Circuit Court for Montgomery County
Case No. 138480C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 730

September Term, 2023

RODJAUN NEAL-WILLIAMS

v.

STATE OF MARYLAND

Leahy,
Shaw,
Albright,

JJ.

Opinion by Leahy, J.

Filed: November 20, 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)

Rodjaun Neal-Williams ("Appellant") shot Javon Gordon in the chest in the early evening of April 13, 2021. Mr. Gordon died at the scene. Although Appellant later testified that the shooting was an accident, a jury in the Circuit Court for Montgomery County convicted Appellant of voluntary manslaughter and use of a firearm in the commission of a crime of violence.[1] The trial court sentenced Appellant to a total of 30 years in prison, after which he filed a timely notice of appeal.

Appellant asks us to consider the following questions:

> 1. Did the trial court err in refusing to give Mr. Neal-Williams's requested jury instruction on accident where it was generated by the evidence?
>
> 2. Did the trial court err in permitting the State to introduce irrelevant and prejudicial evidence?
>
> 3. Did the trial court err in excluding testimony from Deborah Williams?
>
> 4. Did the trial court err in admitting improper opinion testimony?

For the reasons that follow, we shall affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

Montgomery County Police Detective Michael Carin responded to a shooting in front of a home in the 12000 block of Ethel Rose Way, Boyds, Montgomery County, on the evening of April 13, 2021. Despite resuscitation efforts by a bystander and paramedics,

[1] The jury acquitted Appellant of first-degree murder and second-degree murder.

the victim, Javon Gordon, was pronounced dead by Montgomery County paramedic Robert Craig.[2]

During his investigation, Det. Carin discovered that a video camera at a nearby residence had captured the shooting. The recovered video, which was published to the jury, showed three men—identified as Gordon, his brother Shaheem Johnson, and the siblings' friend Delonte Simmons—driving a gold Mustang from an alley behind Gordon's and Johnson's house to the main street. The three men then exited the car and stood on the sidewalk near the home. Johnson and Simmons were wearing what appeared to be knit ski masks on their heads.[3] A few minutes later, a red vehicle, later determined to belong to Appellant's girlfriend, Kaylah Jaramillo, arrived at the scene.

At Appellant's trial, Johnson testified that he and Appellant had met in middle school and were friends. As a result of spending many days at Johnson's house, Appellant also became friends with Johnson's older brother, Javon Gordon.

In the weeks leading up to April 13, 2021, Appellant's family members, along with Johnson, were planning a trip to California. At some point, Gordon was included as a

[2] Dr. Russell Alexander, of the Office of the Chief Medical Examiner, performed the autopsy on Javon Gordon. Alexander observed a single "rapidly fatal" gunshot wound to Gordon's right chest, which injured his heart, lungs, and ribs and caused internal bleeding. Gordon also exhibited superficial scrapes on his right hip and lower right leg. Alexander recovered a bullet from Gordon's chest wall, which he turned over to Montgomery County Police. Alexander determined that Gordon's cause of death was a gunshot wound to the chest, the manner of death a homicide.

[3] Det. Carin collected a ski mask from Johnson during his investigation, which, Johnson told Carin, he had worn like a knit cap with his face uncovered. At trial, however, Johnson denied that any of the men had or wore a ski mask on the night in question.

participant on the trip. According to Johnson, the trip did not occur because Appellant disclosed that he had not purchased a plane ticket and wanted the other participants to pay more than initially agreed upon for an AirBnB. After they decided not to go on the trip, the participants continued to disagree about money.

Johnson recounted that on the evening of April 13, 2021, he was at his home with Gordon and Simmons. They moved their car from behind the house onto Ethel Rose Way because they planned to smoke marijuana. Shortly thereafter, Johnson and Simmons were surprised to see Jaramillo's red Toyota pull up to within two feet of where they were standing. Jaramillo was driving and Appellant was sitting in the front passenger seat. The front passenger window was open, and Appellant "aggressively" asked Johnson, Gordon, and Simmons, "what's up with that on Snapchat?" Johnson said that Appellant was holding a gun in his left hand because "one of his hands was like broken or something."

Then, Johnson told the jury, "He just shot my brother." Gordon held onto the car as it drove away and "ran him over a little bit." Johnson and Simmons denied having an intention to fight with Appellant that night.

The State did not call Jaramillo as a witness, but it did present the testimony of her father, Agustin Lopez. According to Lopez, on the evening of the shooting Jaramillo returned home after calling him on the phone, crying and acting scared. Lopez called 911 after speaking with Jaramillo. Lopez and his daughter spoke with Montgomery County Police detectives the next day at the police station.

Jaramillo agreed to take the detectives to the general location Appellant had directed her to dispose of the gun used in the shooting of Gordon, approximately a ten to 15-minute

drive from Gordon's house. After a fruitless ten-minute search, the detectives requested K9 assistance to search a nearby trailhead. The K9 did not find anything of evidentiary value, so a second K9 was called in on April 15, 2021.

After an approximately hour-long search in the wooded area, the second K9 located a handgun wrapped in a dark cloth and placed within a pile of garbage. The pistol was loaded with a magazine but no live rounds of ammunition.

Laura Lightstone, a Montgomery County Police Department Fire and Tool Mark Examiner, accepted by the court as an expert in firearm and toolmark analysis and identification, examined the semi-automatic firearm, which had no serial number, a fired hollow point bullet, and a magazine containing nine unfired cartridges for analysis. Lightstone determined that the firearm was operable and that the bullet recovered from Gordon's body had been fired from that weapon.

After the State rested its case, Appellant moved for judgment of acquittal. The trial court denied the motion on all counts.

