Circuit Court for Baltimore City
Case No. 122004005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 630

September Term, 2023

DONTE PRICE

v.

STATE OF MARYLAND

Beachley,
Ripken,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: July 5, 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).

Donte Price, appellant, was convicted by a jury sitting in the Circuit Court for Baltimore City of attempted second-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence, and related charges.[1] Appellant raises three questions on appeal, which we have slightly rephrased for clarity:

I. Did the trial court err when it admitted into evidence a videotape of appellant's police interview?

II. Did the trial court err when it instructed the jury on attempted second-degree murder, a count not originally charged, after the jury began its deliberations?

III. Did the trial court err when it admitted into evidence a "jail call" appellant made shortly after his arrest?

For the following reasons, we shall affirm the judgments.

FACTS

The State's theory of prosecution was that on the afternoon of April 22, 2021, appellant and an accomplice fired a total of 23 gunshots at Brandon Burrell while he sat in his car at a shopping center in the 5300 block of Frankford Avenue. Burrell survived the shooting. Two witnesses testified for the State: Burrell and Detective Marcus Smothers with the Baltimore City Police Department. The State also introduced into evidence surveillance footage from nearby stores around the time of the shooting and a "jail call" appellant made shortly after his arrest. Appellant acknowledged that he was in the area

[1] The jury deadlocked and a mistrial was declared on a charge of attempted first-degree murder. The jury found appellant not guilty of two conspiracy charges: conspiracy to commit murder and conspiracy to commit assault. The court subsequently sentenced appellant to a total of 51 years of imprisonment, all but 30 years suspended, to be followed by five years of probation.

when the shooting occurred but claimed that he was not the shooter. The defense called no witnesses. Viewing the evidence in the light most favorable to the State, the following was elicited at trial.

Burrell testified that he spoke with appellant three separate times on the day of the shooting. Burrell explained that he had known appellant for ten years and that they saw each other several times a week. During his testimony, Burrell narrated each of the three encounters using surveillance camera footage from stores at the strip mall. Burrell identified appellant in the surveillance footage as the individual who was wearing a blue hoodie, jeans, and tennis shoes. Across the front of appellant's hoodie were the letters in white, large block type, "GSRD."[2]

Burrell testified that the first encounter occurred around noon when he drove to the strip mall and saw appellant. After Burrell parked and exited his car, he and appellant had a conversation during which appellant told Burrell that he was going to kill "Tigh," a mutual friend, because Tigh owed him more than $300. Burrell then left and went to a gas station.

Burrell recounted that he returned to the strip mall ten minutes later to talk to appellant regarding what he had said about Tigh. Burrell stated that he told appellant that it was "stupid" to kill Tigh over $300. Burrell also told appellant that he would bring Tigh to the strip mall for the two to talk. According to Burrell, appellant became upset and told

[2] Detective Smothers later testified that the acronym stands for "G Star Raw Denim."

Burrell that if he "got in the way, he was going to" kill him. Burrell thought appellant was joking about killing him because he thought they were "cool." The conversation ended after approximately ten minutes with appellant leaving in an "irate" state.

A couple hours later, Burrell returned to the strip mall for a third time. Tigh accompanied Burrell on this third trip. Burrell stated that when he arrived, he spoke to an acquaintance, Kahi Richard, about appellant's whereabouts. Based on what Richard told him, Burrell dropped off Tigh and then drove to the other end of the strip mall to see appellant. Burrell testified that appellant approached his car, removed a gun from his back pocket, and opened the driver's side door of his car. Appellant told Burrell to "roll out" and started hitting him in the head with the gun. Appellant then repeatedly shot at him. Burrell left as Richard shot at him too, driving himself to a nearby hospital.

Burrell verified that the videos showed appellant wearing the same sweatshirt and shoes as both appellant and Richard fired shots at his car. Burrell ultimately had two surgical procedures as a result of the shooting. Burrell spoke to the police the day after his first surgery and identified a photograph of appellant via photo array a few weeks later.

