

Circuit Court for Harford County  
Case No. C-12-CR-19-000849

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 642

September Term, 2022

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RAHZIR MEYERS

v.

STATE OF MARYLAND

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Graeff,  
Zic,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: March 29, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Harford County convicted Razhir Meyers, appellant, of first-degree murder, conspiracy to commit first-degree murder, use of a firearm in the commission of a crime of violence, gang participation resulting in death, and related charges arising out of the shooting of Khalil Johnson. The court sentenced appellant to life plus 45 years.

On appeal, appellant presents the following questions for this Court's review:

1. Did the circuit court abuse its discretion by issuing a protective order authorizing the State to withhold the names, addresses, and statements of witnesses who identified Meyers as a certified Piru gang member and one of the men responsible for a homicide in 2019?
2. Did the circuit court abuse its discretion by admitting evidence to support appellant's purported gang affiliation?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 4, 2019, officers from the Harford County Sheriff's Office responded to a report of a shooting in Edgewood, Maryland. They observed Khalil Johnson, who had been shot in the chest. In the ensuing investigation, officers identified appellant as a suspect, and a witness later identified him as the shooter. Based on the witness's identification, officers charged appellant with first-degree murder and gang-related offenses.

Trial began in September 2021. The State offered evidence of other gang-related offenses. Deputy Keith Jackson, a member of the Harford County Sheriff's Department, testified that, on August 23, 2018, he responded to a report that a stolen vehicle had lost

control, gone airborne, and landed on top of two other vehicles in a parking lot. When he arrived at the scene, Deputy Jackson observed that the vehicle had landed on the passenger side, and the occupants were exiting through the driver's side windows. The driver, Rahzir Meyers, climbed out of the driver's side window and fled on foot, as did the other occupants. Deputy Jackson chased Mr. Meyers for approximately 100 yards and ordered him to stop, which he did. Deputy Jackson then took appellant into custody. He searched appellant and recovered the keys for the vehicle. The other occupants of the vehicle, Rodgers Williams, Jayden Rogers, and Jamel McCormick, fled in opposite directions. They were apprehended and placed in custody by other units.

Detective Michael Berg, a member of the Harford County Sheriff's Office, Criminal Investigations Division, testified that, on January 31, 2019, he responded to a report of a home invasion in Harford County. The victims identified Rodgers Williams as a suspect. Mr. Williams identified appellant as also being involved in the home invasion. Mr. Williams testified that they were at the home to steal, and he gave the police appellant's name because he was scared. Appellant, however, was not charged with the home invasion because Mr. Williams refused to testify against appellant. Mr. Williams stated that he was testifying against appellant at this trial because he "was given no other choice."

Detective Andrew Sampson, a member of the Harford County Sheriff's Department, testified as an expert in gang identification, validation, culture and intelligence. There were "multiple gangs in Harford County," which included Treetop Piru, as a subset of the Bloods criminal organization. Detective Sampson had been trained

in interview techniques, gang codes, symbols, and the different languages that are used by gangs to “hide their illegal activity.” One of his responsibilities was to instruct other officers and community groups on gang-related issues. When the State asked Detective Sampson how many gang-related investigations he had participated in during his more than twelve years with the police department, he stated: “Probably several hundred.” One of his primary responsibilities involved investigations relating to gang members, typically firearms or drug investigations.

Detective Sampson testified that, to determine whether a person is in a gang, Maryland law enforcement agencies use an eight-point validation system. These eight points include: (1) self-admission, where a person admits to being part of a criminal organization; (2) third-party “untested source” identification, where a third-party indicates that an individual is part of a criminal organization; (3) “trusted source” identification, where a third-party indicates that an individual is part of a criminal organization; (4) gang related tattoos; (5) “association with other known and validated gang members”; (6) clothing, e.g., folded bandanas or bandanas tied around ankles and wrists; (7) the use of symbols, signs, graffiti or other language found on social media that “would indicate somebody is in a gang”; and (8) an individual is “arrested with another known validated gang member.” To be classified as a gang member, an individual must have “two validation points” supported by either probable cause or actual observations.<sup>1</sup>

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<sup>1</sup> At one point, Detective Sampson testified that the standard operating procedures required only one point for validation, but Harford County typically used “two or three.”