Deborah Williams, Appellant's mother, testified for the defense about injuries to her son's dominant hand, which persisted on April 13, 2021. She explained that about two years earlier, Appellant had been stabbed at a shopping center in Clarksburg. When she arrived at the scene of the stabbing, Williams saw a large quantity of blood and a "big kitchen butcher knife" that had severely injured her son's right hand. Appellant ultimately required three surgeries on his hand.

Williams related that following a November 2020 surgery, Appellant had several "widgets" screwed into the bones of his right hand. The widgets were still in his hand on

April 13, 2021. Because of the resultant swelling and the stitches, Appellant was unable fully to open or do very much with his hand.

In December 2020, according to Williams, Appellant was assaulted again, that time at gunpoint. After that assault, Appellant was emotional and scared.

Just prior to the day of the shooting, Appellant contracted COVID-19. Nonetheless, on April 13, 2021, Williams observed her son packing for the California trip for which he was to leave the next day. He invited his girlfriend, Jaramillo, over, and when she arrived, Williams said, Appellant was excited and happy about the upcoming trip.

At approximately 2:00 that afternoon, Appellant told Williams that he and Jaramillo were going out to run some errands. He returned between 4:30 and 5:00, dropped off some items, and went back out. Williams recounted that when Appellant returned between 6:00 and 6:30, he was crying and appeared "frantic and emotional."

Jaramillo also testified for the defense, explaining that after she and Appellant went to nearby outlet stores to purchase and return items on April 13, 2021, Appellant asked her to drive him somewhere, and he provided directions on how to get there. Upon reaching the destination neighborhood, Jaramillo saw three men coming out into the street; she recognized two of the men as Gordon and Johnson.

Jaramillo believed that Appellant rolled the car window down as the trio approached, and she heard the men yelling at each other. When the three men reached the car, Gordon punched Appellant in the chest. Jaramillo then heard a gun go off.

Jaramillo opened her door as if to step out of the car, but Appellant, in a "shocked" and panicky manner, urged her to drive. He said that he didn't mean to do it and that it was

an accident. Gordon held on to the car for "a second" as Jaramillo and Appellant drove away.

Appellant provided Jaramillo directions to a second location approximately five to seven minutes from the scene of the shooting to get rid of the gun. Upon arriving at that location, he left the car for another five to seven minutes. When he returned, Jaramillo dropped him off at his home. She then went to her own home and told her father what had happened. They went to the police the next day, and she led the detectives to the approximate location where Appellant had disposed of the gun.

Appellant elected to testify, stating that he had met Johnson in middle school and that they had remained good friends since then, seeing each other almost every day. Through his friendship with Johnson, Appellant also befriended Gordon, Johnson's brother, and Gordon acted as a kind of "big brother" to him.

Appellant explained that in November 2019, he had been the victim of a robbery; when the robber attempted to stab him in the stomach, Appellant grabbed the knife, slicing his right hand and cutting six tendons. The incident limited the mobility of his dominant hand and affected his sense of safety, causing anxiety and a fear of leaving his house.

As a result of his limitations, he had surgery on his hand in November 2020. That surgery attached screws to the bones of his cut fingers and required the wearing of a device to stretch the affected fingers. In 2021, Appellant said the persisting nerve damage left him unable to straighten his fingers or make a fist. Consequently, and he had to do most daily activities using his non-dominant left hand.

In December of 2020, just after he started feeling comfortable going out again,

Appellant was robbed a second time, which caused him to be even more afraid to be in public. After the second robbery, he decided to carry a gun for his protection. He obtained an unregistered gun from a friend named "Joe" in January 2021, although he knew he was disqualified from possessing a firearm because, at the time, he was 19 years old. Nevertheless, he carried the loaded gun on his left hip every time he left the house.[4]

In early 2021, Appellant had planned a one-week trip to California with his sister, Gordon, and Johnson. Because he could purchase discounted tickets through his job at Wegman's, Gordon and Johnson agreed that they would send him money for the tickets, and they would all split the cost of an AirBnB in California. Although Gordon and Johnson did pay Appellant for the airline tickets, they did not pay for their share of the cost of the Airbnb, which Appellant's sister had booked, because they no longer wanted to go on the trip.

On April 13, 2021, Appellant spent the day with Jaramillo. They went out to return some shoes, got some food, and then returned to his house. A few hours later, Appellant asked Jaramillo to take him to Walmart so he could buy some shirts and socks.

After returning home for the second time, Appellant decided to go see Johnson about possibly changing the dates of the airline tickets Johnson and Gordon had elected not to use the next day. He messaged Johnson inquiring if he were home, and when Johnson said he was, Appellant asked Jaramillo to drive him to Johnson's house.

[4] Jaramillo had testified that during their approximately six-month relationship, she had only seen Appellant with a gun on the day of the shooting and on one other occasion.

Appellant and Jaramillo arrived at Ethel Rose Way approximately five minutes later, intending to park behind Johnson's garage or on the side of the house in the alley, as Appellant normally did when visiting Johnson. When pulling onto Ethel Rose Way, Appellant said he was not expecting to see Johnson, Gordon, and Simmons standing in the middle of the street, but they were there, looking "really angry." They had ski masks on top of their heads, their fists were balled, and it looked like they were waiting for someone.

To Appellant, having known Johnson for so long, the ski masks meant "they're probably getting ready to fight," as Johnson and Gordon had donned ski masks on a previous occasion to "jump" two people who had attacked their stepbrother. And, Appellant had known Gordon to be violent on another previous occasion, which caused him to believe Gordon had a "quick temper." Therefore, Appellant said, he was both confused and scared when he saw them in the street.

When Jaramillo stopped the car, Appellant said it was his intent to ask Johnson what was going on, but before he finished his sentence, Gordon hit him in the chest, knocking the wind out of him, and Johnson hit him in the face. As a result of the punches, Appellant reached for his gun with his left hand to scare them and make them back off, but he testified that he had no intention to fire the gun.

