, and we agree, that Mr. Jones' argument is unpreserved. "Maryland Rule 4-324(a) requires that, as a prerequisite for appellate review of the sufficiency of the evidence, [an] appellant move for a judgment of acquittal, specifying

the grounds for the motion." *Whiting v. State*, 160 Md. App. 285, 308 (2004). "The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the] appellant in his motion for judgment of acquittal." *Id.* (internal citations omitted). "Grounds that are not raised in support of a motion for judgment of acquittal at trial may not be raised on appeal." *Jones v. State*, 213 Md. App. 208, 215 (2013).

Here, when Mr. Jones moved for judgment of acquittal at trial, he provided specific grounds only in relation to the first-degree murder charge. As to all other charges, which included the charge of second-degree felony murder, he stated that he would "submit without argument" on those counts, hardly enough to meet Rule 4-324(a)'s specificity requirement. At no time did Mr. Jones advance the argument he now advances on appeal. As such, Mr. Jones' sufficiency claim is not preserved for our review, and we decline to address it.

III.

Mr. Jones' final contention is that the trial court erred in permitting Kara Johnson to testify about Mr. Jones' pretrial incarceration. Mr. Jones notes that a defendant is presumed innocent and that courts are required to ensure that a jury does not place undue weight on a defendant's incarceration. Mr. Jones argues that evidence of his incarceration was prejudicial and "could undoubtedly have pushed any juror towards a guilty verdict." Mr. Jones also argues that there was no compelling need for the disputed testimony

because Ms. Johnson had already testified that he had made a statement regarding the shooting and any further testimony added nothing to the State's case.

The State contends that the trial court properly exercised its discretion in admitting Ms. Johnson's testimony. The State argues that any evidence of Mr. Jones' incarceration was minimally prejudicial and did not substantially outweigh the probative value of Ms. Johnson's testimony.

Evidence is relevant if it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Evidence that is relevant is generally admissible; evidence that is not relevant is not admissible. Md. Rule 5-402.

Even if legally 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." Md. Rule 5-403. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the [fact-finder's] evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). In so doing, "[w]hat must be balanced against 'probative value' is not 'prejudice' but, as expressly stated by Rule 5-403, only 'unfair prejudice.'" *Newman v. State*, 236 Md. App. 533, 549 (2018). Moreover, "the fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in

Maryland Rule 5-403." *Ford v. State*, 462 Md. 3, 58-59 (2018) (citations and quotations omitted). "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003).

We hold that the trial court did not abuse its discretion in admitting Ms. Johnson's testimony regarding Mr. Jones' incarceration. Ms. Johnson testified that, while she and Mr. Jones were in the Baltimore County Detention Center following the shooting, Mr. Jones admitted that he "did it" for her and her friend, Brittany Nock. From that, a reasonable inference could have been drawn that Mr. Jones was admitting to the shooting and not acting in self-defense. Thus, the probative value of the evidence was strong.

Conversely, any prejudice to Mr. Jones was minimal. The reference to his incarceration was brief and was made merely to establish the circumstances of the statement. There is nothing in the record to show that any other references to Mr. Jones' incarceration were made in front of the jury. *Compare to Estelle v. Williams*, 425 U.S. 501, 504-05 (1976) (expressing disapproval of requiring a defendant to stand trial in prison clothes, explaining that "the *constant* reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment") (emphasis added). Moreover, as the trial court noted, it is unlikely that any juror would have been surprised to learn that one on trial for murder, as Mr. Jones was here, had, at some point prior to trial, been in custody. We cannot say, therefore, that any resulting prejudice to Mr. Jones was unfair, much less that the probative value of Ms. Johnson's testimony was

substantially outweighed by the danger of unfair prejudice. Accordingly, we conclude that the trial court did not abuse its discretion in admitting this evidence.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.