

Circuit Court for Montgomery County
Case No. 137342C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1082

September Term, 2023

JAIME HAVIER LEE

v.

STATE OF MARYLAND

Zic,
Kehoe, S.,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: March 17, 2025

* 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 Maryland Rule 1-104(a)(2)(B).

Appellant, Jaime Javier Lee, was convicted of second-degree murder on May 15, 2023, for fatally stabbing Cornelius Lyons on May 2, 2020, in Rockville, Maryland. On July 28, 2023, Lee was sentenced to 40 years incarceration with all but 28 years suspended, and 5 years supervised probation upon release. Lee filed an appeal, asking this Court to address the following question.

Whether the court erred in finding inadmissible the State’s motion to compel, wherein prosecutors wrote that a critical witness wanted to invoke his Fifth Amendment right against self-incrimination.^[1]

Lee argues that the trial court erred in finding that the State’s motion to compel the testimony of Keenan Turner was inadmissible. In the motion, the prosecutor indicated that Turner had “advised the State that he will assert his privilege against self-incrimination and will refuse to testify without an order compelling him to do so.” Lee argues that Turner’s statement within the motion is admissible hearsay as an adopted party admission under Rule 5-803(a)(2). Alternatively, Lee argues that Turner’s statement memorialized in the motion is admissible as double hearsay under Rule 5-805 because Turner’s statement to the State was about “future action” which is admissible hearsay under Rule 5-803(b)(3) and the prosecutor’s statement in the motion about Turner’s intent is admissible hearsay as a party admission under Rule 5-803(a)(1).

^[1] The right against self-incrimination is enshrined in the Fifth Amendment of the United States Constitution, which reads: “No person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V.

Lee further argues that because hearsay is substantive evidence, the rule limiting extrinsic evidence for impeachment purposes does not apply to the admissibility of the motion. Moreover, the authenticity of the motion could be judicially noticed as a “court document” under Rule 5-201(d) even if Turner could not identify the motion. Lastly, Lee argues that the error in finding the motion inadmissible was not harmless beyond a reasonable doubt. For these reasons, Lee asks this court to reverse the judgment of the Circuit Court for Montgomery County and remand the case for a new trial.

Conversely, the State argues that the trial court properly excluded the motion to compel and if there was any error, it was harmless. According to the State, Lee waived his hearsay argument by failing to present such argument before the trial court. Lee counters that his hearsay argument is intertwined with the extrinsic evidence ruling by the court and thus preserved for appellate review. Furthermore, the State argues the motion to compel is irrelevant and its use would engender confusion among the jury. Lastly, the State argues that the trial court was not required to take judicial notice of the statements within the motion to compel. In contest, Lee argues because the court granted the motion to compel, it could have taken judicial notice of the statements made therein under Rule 5-201.

For the reasons discussed *infra*, we hold that the trial court did not abuse its discretion in declining to admit the State’s motion to compel into evidence, and even if it did, such exclusion of evidence was a harmless error. Accordingly, we affirm the judgment of the Circuit Court for Montgomery County.

I. FACTUAL BACKGROUND

The murder of Cornelius Lyons took place at Carlos Ulloa's apartment in Rockville, Maryland, on the afternoon of May 2, 2020. At the time, Ulloa was allowing several homeless men to stay and sleep at his apartment in exchange for marijuana and alcohol. On the day in question, four men, identified as Cornelius Lyons (the victim), Keenan Turner, Andre McDonald, and an older man known as "Hugo" were at the apartment with Ulloa. Shortly after Lee arrived at the apartment, a fist fight between him and Lyons ensued. In the end, Lyons was left dead on the pavement outside of the apartment with four stab wounds and a gash to the jugular vein.

When the police arrived, Turner and McDonald informed them that Lee was the murderer. Lee was located and arrested about a mile away from the apartment, however, the knife that was used was never found. During a show-up identification conducted by police, McDonald identified Lee as Lyons's murderer. Moreover, Lee's clothing revealed traces of Lyons's DNA on them. As Lee conceded on appeal, there was no question as to who was responsible for Lyons's death.

Ulloa, McDonald, and Turner all testified about the events of that fateful day during Lee's trial. Ulloa testified that Lee and Lyons exchanged words and then Lyons, along with McDonald, cornered Lee. While never mentioned to the police that day, Ulloa testified that McDonald drew a knife. Lyons punched Lee first and Lee struck back. When Ulloa threatened to call police, the fight ended. Ulloa said he never saw Lee with a knife, but also admitted to being afraid of Lee.

In contrast, McDonald testified that it was Lee who started the fight with Lyons, and Lyons fought back. According to McDonald, during the fight, Lee went into the other room with Ulloa and said a Spanish word for knife, “cuchillo.” Lee returned with the knife and continued punching Lyons. McDonald admitted that he and Turner threw something at Lee and that Hugo hit Lee with his cane during the fight. Similar to Ulloa’s testimony, McDonald admitted to having a knife on his person on the day of the incident.

Turner testified that Lee and McDonald were in an argument when Lyons threw the first punch on Lee. Lee fought back but then the two were separated. Lyons started attacking Lee a second time and that is when Lee produced the knife, according to Turner. Lyons continued to attack Lee and Lee returned the punches, now with the knife. Turner saw Lyons bleeding and ran with him outside to get help.