As Appellant pulled the gun from his waistband, with his finger near the trigger, Gordon grabbed the barrel and tried to take it from him.[5] As Gordon yanked the gun, it

[5] When Johnson was interviewed by the police, he acknowledged that Gordon had tried to grab the gun from Appellant.

went off, although Appellant denied having pulled the trigger. Both men let go of the gun, and Gordon stepped back before reaching into the car again and trying to grab Appellant.

Appellant then panicked and told Jaramillo to drive. Gordon held on to the inside of the car window but let go as the car moved away. As they drove, Appellant repeatedly exclaimed, "It was an accident." Appellant admitted, however, that he did not call 911 about shooting his friend.

Appellant directed Jaramillo to drive to an area behind a nearby middle school. There, he wrapped the gun in some items he found on the floor of the car and placed it in a pile of garbage under a bush. He then asked Jaramillo to take him home so he could speak to his mother. Appellant denied any plan or desire to shoot or kill Gordon and testified that when he left the scene, he did not know that the fired shot was fatal.

At the close of all the evidence, the trial court denied Appellant's renewed motion for judgment of acquittal. As noted above, the jury convicted Appellant of voluntary manslaughter and use of a firearm in a crime of violence.

We supplement these facts in our discussion of the issues.

DISCUSSION

I.

Jury Instruction on Accident

A. Background

In his pre-trial written requests for jury instructions, Appellant asked that the trial court propound the following non-pattern instruction regarding accident:

> The State bears the burden to disprove beyond a reasonable doubt that the shooting occurred in an accidental manner. An accident is defined as an unforeseen and unplanned event or circumstance. Therefore, an accidental shooting occurs when a gun is fired in an unexpected or in an unforeseen manner, and without the intent to fire it.
>
> In order to convict the defendant of murder, the State must disprove beyond a reasonable doubt that the defendant shot the deceased by accident. If, upon consideration of all of the evidence in this case, you have a reasonable doubt as to the manner in which the gun was fired, then you must find the defendant not guilty. (R. 168).

During discussions among the trial court, prosecutor, and defense counsel regarding proposed jury instructions, defense counsel reiterated her request for a separate instruction on accident. The prosecutor objected, on the ground that the proposed instruction on self-defense sufficiently permitted the jury to assess the credibility of a claim of accident as a mitigating circumstance. Therefore, no separate instruction on accident was required or appropriate. Defense counsel disagreed that an accidental shooting was embedded in the concept of self-defense and argued it was a separate defense that the State was required to disprove.

In this case, the trial court instructed the jury on first-and second-degree murder as follows:

> In order to convict the defendant of first-degree murder, the State must prove that . . . the killing was willful, deliberate, and premeditated[.] . . . Willful means the defendant actually intended to kill Javon Gordon. . . . [S]econd-degree murder is the killing of another person with either the intent to kill or the intent to inflict such serious bodily harm that death would likely be the result. . . . In order to convict this defendant of second-degree murder, the State must prove[:] one, that the defendant caused the death of Javon Gordon. Two, that the defendant engaged in deadly conduct either with the intent to kill or with the intent to inflict such serious bodily harm that death would likely be the result. . . .

(Emphasis added.)

Ultimately, the trial court determined not to give Appellant's requested non-pattern instruction, explaining:

> No, I understand that, but that's not what we're talking about here. Your instruction as does the instructions on first-degree murder, second-degree murder, involuntary manslaughter, all require the State to prove that the killing was willful, deliberate, and premeditated. So, accidental by definition would not be willful, deliberate, and premeditated. So, the instructions already permit an argument about accidental shooting because if it was an accident, then the killing would not be willful, deliberate, and premeditated. And similarly, in second-degree murder, it requires a state to prove the defendant engaged in a deadly conduct, either with the intent to kill or with the intent to inflict such serious bodily harm or death that would likely result. So, again that establishes accident as a defense because then the State wouldn't—if intent to kill or intent to inflict serious bodily harm were lacking because of an accident that would not be Second-degree murder. But this—I think these instructions cover and permit you to argue accident.

Defense counsel responded that she agreed with the court that she "can argue accident all day." Her request, however, remained for the court to "instruct the jury on what that means in the context of the State's burden in a case."

The court reiterated that

> clearly the defense is arguing it's not intentional, it was an accident, but I don't think that the Constitution requires that this proposed non-pattern accidental instruction needs to be given. I think the instructions we've already talked about on intentional murder—I mean first-degree murder, second-degree murder cover that.

Defense counsel persisted in her belief that the jury should be instructed that the State bore the burden of disproving accident. The court responded, in declining to give the requested instruction, "Well, I think that's encompasse[d] in proving intent because disproving accident is just a different way of saying affirmatively proving intent," and "[i]t

doesn't close the door to you being able to argue no intent" or to "argue accident as being the reason why the State hasn't proven intent."[6]

Defense counsel lodged an objection, which the court deemed sufficient to preserve the record. And, although parts of the conversation were unintelligible to the court reporter, it appears that defense counsel renewed her objection at the close of the court's instructions to the jury.

B. Analysis

Appellant argues that, because one of the main issues in the case was whether the shooting death of Gordon was accidental, the trial court committed reversible error in declining to propound his requested non-pattern instruction to the jury on accident. In his view, the instruction the instruction should have been given because it emphasized that the burden was on the State to prove that the shooting was not an accident; was a correct statement of law, applicable under the facts of the case; and not fairly covered by the instructions as given.