With respect to the vehicle incident on August 23, 2018, Detective Sampson testified that two of the people in the vehicle, Rodgers Williams and Jayden Rogers, were members of the Bloods' Treetop Piru criminal organization. At the time of the incident, appellant also was a "validated gang member" of the Bloods criminal organization.

Detective Sampson had reviewed the police report associated with the home invasion that occurred on January 31, 2019. Each of the individuals allegedly involved were validated members of the Bloods criminal organization, including Mr. Williams.

Appellant was first validated as a member of the Bloods criminal organization in 2017, and there was an active gang intelligence file on appellant. Since 2017, appellant's affiliation had been revalidated three times. Detective Sampson associated appellant with four out of the eight validation points: (1) association; (2) clothing; (3) signs, symbols, and social media; and (4) being arrested with another validated member.

After appellant was convicted and sentenced, this appeal followed.

## **DISCUSSION**

### **I.**

#### **Protective Order**

Appellant contends that the court abused its discretion by issuing a protective order authorizing the State to withhold the "names, addresses, and statements of witnesses who

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The circuit court seemingly relied on this testimony when it stated that only "one marker" was required for validation according to the protocols used by police in Maryland. Detective Sampson subsequently testified that "you need two validation points to be a gang member."

identified [appellant], as a certified Piru gang member and one of the men responsible” for the July 2019 homicide. Appellant argues that his conviction should be reversed “because the State did not establish a valid need for a protective order,” “the protective order impinged [his] due process rights,” and it “unfairly handicapped [counsel’s] opportunity to investigate or prepare a meaningful defense.”

The State contends that the court acted within its discretion when it granted the protective order. The State asserts that the court’s protective order was “supported by specific factors, enunciated on the record.”

**A.**

**Proceedings Below**

On June 30, 2020, the State filed a Motion for Protective Order, seeking to prevent the disclosure of witness information.<sup>2</sup> The State asserted that a protective order was warranted for the following reasons:

- (1) the serious and violent nature of the charges pending against [appellant],
- (2) the ties of [appellant] to a violent gang organization,
- (3) [appellant’s] criminal history,
- (4) [appellant’s] reputation for violence in the community,
- (5) specific discussions regarding threats of violence towards another one of the State’s witnesses who has already been disclosed,

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<sup>2</sup> Maryland Rule 4-263(m) states, in part: “On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.”

- (6) the subjective fears of retaliation conveyed by the three witnesses to law enforcement, some of whom are eyewitnesses whose identities are currently not known to [appellant], and
- (7) the difficulties detectives have encountered in convincing witnesses to come forward and the difficulties that are anticipated in maintaining their cooperation as a result of their fears of retaliation.

The State explained the relief requested as follows:

to withhold the disclosure of witness information to *defense counsel until ten (10) days prior to the start of trial*. Witness information includes the names and addresses of the witnesses, other information by which they could be identified, and copies of statements they have made. This Order is sought to protect the lives of the witnesses and to facilitate their truthful testimony at trial, and accordingly the State further requests that the Order prevent the identities of the witnesses from being revealed to the Defendant, the Defendant's family, friends or associates, and/or any other persons apart from defense counsel, **until the day of the trial**.

The docket entries reflect that, on October 20, 2020, the circuit court took sworn testimony and heard party arguments. Appellant did not produce a copy of that transcript on appeal.<sup>3</sup>

On October 26, 2020, the court held another hearing on the State's motion. The State clarified that it was requesting a protective order for two eyewitnesses. The court

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<sup>3</sup> On January 3, 2024, this Court issued an Order directing appellant to "take all steps necessary, including paying any costs for the preparation of the transcript, to have the complete transcript for the hearing held on October 20, 2020, in Case No. C-12-CR-19-000849, filed with the Clerk of the Circuit Court for Harford County on or before January 22, 2024." Our review of the record indicates that, as of the date of argument, the requested transcript was not filed. At oral argument, counsel for appellant stated that he was not challenging the accuracy of the court's recitation of the testimony that day. The State also did not challenge this recitation of the evidence, so we will use that in deciding the issue presented.

stated that it could limit disclosure if it found that such disclosure was “not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.”