Detective Marcus Smothers was assigned to investigate the shooting. Twenty-three 9-millimeter shell casings were recovered from the area, as well as video footage from the shopping center parking lot. Detective Smothers narrated the footage for the benefit of the jury and identified appellant interacting with Burrell at the strip mall. The detective identified appellant as wearing a dark colored hoodie with the logo "GSRD" in large white

letters across the front and jeans. The detective also narrated video corroborating Burrell's account of the shooting at the strip mall.

Appellant was arrested on December 8, 2021, more than seven months after the incident. Appellant waived his *Miranda*[3] rights and was interviewed by Detective Smothers the same day. The State introduced into evidence and played for the jury an hour-long partially redacted audio/video tape of the appellant's police interview. The State also played for the jury a "jail call" made by appellant about a month after appellant's arrest in which he states that he had been "on the run[.]"

We shall provide additional facts as necessary.

I.

Appellant argues on appeal that the trial court erred by admitting into evidence the videotape of his police interview because he contends that it contained improper remarks by Detective Smothers. Appellant directs us to specific statements made by the detective and argues that the detective improperly remarked that appellant was lying, opined that appellant was the shooter, and contradicted appellant's assertions of innocence. The State responds that appellant's arguments are not preserved for our review because he did not identify any objectionable statements with sufficient particularity below. Alternatively, the State argues that the court properly exercised its discretion in admitting the videotape, and if the court erred, any error was harmless.

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

"Ordinarily, an appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Md. Rule 4-323(a) provides: "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." "It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *see also Gutierrez v. State*, 423 Md. 476, 488 (2011) ("[W]hen an objector sets forth the specific grounds for his objection . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified." (quoting *Sifrit v. State*, 383 Md. 116, 136 (2004))).

During trial, defense counsel moved in limine to preclude the State from introducing the entire videotape of appellant's police interview with Detective Smothers. Defense counsel argued as follows:

> [Y]our Honor, during the interview . . . the detective is essentially telling my client what he believes the theory of the case is. What he believes happened at the scene. In other words, the detective is giving a narrative and we are objecting because he's, by doing that essentially, he's able to give de[ ]facto, de[ ]facto testimony without the benefit of cross-examination.

Defense counsel further expounded that the videotape's "prejudicial value outweighs the probative[,]" because "[the detective] gets to testify in front of the jury plus . . . he gets just to, [for] lack of a better word, just to shoot off about what he knows, what his theory is and that he knows this happened and he knows this, this happened and things of that nature."

The court denied the motion as to the detective's "narrative" in part because the State planned to call Detective Smothers as a witness, making him available for cross-examination.[4] Significantly, defense counsel never directed the court to any particular remarks in the hour-long interview that counsel deemed to be objectionable.[5]

On appeal, appellant asserts that the following remarks by the detective on the videotape should not have been admitted:

1) When the detective expressed his "disbelief of [appellant's] denials" by telling appellant, "Now, you're just . . . lying to me. You're playing with me."

2) When the detective told appellant at the beginning of the interview that he was sure that appellant had seen the *Miranda* Rights Waiver form before, and later in the interview, it was elicited that the detective had possibly yelled at appellant on a prior occasion.

3) When the detective opined appellant shot Burrell because he had a "beef" with a third person and Richard shot at Burrell because he "looked up" to appellant; stated he had a "damning amount" of evidence against appellant; and disputed appellant's assertions that Burrell may have been intoxicated or that appellant and his family would be killed if he called the police.

We summarily dispense with the second remark alleged to be error in appellant's brief. On this point, defense counsel never even mentioned the detective's statement that "the appellant had seen the *Miranda* rights form before" or any previous encounters that the appellant may have had with Detective Smothers. This issue, therefore, is not preserved.

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[4] The detective did testify and was cross-examined.

[5] The videotaped interview spans 52 pages of transcript.