The State counters the instruction was indeed covered elsewhere in the instructions provided to the jury and the trial court properly declined to give it, especially as the court permitted the defense to argue, in closing, that the shooting was accidental. Moreover, the

[6] Indeed, defense counsel argued to the jury in closing that "[t]his case is not about an intentional shooting. This case was about self-defense, and it was about an accident. . . Rodjaun Neal-Williams did not commit murder. He did not intend to commit murder. He did not want to kill anyone. He didn't want to shoot him. And at the end of the evidence in this case, we are in the very same position as we were with open[ing] statement, which is to ask you to deter[mine] the only fair verdict that is recognizing the self-defense and the only fair verdict that is recognizing that what happened in this case was an accident, not an intent to kill."

State argues, "insofar as the defense of accident can apply in the context of manslaughter, the requested instruction was not a correct statement of the law." This is because, the State explains, in order for a homicide by accident to be excusable, "it must have been done with reasonable care and due regard for the lives and persons of others." (quoting 40 C.J.S. Homicide §179 (2023)).

Pursuant to Maryland Rule 4-325(c), a trial court "may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." The trial court is required to give a requested instruction if it is (1) a correct statement of the law, (2) generated by some evidence, and (3) not fairly covered by the other instructions given. *Preston v. State*, 444 Md. 67, 81-82 (2015) (and cases cited therein). Reversal is not required, however, when the jury instructions, taken as a whole, sufficiently protect the defendant's rights and adequately cover the theory of the defense. *Cost v. State*, 417 Md. 360, 369 (quoting *Fleming v. State*, 373 Md. 426, 433 (2003)). We review a trial court's refusal to give a jury instruction under the abuse of discretion standard. *Stabb v. State*, 423 Md. 454, 465 (2011).

Here, we agree with the State that the jury instructions, as given, fairly covered the defense argument that the shooting was accidental, and, therefore, the requested non-pattern instruction was not required. The trial court instructed the jury that, regarding the charged crime of murder, which "include[d] first-degree murder, second-degree murder, and voluntary manslaughter," the State "must prove" that Appellant intended to kill Gordon. In addition, the court instructed that the State bore the burden of proving every

element of the charged crimes beyond a reasonable doubt and that that burden remained on the State throughout the trial.

In *Robinson v. State*, 66 Md. App. 246 (1986), another case in which the defendant argued that the shooting of the victim was an accident that occurred as the pair struggled for possession of the gun during an argument, *id*. at 248, this Court held:

> With respect to the appellant's requested instruction on the excuse of accident, it is well settled that if the instruction actually given adequately covers the subject, no particular additional instruction and no particular version of the instruction is necessary. In this case, [the trial court] fully and correctly instructed the jury that the crime of assault with intent to disable required a finding that there was a 'deliberate, intentional wounding,' with the 'specific intent to incapacitate or physically impair the victim' without 'any legal excuse or justification.' It is clear beyond doubt that an accidental shooting would not satisfy the stringent *mens rea* requirement. It is not necessary to reiterate in negative terms what is already fully and adequately expressed in affirmative terms.

Id. at 250.

We arrive at the same conclusion in the case before us on appeal. Because the trial court fully and properly instructed the jury on the intent to kill required to convict Appellant of the charged crimes, and because an accidental shooting could not satisfy that "stringent *mens rea* requirement," *id*., an additional and separate instruction on accident was not required, and the trial court did not err in declining to give it.

Moreover, we observe that it is clear from the jury's verdict, convicting Appellant of voluntary manslaughter, that the jury understood the court's instructions on requisite intent required to find Appellant guilty of first or second-degree murder. Appellant's requested non-pattern jury instruction sought to explain to the jury that the State was required to disprove accident "[i]n order to convict the defendant of *murder*[.]" (emphasis

added). As the jury acquitted Appellant of both first-degree murder and second-degree murder—convicting him only of voluntary manslaughter—even in the absence of the requested instruction, we cannot say that any purported error in failing to give the instruction could have influenced the verdict to Appellant's unfair prejudice. *See Dionas v. State,* 436 Md. 97, 108 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)) (Error is harmless if "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[.]"); *Adkins v. State*, 258 Md. App. 18, 30 (2023) ("An instructional error is subject to harmless error analysis.").

II.

Introduction of Evidence

Appellant contends that the trial court erred in permitting the prosecutor to cross-examine him about the lack of a serial number on the gun used in the shooting and about the full name of the person from whom he obtained the unregistered gun. Appellant asserts, "[p]lacing evidence before the jury that the serial number on the gun had been obliterated did nothing to establish whether the gun had been fired accidentally or in defense of himself from Mr. Gordon and Mr. Johnson." Likewise, "knowing the identity of the person that [Appellant] obtained the gun from had no tangible connection to the crime[.]" In Appellant's view, the evidence was irrelevant, far more prejudicial to him than probative, and representative of other crimes, wrongs, or acts, which impermissibly allowed the jury to conclude that he was predisposed to criminal behavior and to infer guilt based on character.

The State responds that Appellant failed to preserve the issue of whether the lack of serial number on the gun comprised a prior bad act for appellate review. The State points out that any objection was waived because during the State's presentation of evidence, the firearm examiner testified, without objection, that the gun's serial number was missing. Furthermore, the State asserts, "[t]he trial court here was not asked to decide whether the lack of a serial number was evidence of any prior bad acts." And in any event, the State continues, permitting cross-examination about the missing serial number on the gun used to shoot Gordon was proper because there was no unfair prejudice to Appellant and the evidence did not comprise a prior bad act.

Finally, in the State's view, Appellant "largely" failed to preserve his challenge to the prosecutor's cross-examination about the gun seller's last name by not offering a contemporaneous objection to each of the prosecutor's questions. Even if preserved, the State offers that the trial court properly permitted the cross-examination because the defense opened the door to the question by bringing up the source of the gun during direct examination and because it went to the issue of Appellant's credibility when he was not forthcoming with information.