The court noted that it had accepted Detective Sampson as an expert in gang investigation, identification, and intelligence. Based on his prior testimony, and evidence proffered in the State’s motion in limine, the court concluded that appellant was a “validated member” of the Piru Treetop criminal organization, a subset of the Bloods criminal gang.<sup>4</sup>

The court accepted Detective Sampson’s testimony that Treetop Piru is a “big league” criminal organization that “engages in murder, assault and home invasion in Harford County.” Detective Sampson gave details regarding multiple crimes committed by validated members of the Bloods criminal organization, including attempted murder, home invasions, and possession of firearms. In one case involving a home invasion, a

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<sup>4</sup> Effective October 1, 2020, the Maryland General Assembly replaced “the term ‘gang’ as it pertains to certain prohibitions against participation in a criminal gang with the term ‘organization.’” 2020 Md. Laws, ch. 422. *See also*, Md. Code Ann., Crim. Law (“CR”) §§ 9-801(c), 9-802 (2021 Repl. Vol.). CR § 9-801(c) defines a “criminal organization” as:

an enterprise whose members: (1) individually or collectively engage in a pattern of organized crime activity; (2) have as one of their primary objectives or activities the commission of one or more underlying crimes, including acts by juveniles that would be underlying crimes if committed by adults; and (3) have in common an overt or covert organizational or command structure.



victim was murdered after his picture was shown on Instagram, and the gang member charged with the home invasion was released from jail.

Addressing appellant's affiliation with the Bloods criminal organization, the court accepted Detective Sampson's testimony that appellant was first validated as a Bloods gang member in 2017. Only one indicator was required to validate a gang member according to "protocols used by the police in the State of Maryland for gang validation," but appellant had "four of the eight indicators," including "association with a validated gang member . . . wearing gang attire, exhibiting the use of hand signs that are only used by gang members, and [having] been arrested with a validated gang member." The court stated that it was clear that appellant was "part of a violent criminal gang which has been active in Harford County in murder," attempted murder, and home invasion.

With respect to efforts to intimidate or eliminate witnesses, the court stated that the threat "is real." Several of appellant's known criminal organization associates were not incarcerated and were free to do appellant's "bidding in dealing with any State's witnesses." One of appellant's associates had asked in a jail call for another person to "take care" of witnesses in his case, showing the ability to "command retaliation that reaches outside the Detention Center." Appellant similarly had demonstrated in his jail calls "a desire and the ability to command others to retaliate on his behalf against those who displease him." Specifically, in a May 2020 jail call, appellant "was angry about what a young woman was saying about him on social media," and he "instructed his fellow gang

members to ‘slap her,)’” which the court understood to mean that he was instructing them to assault her.

The court next addressed the witnesses that were the subject of the motion for a protective order. It noted that they were eyewitnesses to the shooting of the victim, which occurred in broad daylight while families were gathering to celebrate July 4th. The court stated: “The crime itself demonstrates the ruthlessness, violence and indifference to the value of human life of these gang members. The murder was captured on surveillance video, but the testimony of these witnesses is necessary to identify who killed Mr. [Johnson]. Obviously[,] their testimony is crucial to the State’s case.” The court noted that Detectives Sampson and Michael Berg testified regarding the victims’ fear of retaliation, stating that it found credible the fears expressed and noting that it had “grave concerns about the safety” of the State’s witnesses.

The court then addressed its concerns about ensuring “the due process rights of [appellant] and particularly his attorney’s ability to provide effective representation.” It stated that appellant had a “constitutional right to effective representation of counsel, which includes the ability of his attorney to receive full discovery and prepare for trial.” Balancing the State’s interest in protecting the lives of eyewitnesses against “[appellant’s] right to a fair trial,” the court found that the balance weighed in favor of the protection of the eyewitnesses. It issued the following order:

[T]he State shall provide . . . a paper copy of discovery which includes the name, statements, police reports concerning the statements, transcripts of grand jury testimony, documents and police reports relevant to any pre-trial identification proceeding, criminal histories, if any, and any other

discoverable information and materials for each of the two protected eye-witnesses; that pursuant to CP § 11-301, the State shall withhold (subject to further order of this Court on request of defense counsel) the current address and telephone number of each protected eye-witness[.]