As to the other two remarks, appellant cites *Crawford v. State*, 285 Md. 431 (1979), for the proposition that "evidence that the interrogating officer expressed disbelief of the suspect during interrogation is inadmissible." In *Crawford,* the Supreme Court of Maryland reversed a first-degree murder conviction due to the admission of police interrogation videos that "seriously prejudice[d] the defense." *Id.* at 451. During the interrogation, the defendant "readily admitted that she had stabbed the victim . . . in self-defense" and was "steadfast" in this claim. *Id.* at 433. Over defense counsel's "persistent and emphatic objections," *id.* at 453, the prosecution played videos of police efforts to have her recant by "exhorting her to tell the truth and arguing with her, by recounting what other persons, some named, some unnamed, had told them, by stating their opinions as to what had occurred, and by referring to what the victim had said when deposed . . . in a [previous] civil proceeding." *Id*. at 433. Recognizing that the "credibility of the accused was all important" to her assertion of self-defense, the Court held that:

> There is no doubt that the challenged comments of the police which were heard by the jury, whether in the form of questions, assertions of disbelief, opinions (not as expert witnesses), argument, recounting of what others were purported to have said contrary to the version of the accused, hearsay, or otherwise, tended to seriously prejudice the defense.

Id. at 451. Accordingly, the Supreme Court reversed the judgment and ordered a new trial. *Id.* at 456.

We agree with the State that appellant's appellate claims on this issue are not preserved. In the circuit court, appellant generically objected to the detective's "narrative" about how the shooting occurred and claimed it was prejudicial for the detective to have

"two bites of the apple" by testifying twice "without the benefit of cross-examination." Appellant did not identify any particular statements and was unable to state to the court, when asked, which statements over the course of the hour-long interview constituted the detective's objectionable "narrative." Because appellant failed to sufficiently articulate to the trial court the statements he found objectionable, he cannot claim trial court error on appeal. *See Woodlin v. State*, 484 Md. 253, 293-94 (2023) ("[Petitioner] only ever object[ed to] the admissibility of the entirety of the evidence offered by the State, not specific portions. Petitioner's decision not to ask . . . the trial judge to limit the scope of the State's evidence means that this issue was not preserved for appellate review.").

Even if appellant's *Crawford* argument were preserved, we would hold that it is without merit. Appellant is incorrect to assert that *Crawford* holds that any assertions of disbelief during a police interrogation are "inadmissible." Instead, the *Crawford* Court reversed because of a combination of prejudicial factors, including the introduction of hearsay, assertions of disbelief, and unqualified opinions offered by the officers during their interrogation. *Id.* at 451. Because these statements pervaded the three and a half hours of interrogations and were in contrast to the defendant's adherence to her story, the Court concluded that "the placing before the jury of the challenged portions of the interrogations did not meet the 'civilized standards for a fair and impartial trial.'" *Id.* at 453 (quoting *Madison v. State*, 205 Md. 425, 434 (1954)).

The statements identified by appellant during the hour-long interview in this case are qualitatively and quantitatively different from those found in *Crawford.* Appellant

asserts that the detective's statement of "Now, you're just . . . lying to me," qualifies as a highly prejudicial repudiation of his story. When viewed in context, this statement is not a rejection of appellant's account of the shooting; instead, the detective was challenging appellant's collateral statement that he did not have any "beef" with anyone. Similarly, the other statements relate to either collateral issues that are only tangentially related to the appellant's defense or are simply speculative statements made by the detective based on his investigation. The strongest assertion by the detective—that he had a "damning" amount of evidence—refers to the videos that would ultimately be admitted into evidence at trial. While appellant consistently denied that he was the shooter during the interrogation, he also admitted to key incriminating details—that he was in the shopping center during the shooting and that he had issues with Burrell over money—that were probative to the State's case. We therefore reject appellant's claims that the detective's statements in the police interview are violative of *Crawford*.

Even if we were to assume that the court erred in admitting the detective's statements, we would find any such error harmless. In Maryland, determining whether an error is harmless is governed by the following standard:

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

Smith v. State, 423 Md. 573, 598-99 (2011) (alteration in original) (quoting *Dorsey v. State*,

276 Md. 638, 659 (1976)). If an appellant demonstrates error, the burden shifts to the State to persuade the appellate court that, beyond a reasonable doubt, the error had no influence on the verdict. *Dionas v. State*, 436 Md. 97, 108-09 (2013) (citing *Hunter v. State*, 397 Md. 580, 596 (2007)). In *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986), the United States Supreme Court set forth factors that an appellate court should use to decide the extent to which an error contributed to the verdict: the importance of the tainted evidence; whether the evidence was cumulative or unique; the presence or absence of corroborating evidence; and the overall strength of the State's case.