A. Absence of Serial Number on the Gun

In cross-examining Appellant about the gun he carried on his person, purportedly for self-defense, the prosecutor questioned him, as follows:

Q. The serial number on that gun had been obliterated, correct?

[DEFENSE COUNSEL]: Objection.

THE COURT: Did you want to approach?

[DEFENSE COUNSEL]: Yes, please.

(Bench conference follows:)

[DEFENSE COUNSEL]: Your Honor, there's no serial number on the gun, so---

THE COURT: That's right.

[DEFENSE COUNSEL]: --so was the testimony from the fire [arm] examiner and the (unintelligible) and whether he, you know, things he has to talk about, his crimes and other (unintelligible) in this case. He's already admitted he put the gun in the street. There's no need to (unintelligible) highly prejudicial information regarding the serial numbers on the gun.

[PROSECUTOR]: (Unintelligible) serial numbers are (unintelligible) purpose. They are (unintelligible).

THE COURT: Well, I mean I see where you're going. It goes to state-of-mind and premeditation, and I will allow it.

(Bench conference concluded.)

THE COURT: Overruled. The objection is overruled.

BY [PROSECUTOR]:

Q. Mr. Neal-Williams, there is no serial number on that gun, isn't that correct?

A. I don't, I don't think so.

Q. Okay. And would you agree with me that the reason you have a gun with no serial number is so that it is untraceable to law enforcement?

A. What do you mean by untraceable?

Q. No one knows that gun exists, correct?

[DEFENSE COUNSEL]: Objection.

THE COURT: Form of the question. Sustained.

BY [PROSECUTOR]:

Q. Are you aware, sir, that guns are listed by serial number?

A. Yes.

Q. Okay. And the purpose, are you aware that the purpose for having a serial number on a gun is so that the world at large knows that gun exists. Are you aware of that?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

BY [PROSECUTOR]:

Q. Are you aware of it?

A. I, I, I would think like a serial number on a gun would be to identify what type of gun it is.

Q. Or the existence thereof, isn't that correct?

A. I, I guess so.

Q. So, would you agree with me that a gun with no serial number does not exist to law enforcement, to anyone who might try and regulate that gun, would you agree with me?

[DEFENSE COUNSEL]: Objection.

THE WITNESS: Well—

THE COURT: Sustained.

Although much of much of defense counsel's first objection to the prosecutor's question, "The serial number on that gun had been obliterated, correct?," was transcribed as "unintelligible," we are able to discern, giving Appellant some benefit of the doubt, that her specific objection sufficiently preserved an objection that the evidence was more

prejudicial than probative under Maryland Rule 5-403.[7] Nonetheless, we find no error in the admission of Appellant's testimony on the subject.

Initially, we point out that the trial court sustained defense objections to two of the prosecutor's inquiries, permitting answers only to the questions, "[T]here is no serial number on that gun, isn't that correct?" and "[A]re you aware that the purpose for having a serial number on a gun is so that the world at large knows that gun exists[?]" As the answers to those questions are the only ones the trial court admitted over objection, they are the only ones we consider.

The firearm examiner had previously testified, without objection, that: (1) there was no serial number on the gun that she received to analyze; and (2) when examining the firearm in the lab, she "notated the make, model, lack of serial number, and functionality of it[.]" Therefore, the evidence that the gun used in the shooting did not have a serial number was already before the jury.

[7] Appellant's claim that evidence of the missing serial number was inadmissible under Maryland Rule 5-404(b) because it represented evidence of "other crimes, wrongs, or other acts" was not preserved. The transcript does not reflect that defense counsel raised the argument, nor does it show that the trial court undertook the three-step analysis announced in *State v. Faulkner*, 314 Md. 630, 634-35 (1989), that a judge must apply before prior bad acts evidence is admitted. The objection may not have been raised because the lack of a serial number on the gun used in the shooting was intrinsic to the crimes charged in the underlying case. *See Odum v. State*, 412 Md. 593, 611 (2010) ("[T]he strictures of 'other crimes' evidence law, now embodied in Rule 5–404(b), do not apply to evidence of crimes (or other bad acts or wrongs) that arise during the same transaction and are intrinsic to the charged crime or crimes.").

The Supreme Court of Maryland "has long approved the proposition that we will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury *without objection* through the prior testimony of other witnesses." *Yates v. State*, 429 Md. 112, 120 (2012) (quoting *Grandison v. State*, 341 Md. 175, 218-19 (1995)) (emphasis in original). "Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection." *DeLeon v. State*, 407 Md. 16, 31 (2008); *see also Jones v. State*, 310 Md. 569, 589 (1987), *vacated on other grounds*, 486 U.S. 1050 (1988) ("Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received."). Because the evidence about the lack of serial number on the gun came in through the firearm examiner's testimony—without objection—any other objection to admission of the lack of serial number evidence cannot be unduly prejudicial and is waived.

Even if Appellant's objection to the evidence had not been waived, we would find no reversible error in the trial court's admission of it. The trial court found that the lack of serial number on the gun was relevant to Appellant's state of mind and preparation leading up the shooting. Appellant argued that the shooting was accidental, so his state of mind was indeed pertinent to the jury in rendering its verdict. Although Appellant claimed that he had the gun with him every time he left the house, his girlfriend testified that she had seen him with on only one other occasion. Consequently, the fact that Appellant carried an unregistered handgun with no serial number on the evening of the shooting was relevant

to premeditation or plan in the shooting of Gordon, negating Appellant's claim of accident or self-defense.

B. Name of Gun Supplier

On direct examination, Appellant testified that he had purchased the gun for the purpose of self-defense from a friend named "Joe." Immediately following the cross-examination about the lack of serial number on the gun, detailed above, the prosecutor sought to obtain further information about the purchase of the gun, as follows:

BY [PROSECUTOR]:

Q. You testified that you got that gun from Joe, is that right?

A. That's right.

Q. Your imaginary gun dealer?

[DEFENSE COUNSEL]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: I'll move to strike the question, Your Honor.