The court stated that defense counsel had the option of returning to court to make a good cause showing that the addresses and telephone numbers of the witnesses were necessary for his investigation or preparation for trial. Appellant's attorney was ordered to safeguard the ordered discovery, so it was "seen only by him." The court prohibited appellant's counsel from disclosing the "names or other identifying information of the protected eye-witnesses" to appellant earlier than "**noon on Monday December 21, 2020,**" 21 days before the start of the scheduled trial date. The court also ordered the State to make the two witnesses available to meet with appellant's attorney, with the State informing the witnesses, in the presence of appellant's counsel, that they were under no obligation to submit to an interview.

On January 12, 2021, the court noted the State's compliance with its previous directives and issued an amended protective order.<sup>5</sup> In that order, the court extended its prohibition on appellant's counsel's use of disclosed materials, stating that appellant's counsel "shall not inform [appellant] or anyone else of the names or other identifying

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<sup>5</sup> The trial was postponed several times. On August 13, 2019, the court issued its initial scheduling order, with the trial to commence on January 14, 2020. On December 23, 2019, the court issued a revised scheduling order, postponing the trial to April 13, 2020. As a result of the Covid-19 emergency, the trial was again rescheduled multiple times. On January 12, 2021, the court ordered appellant's trial to commence with jury selection on September 15, 2021.

information of the protected eye-witnesses . . . [any] **earlier than noon Wednesday, August 25, 2021,**” 21 days before the start of the scheduled trial date.

**B.**

**Standard of Review**

We review a circuit court’s decision to issue a protective order for abuse of discretion. *Lancaster v. State*, 410 Md. 352, 380–81 (2009). We have previously explained that:

[a]n abuse of discretion occurs “where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court, or when the ruling is violative of fact and logic.”

*Sibley v. Doe*, 227 Md. App. 645, 658–89 *cert. denied*, 448 Md. 726 (2016) (quoting *Bacon v. Arey*, 203 Md. App. 606, 667 (2012) (cleaned up)). We review a circuit court’s finding of fact for clear error, giving “due regard to the opportunity of the trial court to judge the credibility of witnesses.” *Ingram v. Cantwell-Cleary Co., Inc.*, 260 Md. App. 122, 143 (2023) (quoting Md. Rule 8-131(c)). “[A] finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Scriber v. State*, 236 Md. App. 332, 345 (2018) (quoting *Brown v. State*, 234 Md. App. 145, 152 (2017)).

C.

**Analysis**

In cases in which the State seeks to protect the identity of a witness, a court is “required ‘to balance the public interest in protecting the flow of information against the individual’s right to prepare a defense.’” *Lancaster*, 410 Md. at 378 (quoting *Brooks v. State*, 320 Md. 516, 320 (1990)). “Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the [witness’s] testimony, and other relevant factors.” *Brooks*, 320 Md. at 523 (quoting *Roviaro v. United States*, 353 U.S. 53, 62 (1957)).

We begin by addressing appellant’s contention that the court abused its discretion to withhold the names, address, and statements of witnesses who identified him as a member of the Treetop Piru criminal organization and “one of the men responsible” for Mr. Johnson’s homicide. As indicated, “[o]n motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.” Md. Rule 4-263(m)(1). Additionally, a court may “prohibit the release of the address or telephone number of the victim or witness unless the court determines that good cause is shown for the release of the information.” Md. Code Ann., Crim. Proc. (“CP”) § 11-301 (2018 Repl. Vol.).

Here, the State presented evidence regarding the witnesses' testimony and the facts surrounding Mr. Johnson's death. *Cf. Lancaster*, 410 Md. at 379 ("the State failed to present any evidence at the protective order hearing about the . . . witnesses' testimony or the facts surrounding the alleged crime"). In its motion for a protective order, the State noted that Mr. Johnson was "standing in an open grassy area, when [appellant], along with two unknown suspects, ambushed [Mr.] Johnson from behind." The State proffered that the witnesses would present testimony and provide "positive identification of the shooters and actions of the shooters right before and after [Mr. Johnson's] homicide." The court noted that, although Mr. Johnson's murder "was captured on surveillance video," the testimony of the witnesses was necessary to identify who killed him. It stated that "[t]he two witnesses for whom the State is seeking protection are both eyewitnesses . . . who have identified [appellant] as having been involved in the shooting of [Mr.] Johnson."