Here, the State's case that appellant was the shooter was very strong. Burrell had known appellant for over a decade and the two were close acquaintances. Burrell had several interactions with appellant that day and identified appellant as the shooter. Video evidence of the events and Detective Smothers's testimony corroborates Burrell's testimony. The videos show appellant firing a handgun, in broad daylight, at Burrell's car. In light of this evidence, any error in admitting the detective's "theory" of the shooting was minimal. Accordingly, even if we were to assume that the court erred, we would hold that any error was harmless beyond a reasonable doubt.

II.

Appellant argues that the trial court erred when it allowed the State to add an uncharged count, attempted second-degree murder, to the verdict sheet after the jury retired to deliberate because doing so violated basic fairness principles and the prohibition against double jeopardy. He concedes that amending an indictment is generally permitted, but

argues that the court erred in allowing amendment of the indictment after the close of the evidence, jury instructions, and closing arguments, because he was precluded from responding to the amendment. Recognizing that he did not object to the amendment in the trial court, he asks us to invoke plain error review. The State responds that we should decline to exercise our discretion to find plain error because appellant has failed to meet any of the four conditions required before exercising our discretion.

After the jury retired to deliberate, the State moved to add attempted second-degree murder to the charging document under Md. Rule 4-204. Md. Rule 4-204 provides:

> **Charging document – Amendment.** On motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the parties is required. If amendment of a charging document reasonably so requires, the court shall grant the defendant an extension of time or continuance.

The State argued that because attempted second-degree murder is a lesser included offense of attempted first-degree murder, adding the charge of attempted second-degree murder would not change the character of the offenses charged. The court initially denied the motion. When the court asked defense counsel if he wanted to be heard on the matter, he responded, "No[.]" The jury was then dismissed for the day.

The next morning, before the jury resumed its deliberations, the trial court advised the parties that it was revisiting its ruling regarding the State's request to amend the indictment. The court stated that in light of *Ross v. State*, 308 Md. 337 (1987), it was persuaded that it could instruct the jury on attempted second-degree murder. In *Ross*, the Maryland Supreme Court held that a defendant charged with murder is "clearly apprised

that he is being charged with the crime of murder and that he may be convicted of murder in either degree, or manslaughter." 308 Md. at 345. The trial court then revised the verdict sheet to include attempted second-degree murder and the court advised the parties as to its proposed jury instruction on attempted second-degree murder. When the trial court asked defense counsel if he had anything to add, he replied, "Based on the instructions, Your Honor, no."

Preservation

Md. Rule 4-325(f) governs objections to jury instructions and provides:

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

An appellate court should recognize unobjected-to error when "compelling, extraordinary, exceptional or fundamental to assure the defendant of fair trial." *Rubin v. State*, 325 Md. 552, 588 (1992) (quoting *Trimble v. State*, 300 Md. 387, 397 (1984)). The standard is high: "Every error that, if preserved, might have led to a reversal does not thereby become extraordinary." *Perry v. State*, 150 Md. App. 403, 436 (2002). "[A]ppellate invocation of the 'plain error doctrine' 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon." *Morris v. State*, 153 Md. App. 480, 507 (2003).

The Maryland Supreme Court has articulated the following four conditions, all of which must be met, before an appellate court can exercise its discretion to find plain error:

> 1. appellant did not intentionally relinquish or abandon the legal error;
>
> 2. the legal error is clear or obvious, and not subject to reasonable dispute;
>
> 3. the error affected the appellant's substantial rights, which means that it affected the outcome of the proceedings; and
>
> 4. the error seriously affects the fairness, integrity or reputation of judicial proceedings.

Newton v. State, 455 Md. 341, 364 (2017) (citing *State v. Rich*, 415 Md. 567, 578 (2010)). A plain error analysis "need not proceed sequentially through the four conditions; instead, the court may begin with any one of the four and may end its analysis if it concludes that that condition has not been met." *Winston v. State*, 235 Md. App. 540, 568 (2018).