THE COURT: The—

BY [PROSECUTOR]:

Q. What's Joe's last name?

THE COURT: All right. Hang on. The question is stricken. The jury will disregard the question and not speculate as to the answer.

BY [PROSECUTOR]:

Q. What's Joe's last name?

A. I don't, I don't feel comfortable, you know, like saying his full name in front of everybody.

Q. You don't want to get Joe in trouble?

A. (No affirmative response.)

Q. What's his last name?

A. I don't, I honestly don't feel comfortable just saying that in front of everyone.

Q. Do you know his last name?

A. Yes, I do.

Q. Why don't you tell us?

A. I, I don't feel comfortable putting that information in front of everyone.

[DEFENSE COUNSEL]: Your Honor, may we approach?

THE COURT: Sure.

(Bench conference follows:)

[DEFENSE COUNSEL]: Your Honor, the purpose of the State's question is he, he said, he said he does know the last name and is it really necessary for him to say the last name? I'm not really sure (unintelligible).

[PROSECUTOR]: My suggestion is (unintelligible) he got his gun.

THE COURT: Okay. It's impeachment and recollection. I'll allow it.

[DEFENSE COUNSEL]: So, it is direct as to relevance (unintelligible)?

THE COURT: (Unintelligible).

[DEFENSE COUNSEL]: (Unintelligible).

THE COURT: Well, if I'm requested, I'll allow him to ask it again. If I'm requested to direct him, I will.

[DEFENSE COUNSEL]: Okay. (Unintelligible).

(Bench conference concluded.)

[DEFENSE COUNSEL]: I mean, can you—

[PROSECUTOR]: Sorry, I didn't understand what [Defense counsel] just requested.

(Bench conference follows:)

THE COURT: She just asked me to do it in a kind way.

[DEFENSE COUNSEL]: Can you do it outside of the presence of the jury?

THE COURT: No, I'm just going to keep going with this. Okay.

(Bench conference concluded.)

BY [PROSECUTOR]:

Q. Mr. Neal-Williams, would you tell us Joe's last name, please?

A. I'm sorry, I don't, I don't feel comfortable putting that information in front of everyone.

Q. Because he does not exist, isn't that right?

A. Oh, yes, he does. He's, he's a friend of a friend.

Q. Okay. Then let's hear all about him, Mr. Neal-Williams. How did you meet him?

A. Is that really important?

Q. How did you meet him, Mr. Neal-Williams?

A. We played football together.

Q. Where?

A. At Clarksburg.

Q. And where does he live?

A. In Boyds, Maryland.

Q. Okay. And what's his last name?

A. I don't, I don't want to put that information in front of everyone, sir.

Appellant did not answer the question, and the prosecutor moved on to another line of questioning.

Appellant argues that the trial court erred in permitting the prosecutor to argue with him about providing Joe's last name. In his view, the identity of the person from whom he obtained the gun months before the shooting was irrelevant, and the argumentative questions had "no permissible purpose" when the "main focus" of the case was whether the shooting was accidental or intentional. Moreover, the repeated questioning impermissibly "served to remind the jury of the illegal purchase of the firearm," which had nothing to do with the charged crimes.

Maryland Rule 4-323 specifies the method for making objections to evidence in a criminal case and provides, in pertinent part:

> (a) **Objections to Evidence.** 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[.]
>
> (b) **Continuing Objections to Evidence.** At the request of a party or on its own initiative, the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope.

As we stated in *Beghtol v. Michael*, 80 Md. App. 387, 394 (1989), "[i]n the absence of a continuing objection, specific objections to *each question* are necessary to preserve an issue on appeal." (emphasis added); *see also Fowlkes v. State*, 117 Md. App. 573, 588 (1997) (quoting *Sutton v. State*, 25 Md. App. 309, 316 (1975)) ("Cases are legion in the [Supreme Court of Maryland] to the effect that an objection must be made to each and every question[.]").

Here, defense counsel did not object until the prosecutor had asked Appellant to provide Joe's last name three times, and Appellant had already answered that he knew the name but did not feel comfortable saying the name in front of the jury. The evidence to which Appellant objects on appeal was thus already before the jury by the time defense counsel objected. Therefore, the later objections were waived. *See DeLeon v. State*, 407 Md. at 31.

Even were the issue not waived, we would agree with the trial court that the questioning was proper as to impeachment and to Appellant's recollection. Maryland Rule 5-616 provides that "[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at . . . [p]roving lack of personal knowledge or weaknesses in the capacity of the witness to perceive, remember, or communicate[.]" The State was permitted to attack Appellant's credibility, which is "always relevant," *Devincentz v. State*, 460 Md. 518, 551 (2018), by implying that his repeated refusal to answer the question showed a lack of knowledge or memory or a lack of willingness to testify fully after electing to take the stand. The repeated questioning was

not argumentative, as Appellant complains, so much as an exhibition that Appellant's repeated refusal to answer the question was obfuscation.

III.

Exclusion of Testimony of Deborah Williams

Next, Appellant contends that the trial court violated his right to present a defense, under the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, by not permitting his mother to testify that his sense of safety was negatively affected after he was stabbed in the hand in 2019. In Appellant's view, that testimony went directly to his defense argument that he carried a gun for safety because of prior assaults and should have been permitted. The court also erred, Appellant continues, in preventing his mother from testifying about statements he made to her after returning home following the shooting as to why he was in such an emotional state. Appellant claims these statements were admissible under the excited utterance exception to the rule against the admission of hearsay.