With respect to potential violence against likely witnesses, the court recognized that the witnesses had not "received a specific threat" from appellant. It found credible, however, the fears expressed by the witnesses to Detectives Sampson and Berg. Evidence was presented that "Treetop Piru is a 'big league' criminal gang which engages in murder, assault and home invasion in Harford County." Several members of the organization were serving sentences for attempted murder and home invasion, and in at least one instance, a victim-witness to a home invasion perpetrated by a Piru Treetop member was murdered after his picture and the "actual police report" regarding the home invasion was posted on social media, leading to the release of the suspect.

Appellant also had a reputation for violence. Specifically, the court stated:

Regarding [appellant's] reputation for violence, the police are now hearing [appellant] referred to as a "Shoota", S-H-O-O-T-A, on jail calls, a term which identifies him in the minds of police as an enforcer following the shooting murder for which he is facing trial. In the last month at least one individual with firsthand knowledge has reported to [Detective] Sampson that [appellant] knows 'his way around' firearms. The Court has heard evidence in this case of [appellant's] involvement in physical altercations with opposing gang members and a home invasion. He also was in the company of an armed gang member in the April 10th, 2019 incident.

Based on the evidence, the court was convinced that the "threat of an effort to intimidate or eliminate th[e] witnesses is real." The decision to issue a protective order was based, in part, on its finding that appellant had "demonstrated in his own jail calls his desire to call on his fellow gang members . . . to punish or retaliate when he is displeased with someone." The court had "grave concerns about the safety of th[e] witnesses based on everything" it had discussed.

Balancing the State's interest in protecting the identity of two witnesses, and appellant's right to a fair trial, the court permitted appellant's counsel to obtain the names, statements, and information associated with statements given to police by the prospective eyewitnesses. It ordered only that "the current address and telephone of each protected eye-witness" be withheld pursuant to CP § 11-301.

We note that the court stated that appellant's counsel, on a good cause showing, could request that the court issue an order releasing the addresses and telephone numbers of the protected eyewitnesses. Despite several postponements of the scheduled trial dates,

our review of the record shows no such request by counsel. Counsel was permitted to give appellant the name of the eyewitnesses three weeks before the start of trial.

Based on this record, we perceive no error or abuse of discretion by the circuit court in its decision to issue a protective order. There was ample evidence to support the court’s finding that the witnesses were in danger. Although appellant now argues that the court’s protective order “tied” the hands of his counsel and “foreclosed him from pursuing a valuable source of information,” citing *Lancaster*, 410 Md. at 380, counsel was permitted to advise appellant of the names prior to trial, and the court specifically stated that it would revisit its decision if appellant’s counsel requested it to do so based on a “good cause showing that th[e] information [was] necessary for him to complete his investigation or prepare for trial.” Reversal of appellant’s conviction is not warranted based on the court’s grant of the protective order.

## II.

### **Organized Crime Activity**

Appellant contends that “the State relied on irrelevant and unfairly prejudicial prior bad act evidence” to prove his affiliation with a criminal organization. He asserts that the State relied on “two separate physical altercations alleged to have been gang related; a home invasion allegation; the arrest of an individual in the presence of Meyers for illegal possession of a firearm”; and Mr. Johnson’s murder. Appellant acknowledges that the circuit court “properly determined that three events—the two physical altercations, and the arrest of the individual for illegal possession of a firearm—did not constitute underlying



crimes for the purpose of establishing” appellant’s gang affiliation and precluded the admission of this evidence. He argues, however, that the court erred in admitting the evidence of the home invasion. In that regard, he asserts that the court “erred by incorrectly applying the balancing test described in *Marshall v. State*, 213 Md. App. 532 (2013).”

The State contends that the court “properly admitted evidence of [appellant’s] gang affiliation and gang activity.” It asserts that a trial court has discretion to admit evidence of prior gang activity by a defendant to show a “pattern of criminal activity by the gang, and the defendant as part of it.” The State notes that appellant’s participation in an auto theft with members of the criminal organization, and appellant’s participation in a home invasion with other members of the Treetop Piru criminal organization were necessary “to satisfy the element of the required underlying crimes,” and to show appellant’s “affiliation with Treetop Piru.”