As to the first factor—intentional relinquishment or abandonment—defense counsel twice declined to respond when asked to do so by the court. Where defense counsel "affirmatively advise[s] the court that there [is] no objection to the instruction" that the court proceeded to give to the jury, plain error review is not available. *Booth v. State*, 327 Md. 142, 180 (1992); *see also Choate v. State*, 214 Md. App. 118, 130 (2013) (stating that where a party "affirmatively (as opposed to passively) waived his objection by expressing his satisfaction with the instructions as actually given[,]" a reviewing court is "especially disinclined to take the extraordinary step of noticing plain error"). Here, appellant acknowledges that he failed to make an objection yet makes no attempt to explain why the failure to object when asked was not an affirmative waiver of the issue. Defense counsel's affirmative representation that he had no objection to the instructions therefore makes plain

error review unavailable.[6]

We note that, even if we were to hold that all four factors were met, plain error review is a "discretionary exercise." *Morris*, 153 Md. App. at 511. The Maryland Supreme Court has emphasized that appellate courts should "rarely exercise" their discretion in this regard because "considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court." *Ray v. State*, 435 Md. 1, 23 (2013) (quoting *Chaney v. State*, 397 Md. 460, 468 (2007)). Thus, courts have consistently affirmed the principle that plain error review "is reserved for those errors that are compelling, extraordinary, exceptional, or fundamental to assure the defendant of a fair trial." *Savoy v. State*, 218 Md. App. 130, 145 (2014) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). We affirm that, in view of the entire record, we would not exercise our discretion to engage in plain error review in this case. *See Morris*, 153 Md. App. at 506-07 (noting that the words "[w]e decline to do so[]" are "all that need to be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation").

[6] Furthermore, appellant likely could not satisfy the second factor—that the error was clear and obvious—because Md. Rule 4-204 permits amendment of the charging document after closing argument without the consent of the parties so long as the amendment does not "change[] the character of the offense charged[.]" Because attempted second-degree murder is a lesser-included offense of attempted first-degree murder, the circuit court's amendment complied with this rule. *See Moore v. State*, 84 Md. App. 165, 181 (1990).

III.

Finally, appellant argues that the trial court erred in admitting a jail call recording in which appellant allegedly told his brother that he was "on the run." Citing *Thompson v. State*, 393 Md. 291 (2006), appellant argues that the call should not have been admitted as consciousness of guilt evidence because it was not clear that he was fleeing because of the offense for which he was tried or some other "completely unrelated offense." The State responds that the trial court did not err in admitting the jail call because the probative value outweighed any risk of unfair prejudice, and even if the trial court admitted the jail call in error, any error was harmless.

Background

During trial, appellant moved in limine to preclude the State from introducing into evidence a jail call appellant made to his brother in which he said "I've been on the run [.]" Appellant argued that the statement was irrelevant and prejudicial because, among other things, he was on parole and probation, and "doesn't say what he is on a run from."

The State's basic response was "context matters." The shooting in this case occurred in April 2021, appellant was arrested in December 2021, and the jail call was placed in January 2022. Thus, the State asserted that the call was admissible and relevant because the context of the conversation clearly showed that appellant was talking about his recent arrest in this case. The State added that his statement about being on the run undermined his credibility because he told the detective during his interview that he had not been hiding from the police but had been "right there at Frankford working or doing

things for the community." He also told the detective that he was not avoiding the police, stating "I never hide or nothing. I was walking past the police every day." The court denied the defense motion.

The State played the jail call for the jury, transcribed as follows:

> MR. PRICE: And then I got my motions and all of that. You see, I'm only – he got, I know he got my motions already because my Co-Defendant got his shit. You feel me.
>
> UNIDENTIFIED SPEAKER: (Inaudible[])
>
> MR. PRICE: I know. That's because, **because I was on the run and he saw me**. You feel me. But if we had got locked up together then –
>
> UNIDENTIFIED SPEAKER: No, no, no, no, no. That is – no, you're not. No you're not.
>
> [MR. PRICE]:[7] He's in my charge papers as suspect number one and suspect number two.

(Emphasis added.)