The State responds that Appellant did not preserve his claim of error in relation to the excited utterance because after the trial court sustained the State's objection to the line of questioning, defense counsel did not proffer the content of Appellant's statement to his mother. In any event, the State continues, the trial court properly excluded Williams's testimony on both topics.

A. Appellant's Fear for His Safety

Deborah Williams, Appellant's mother, testified for the defense, detailing the stabbing Appellant had sustained in 2019. On the day of the stabbing, Williams said her

son called her crying and screaming. She further explained that the stabbing had caused swelling that precluded him from opening his hand and that he had to undergo several surgeries as a result.

When defense counsel asked Williams how the stabbing had affected her son's sense of safety, the prosecutor objected. The trial court sustained the objection and struck the question, on the ground that instead of resting on Williams's observations, the question sought to have her impermissibly speculate as to Appellant's state of mind and to "be inside his head—how he felt." The court also sustained the prosecutor's objections to questions about Williams's observations of how her son was different after the assault and struck Williams's answers that Appellant was scared. The court did permit Williams to testify that Appellant did not go out as much after the assault.

To be sure, a criminal defendant's right to present a defense is enshrined in law. As we explained in *Taneja v. State*, 231 Md. App. 1, 10 (2016) (quoting *Washington v. Texas*, 388 U.S 14, 19 (1967)):

> The right to offer the testimony of witnesses . . . is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Although the right of a defendant in a criminal trial to present witnesses in his defense is a critical right, it is not absolute. A defendant does not have the "unfettered right," for example, "to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Id.* (quoting *Taylor v. Illinois*, 484 U.S.

400, 407 (1988)). A trial court is given wide latitude in controlling the admissibility of evidence. *Sifrit v. State*, 383 Md. 116, 128 (2004). We review the trial court's decision under an abuse of discretion standard. *Id*. at 128-29. "If the trial court's ruling is reasonable, even if we believe it could have gone the other way, we will not disturb the ruling on appeal." *Peterson v. State*, 196 Md. App. 563, 585 (2010).

Here, we cannot say that the trial court's ruling regarding Williams's testimony was unreasonable. Although Williams could, and did, testify as to her specific *factual* observation that Appellant was more hesitant to leave home following his stabbing in 2019, she was not competent to testify about his state of mind, that is, how he *felt* regarding his sense of safety after the stabbing.

Appellant argues that the court's ruling prevented him from establishing how his fear after the prior assault impacted him and lead to his decision to carry the gun for his safety. However, Appellant testified that the 2019 stabbing incident that limited the mobility of his hand affected his sense of safety, causing him anxiety and a fear of leaving his house, and that the 2020 robbery made him even more afraid to be in public, leading to his decision to carry a gun for his protection. In sum, we cannot say that the trial court abused its discretion by its ruling, or that Appellant suffered undue prejudice from the exclusion of that portion of Williams's testimony.

B. Appellant's Statements to Williams Following the Shooting

Defense counsel went on to ask Williams how she found out that "something happened to [her] son" on April 13, 2021. Williams answered that Appellant came home that evening "frantic" and "shooken up."

The prosecutor objected when defense counsel then asked Williams what Appellant told her about what had happened. The basis of the objection is noted as "unintelligible" in the transcript, but it appears that the State made an objection on the ground of hearsay and lack of exception thereto because the trial court responded, "It has to be approximate [sic] to the event, temporally approximate [sic]" and that if there was too much time between the event and the statement, the statement would not meet the exception's requirement of spontaneity.[8] The court reserved ruling on the objection, determining that the statement didn't "seem to be close enough in time to the event which allegedly makes it spontaneous."

Defense counsel later again asked Williams what Appellant said to her when he returned home on the evening of April 13, 2021. The prosecutor again objected. The court, stating it had "no idea how long after the event this is" and could therefore not determine if Appellant were still under the effect of the event, ruled that the defense had not "adequately established a groundwork for it to come in as an excited utterance." The court agreed to reconsider its ruling if defense counsel chose to recall Williams as a witness after other witnesses had testified.

Thereafter, defense counsel questioned Jaramillo to establish the timeline of events following the shooting. Jaramillo said that it took approximately five to seven minutes to drive to the area where Appellant disposed of the gun, that he was out of the car taking the gun to the wooded area for approximately five to seven minutes, and that when he returned

[8] The court also questioned why Williams's testimony on the statement was required—other than to show its effect on her—if Appellant was going to testify.

it took approximately ten to 15 minutes to drive him to his house. At the close of Jaramillo's testimony, defense counsel sought to recall Williams to ask about Appellant's excited utterance, noting that, based on Jaramillo's testimony, only 20 to 30 minutes had passed between the shooting and the statement.

The court, calculating that the minimum amount of time between the shooting and the utterance to Appellant's mother was 22 minutes,[9] ruled that Appellant recognized the need to drive to another location after the shooting to dispose of the gun and to develop the idea that it might be in his best interest to minimize his responsibility in the shooting. As such, the court did not find that the shooting and the statement to Appellant's mother were proximate enough in time to be an excited utterance. The court therefore denied Appellant's request to have Williams testify as to what he told her after the shooting.

Preliminarily, the State avers that Appellant did not preserve his complaint about the admission of this hearsay evidence because he never proffered to the trial court the substance of Williams's proposed testimony. We disagree. Although "the proponent of evidence that has been excluded must proffer what the evidence would have been" to claim error in its exclusion, *In re Adoption/Guardianship Nos. CAA 92-10852, 92-10853 in Cir. Ct. for Prince George's Cnty.*, 103 Md. App. 1, 33 (1994), Maryland Rule 5-103(a)(2) provides that "[e]rror may not be predicated upon a ruling that . . . excludes evidence unless the party is prejudiced by the ruling and . . . the substance of the evidence was made known to the court by offer on the record *or was apparent from the context within which the*

[9] By our math, the minimum amount of time would have been 20 minutes.

evidence was offered." (Emphasis added). We think it was sufficiently apparent from the context of the discussions at the bench and from the admitted evidence that Williams would have testified that Appellant, crying and upset, told her the shooting was an accident.