**A.**

**Proceedings Below**

Prior to trial, the State advised in discovery its intention to introduce into evidence four specific incidents to establish appellant’s “engagement in a pattern of ‘criminal gang activity.’” Appellant filed a Motion in Limine to exclude this evidence, arguing that evidence of his criminal gang affiliation was inadmissible because the probative value of the evidence was outweighed by its unfair prejudicial effect.

The court held several hearings on the motion. It ultimately agreed with appellant with respect to three of the four incidents and precluded the State from admitting evidence

related to those incidents. With respect to the fourth incident, which occurred on January 31, 2019, the court ruled as follows:

[T]he State alleges that on January 31st, 2019, when he had just turned eighteen years old [appellant] was one of four individuals who committed an armed home invasion at 4403 Sanford Court in Belcamp. One of the individuals involved in the crime identified [appellant] and described his gang affiliation in a recorded statement. In lieu of live testimony at the motion in limine hearing, the [c]ourt accepted and reviewed the transcript of the witness's statement. The level of fear of retaliation expressed by the witness during the recorded statement gave considerable credibility in the [c]ourt's mind to what the witness told the police. [Appellant] was not charged in this incident. The [c]ourt finds that this incident did constitute a qualifying crime for a pattern of criminal gang activity.

**B.**

**Analysis**

Generally, “evidence of other crimes or bad acts is not admissible in Maryland.” *Marshall v. State*, 213 Md. App. 532, 545, *cert. denied*, 436 Md. 329 (2013) (quoting *Hurst v. State*, 400 Md. 397, 406 (2007)). Maryland Rule 5-404(b) provides:

Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by [Md. Code Ann., Cts. & Jud. Proc.] § 3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

“The policy consideration underlying Rule 5-404(b) is to avoid tainting the jury into thinking that the defendant is a bad person ‘who should be punished regardless of his [or her] guilt of the charged crime, or to infer that he [or she] committed the charged crime due to a criminal disposition.’” *Woodlin v. State*, 484 Md. 253, 265 (2023) (quoting

*Thompson v. State*, 412 Md. 497, 503 (2010)) (alterations in original). “Evidence of other crimes may be admissible, however, if the evidence has ‘special relevance, i.e.[,] is substantially relevant to some contested issue in the case and is not offered simply to prove criminal character.’” *Wagner v. State*, 213 Md. App. 419, 458 (2013) (quoting *Hurst*, 400 Md. at 397).

“To determine the admissibility of other crimes evidence, the court must engage in a three-step analysis.” *Wagner*, 213 Md. App. at 458. *Accord Thomas v. State*, 213 Md. App. 388, 410 (2013), *cert. denied*, 437 Md. 640 (2014). “First, the evidence must fall within one of the exceptions listed in Rule 5-404(b), or otherwise have special relevance to some contested issue in the case.” *Id.* *Accord Marshall*, 213 Md. at 546 (the trial court must first “determine if the evidence fits into one of the exceptions in the rule”). The determination of whether evidence has special relevance is a legal determination that does not involve any exercise of discretion. *Id.*

“After determining whether the contested evidence falls within an exception to the general bar on the use of other crimes evidence, the court must find that the accused’s involvement in the other crimes is established by clear and convincing evidence.” *Wagner*, 213 Md. App. at 459. *Accord Marshall*, 213 Md. at 546. In addressing the clear and convincing evidence standard, the Supreme Court has stated:

[T]he term “clear and convincing” evidence means that the witnesses to a fact must be found to be credible, and that the facts to which they have testified are distinctly remembered and the details thereof narrated exactly in due order, so as to enable the trier of the facts to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Whether evidence is clear and convincing requires weighing, comparing, testing, and judging

its worth when considered in connection with all the facts and circumstances in evidence.

*Att’y Grievance Comm’n of Md. v. Kalarestaghi*, 483 Md. 180, 232 (2023) (quoting *Att’y Grievance Comm’n of Md. v. Hodes*, 441 Md. 136, 169 n.15 (2014)). We review the circuit court’s “decision in this regard ‘to determine whether the evidence was sufficient to support the [trial court’s] finding.’” *Cousar v. State*, 198 Md. App. 486, 515 (2011) (quoting *State v. Faulkner*, 314 Md. 630, 635 (1989)) (alteration in original). *Accord Colkley v. State*, 251 Md. App. 243, 277, *cert. denied*, 476 Md. 268 (2021).