Merits

We reprint the entirety of appellant's substantive argument on this point:

> Similarly [referring to *Thompson v. State*] in the present case, Detective Smothers made clear that Mr. Price had had prior contacts with police, including himself, and that he had a familiarity with the *Miranda* warnings that he was being read, implying that he had previously been a suspect in some other crime or crimes. Therefore, it is not at all clear that Mr. Price was "on the run" as a result of the offense on trial. Under the reasoning of *Thompson* and [*United States v.*] *Myers*, [550 F.2d 1036 (5th Cir. 1977)] the admission of evidence of flight was an abuse of discretion.

[7] The transcript labels this speaker as "unidentified." After listening to the jail call, however, we can identify the speaker as Mr. Price.

We initially note that whether appellant "had prior contacts with police," or that the detective implied that appellant "had previously been a suspect in some other crime or crimes" would not implicate the Supreme Court's holding in *Thompson*. In *Thompson*, a detective attempted to stop Thompson because he matched the description of a shooter in a recent attempted robbery. 393 Md. at 294. Thompson fled and upon arrest, cocaine was recovered from his person. *Id.* During his subsequent interview with the police, Thompson suggested that he fled because of the cocaine in his possession. *Id*. at 313. This statement was later suppressed because although he was initially charged with, among other things, attempted murder and drug possession, the latter was dismissed because of a chain of custody problem. *Id*. at 294-95. Thompson was ultimately convicted of assault and handgun convictions after the court gave an instruction that allowed the jury to consider Thompson's flight "as evidence of [his] guilt." *Id.* at 300.

Thompson appealed, noting that it was unfair that the jury was allowed to infer guilt for his charged crimes through his flight when his explanation for flight—possession of cocaine—was prejudicial. On appeal, the Maryland Supreme Court reversed his convictions and held that the trial court erred in giving a flight instruction to the jury. The Court explained:

> Where the defendant possesses an innocent explanation that does not risk prejudicing the jury against him, it would be expected that the defendant would present his purported reasons for his flight to the jury. It is error, however, for the trial judge to give such an instruction in a case like the case *sub judice* where the defendant would be prejudiced by the revelation of the "guilty" explanation for his flight. The circumstances of the case at bar impaired the confidence with which the inference that Mr. Thompson fled from police due to a consciousness of guilt with respect to the crimes charged

> could be drawn and rendered the instruction misleading as to the existence of an alternative basis for Mr. Thompson's flight from the police.

Id. at 315. Thus, critical to the Court's holding is that Thompson could have been fleeing because he possessed cocaine, rather than because of the robbery.

Appellant's case is distinguishable from *Thompson*. The instruction in *Thompson* was prejudicial because there was another explanation for the defendant's flight that was known to the court but not known to the jury and was therefore misleading. Here, appellant fails to explain how his "prior contacts with police" and "previously [being] a suspect" in unidentified other crimes could have reasonably caused him to be "on the run."[8] Appellant offers no cogent explanation for being "on the run" other than an amorphous claim that it could be for some "completely unrelated offense." Accordingly, appellant's reliance on *Thompson* is misplaced.

Although appellant does not allege any other evidentiary errors in the admission of his "on the run" statement, we note that the evidence was relevant. 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. The Maryland Supreme Court has recognized that the finding of relevance "is generally a low bar[.]" *State v. Simms*, 420 Md. 705, 727 (2011). Evidence deemed relevant may still be inadmissible because its probative value is outweighed by the "danger of unfair

[8] In the trial court, defense counsel stated that appellant could have been on the run because he was on parole and probation. This argument is not made on appeal, presumably because there is no suggestion that he was in *violation* of the terms of his parole or probation.

prejudice, confusion of the issues, or misleading the jury[.]" Md. Rule 5-403.

We agree with the State that the jail call was relevant because it implicated appellant in the commission of the crime and undercut appellant's statement to Detective Smothers in his police interview that he was visible "working or doing things for the community" after the shooting. Furthermore, given the timing of the call relative to the shooting and appellant's reference to his co-defendant, the call demonstrated his consciousness of guilt, *i.e.*, he was "on the run" for the shooting of Burrell. Despite appellant's suggestion that there was another reason for his flight, appellant offered no other explanation for why he was on the run other than some abstract, unarticulated other crime. We note that appellant fails to argue that admission of the jail call was unduly prejudicial. Under the circumstances, we find no abuse of discretion by the trial court in admitting the telephone call.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.