Maryland Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay is generally inadmissible as substantive evidence absent an applicable exception or exemption. Md. Rule 5-802.

Maryland Rule 5-803 provides exceptions to the rule against hearsay. Among those exceptions is the "excited utterance," which Rule 5-803(b)(2) defines as "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." That exception, therefore, requires (1) the occurrence of a startling event, (2) "a spontaneous statement which is the result of the declarant's reaction to the occurrence," *Morten v. State*, 242 Md. App. 537, 547 (2019) (quoting *Mouzone v. State*, 294 Md. 692, 697 (1982)) (emphasis omitted), and (3) a nexus between the startling event and the content of the statement. *See Bayne v. State*, 98 Md. App. 149, 177 (1993).

The Supreme Court of Maryland has explained the rationale for this exception:

> The essence of the excited utterance exception is the inability of the declarant to have reflected on the events about which the statement is concerned. . . . The rationale for overcoming the inherent untrustworthiness of hearsay is that the situation produced such an effect on the declarant as to render his reflective capabilities inoperative. The admissibility of evidence under this exception is, therefore, judged by the spontaneity of the declarant's statement and an analysis of whether it was the result of thoughtful consideration or the product of the exciting event.

Parker v. State, 365 Md. 299, 313 (2001) (cleaned up).

In determining whether a statement qualifies as an excited utterance, we examine the totality of circumstances to discern whether "the declaration was made at such a time and under such circumstances that the exciting influence of the occurrence clearly produced a spontaneous and instinctive reaction on the part of the declarant ... [who is] still emotionally engulfed by the situation." *Curtis v. State*, 259 Md. App. 283, 315 (2023) (quoting *State v. Harrell*, 348 Md. 69, 77 (1997). The most important factor is timing. *Morten*, 242 Md. App. at 548. If the statement is made while the event is in progress, we "have little difficulty finding that the excitement prompted the statement." *Id.* (quoting *McCormick on Evidence* § 297, at 856 (E. Cleary 3d ed. 1984)) (emphasis omitted). "But as the time between the event and the statement increases, so does the reluctance to find the statement an excited utterance." *Id.* (quoting McCormick on Evidence Sect. 297, at 856 (E. Cleary 3d ed. 1984)) (emphasis omitted).

Appellant's statement to his mother does not satisfy all of the requirements for an excited utterance. Although the shooting of his friend undoubtedly startled him, and there was indeed a nexus between the shooting and the purported content of the statement to his mother, the statement was not spontaneous. The evidence showed that the minimum amount of elapsed time between the shooting and the statement to Appellant's mother was twenty minutes. And the court pointed out that during that twenty minutes, Appellant was able to reflect enough to direct Jaramillo to a wooded area so as to dispose of the gun and then realize that he should distance himself from the shooting, either by claiming accident or self-defense. During the ride home from the area where he disposed of the gun,

Appellant had more time for reflective thought about what he might tell his mother. Therefore, we hold that the trial court did not abuse its discretion in declining to admit the statement as an excited utterance exception to the rule against the admission of hearsay.

IV.

Testimony of Shaheem Johnson

Finally, Appellant claims that the trial court erred when it permitted Johnson, in response to the prosecutor's question, "[W]ho killed your brother?" to answer, "Rodjaun." Appellant contends that the lay opinion testimony should have been excluded because it went to a contested issue of fact, that is, Appellant's culpability in the shooting of Javon Gordon, and was outweighed by the prejudice to him and the improper invasion of the province of the jury.

The State counters that the issue is waived because Johnson had earlier testified, without objection, that Appellant shot Gordon and that Gordon died in the street, the same thing as saying Appellant killed Gordon. Even if we were to consider the issue, the State continues, the testimony was properly admitted because it comprised Johnson's first-hand observations rather than an opinion. Finally, even if the statement was an opinion, it was rationally based on Johnson's perception and was properly admitted.

We agree with the State that this issue has been waived. Prior to the redirect examination question and answer to which Appellant takes exception, Johnson had testified upon direct examination that after he observed Appellant holding the gun, "[h]e just shot my brother," and that as Appellant and Jaramillo drove away, Johnson saw his brother dead in the street. There was no objection to the testimony. Because Johnson's testimony that

Appellant shot Gordon, who seconds later was dead in the street, is the functional equivalent of Johnson saying that Appellant killed his brother, the evidence was already before the jury and cannot now be the basis of an appellate challenge. *See Yates,* 429 Md. at 120-21 ("Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received.").

Even if considered, we would conclude that Appellant's claim is without merit. Appellant's argument is that Johnson's "opinion as to the guilt of [Appellant] was far more prejudicial than it was helpful to the jury" because "how Mr. Gordon was killed was the ultimate question that the jury was to consider." Johnson did not, as Appellant claims, offer any opinion as to his guilt of the charged crimes. He testified simply that Appellant *killed* his brother, not that Appellant *murdered* him, which was the ultimate question the jury had to consider. There was little dispute at trial that Appellant killed Johnson; the main focus of his defense was whether the killing was accidental or in self-defense.

Johnson's statement that Appellant killed Gordon was rationally based on his observation, which was supported by the evidence. Appellant was free to, and did, offer testimony that the gun had gone off when Gordon grabbed it and that Gordon's death was an accident. The ultimate decision of whether Appellant killed Gordon intentionally or accidentally was properly left to the jury, based on the credibility of all the witnesses, and we cannot say that the jury's decision was affected by Johnson's cumulative testimony that Appellant killed his brother.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.