Finally, when the clear and convincing evidence standard is satisfied, the court must weigh “[t]he necessity for and probative value of the ‘other crimes’ evidence . . . against any undue prejudice likely to result from its admission.” *Cousar*, 198 Md. App. at 497 (quoting *Cross v. State*, 282 Md. 468, 473 (1987)). We review the court’s “conclusion to admit or deny this evidence based on its probative value” for abuse of discretion. *Wagner*, 213 Md. App. at 459.

Because appellant challenges only the admissibility of evidence of the home invasion, we limit our analysis to that evidence. With respect to the first prong, whether the January 2019 home invasion had special relevance in this case, we note that appellant was charged with gang participation resulting in death. The statute in effect at the time of the crime provided as follows: “A person may not violate subsection (a) of this section that results in the death of a victim.” Md. Code Ann., Crim. Law (“CR”) § 9-804(e) (2018 Repl. Vol.). Subsection (a) stated, in relevant part:

A person may not: (1) participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity; and (2) knowingly and willfully direct or participate in an underlying crime, or act by a juvenile that would be an underlying crime if committed by an adult, committed for the benefit of, at the direction of, or in association with a criminal gang.

CR § 9-804(a).

Evidence of appellant's alleged participation in the home invasion was relevant to prove appellant's participation in a criminal gang under CR § 9-804. *See Marshall*, 213 Md. App. at 546–47 (evidence offered was “necessary to prove statutory requirements of . . . [defendant's] participation in a ‘criminal gang’”). Indeed, appellant does not argue that the evidence does not have special relevance in this case.

Rather, appellant challenges the second and third steps, i.e., whether appellant's involvement in the home invasion was established by clear and convincing evidence and whether the probative value of the evidence outweighed its prejudice. With respect to the second step, appellant contends that the “bald testimony of a single individual, [Mr. Williams], with an obvious motive to fabricate and blame shift after being caught perpetrating a violent crime cannot independently amount to *clear and convincing* evidence of [appellant's] participation in the underlying crime.”

The circuit court, however, disagreed. It stated that “[t]he level of fear of retaliation expressed by [Mr. Williams] during the recorded statement gave considerable credibility in the [c]ourt's mind to what [Mr. Williams] told police.” The court stated that the information given by Mr. Williams and “presented under oath . . . at trial would constitute

clear and convincing evidence to meet the second prong of the *Marshall* analysis for admissibility of evidence.”

“Whether this [C]ourt is convinced by [a witness’s] testimony is irrelevant.” *Colkley*, 251 Md. App. at 278. Our concern “is whether there was some basis from which a rational fact-finding trial judge could have concluded that the ‘other crimes,’ in fact, took place.” *Oesby v. State*, 142 Md. App. 144, 165, *cert. denied*, 369 Md. 181 (2002). The evidence here was sufficient to support the court’s finding in this regard.

With respect to the third step, we assess whether the court properly weighed “the necessity for and probative value of the other crimes evidence against any undue prejudice likely to result from its admission.” *Wagner*, 213 Md. App. at 459. Evidence is “probative ‘if it tends to prove the proposition for which it is offered[.]’” *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 220 (2011) (quoting *Johnson v. State*, 332 Md. 456, 474 (1993)). In addressing this factor, the court stated that it found:

that the probative value of the evidence concerning the home invasion outweighs the risk of unfair prejudice. The [c]ourt finds that this incident is highly probative of the [appellant’s] participation in a crime which qualifies as an underlying crime necessary to prove an element of the gang participation count of the indictment.

With respect to prejudice, the court stated that, because the evidence of the home invasion was a necessary element of the alleged crime under the “gang statute itself,” evidence of the home invasion had “very strong probative value,” and “the stronger the probative value the less likelihood there is that it will be unfair prejudice.” The court found that the probative value of the evidence outweighed the danger of undue prejudice. On the

record here, we cannot conclude that the circuit court abused its discretion in this regard. Accordingly, we hold that the circuit court properly overruled appellant's objection to the admission of evidence of his involvement in the home invasion.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR HARFORD COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**