However, the statement that Turner gave to police on the day of the incident differed from his in-court testimony. Turner told police that Lyons was protecting himself from Lee because Lee was coming at Lyons and Lyons wasn’t backing down. During the fight, Lee pulled out the knife. The two continued to exchange punches and Lyons was stabbed. Turner never admitted that he threw something at Lee, neither to the police on the day of the event nor in his testimony before the jury.

During Turner’s cross-examination, Lee’s counsel attempted to enter the State’s motion to compel into evidence, which the court rejected. In the motion, the prosecutor indicated that Turner “advised the State that he will assert his privilege against self-incrimination and will refuse to testify without an order compelling him to do so.” When

asked by defense counsel, Turner denied that he wanted to assert his Fifth Amendment right against self-incrimination. Defense counsel showed Turner the motion and asked if he recognized it, to which Turner replied in the negative. The court was asked to take judicial notice of the motion and the State objected, arguing that the motion was extrinsic evidence and thus inadmissible. The court agreed with the State and the motion was excluded from evidence. The trial court explained its ruling:

[T]his is clearly extrinsic evidence now because he can't identify it So it is [] sort of like proving other things. Having mini trials or having judicial notice of it. And he can't testify cause [sic] he hasn't recognized it. So in light of that, I'll sustain the [State's] objection.

The crux of the issue on appeal is the admissibility of the motion to compel, which alleged Turner's intent to invoke his Fifth Amendment right. Additional facts may be included in the discussion as they become relevant.

II. DISCUSSION

a. Admissibility of Evidence

The general rule of admissible evidence is that “all relevant evidence is admissible” and “[e]vidence that is not relevant is not admissible.”² Md. Rule 5-402. Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401; *Merzbacher v. State*, 346 Md. 391, 404 (1997) (“To be relevant, evidence must tend to establish or refute a fact at issue in the case.”).

² “Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules...” Md. Rule 5-402.

Whether evidence is relevant depends on “the considerable and sound discretion of the trial court.” *Merzbacher*, 346 Md. at 404.

However, a court may exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Md. Rule 5-403; *Crane v. Dunn*, 382 Md. 83, 100 (2004) (“Maryland Rule 5-403 [sets forth] the inherent powers of trial judges to exercise discretion to exclude relevant, probative evidence that is unduly prejudicial, confusing, or time-consuming.”). Rule 5-403 requires the trial court to balance the probative value of the evidence against, *inter alia*, prejudice and confusion. *Crane*, 382 Md. at 100. While it is preferable, the trial court does not need to state on the record the reasons for excluding evidence. *Id.*

Our Supreme Court has recognized that the credibility of a witness is always relevant. *Devincentz v. State*, 460 Md. 518, 551 (2018) (citing *Smith v. State*, 273 Md. 152, 157 (1974)). “The credibility of a witness may be attacked through questions asked of the witness” Md. Rule 5-616(a). One way to impeach the credibility of a witness is to prove “that the witness has made statements that are inconsistent with the witness’s present testimony.” Md. Rule 5-616(a)(1). However, extrinsic evidence is not admissible to impeach a witness regarding “facts that are collateral, irrelevant or immaterial to the issues of the case.” *Smith*, 273 Md. at 158; *see also* Md. Rule 5-616(b)(2) (“Other extrinsic evidence contradicting a witness’s testimony ordinarily may be admitted only on non-

collateral matters.”³). This Court noted in *Anderson v. State* that “[e]vidence is ‘extrinsic’ when it is ‘proved through another witness, or by an exhibit not acknowledged or authenticated by the witness sought to be contradicted.’” 220 Md. App. 509, 519 (2014) (citations omitted). The objective of the rule prohibiting extrinsic evidence on a collateral matter for impeachment purposes is “aimed at preventing inconvenience, loss of time, unfair surprise to the witness and confusion of the issues.” *Id.* at 521 (quoting *Smith*, 273 Md. at 159).

The Court in *Smith v. State* articulated a “test of collateralness” to determine whether a matter is collateral for impeachment purposes.

In sum, the test of collateralness-whether the fact as to which the error is predicated could have been independently shown in evidence-actually means whether that fact could have been shown in evidence from the standpoint of relevancy. It is only in the context of relevancy that the rule accomplishes its underlying objectives. The test, therefore, and we think it is foreshadowed by our earlier decisions, is whether the fact as to which the error is predicated is relevant independently of the contradiction; and not whether the evidence would be independently admissible in terms of satisfying all the rules of evidence. This conclusion is bolstered by the grouping of the word ‘collateral’ with the words ‘irrelevant’ and ‘immaterial’ in those cases which have applied this rule.

Smith, 273 Md. at 162 (citations omitted). Thus, the analysis returns to Rule 5-401 and whether the extrinsic evidence is relevant, “independent of the contradiction.” *Id.* at 161.

It is the relevancy of the fact or matter that is being used to impeach the credibility of a witness that is under review, rather than the relevancy of a witness’ credibility (which

³ “In the court’s discretion, however, extrinsic evidence may be admitted on collateral matters.” Md. Rule 5-616(b)(2).

is always relevant). *Anderson*, 220 Md. App. at 524; *Devincentz*, 460 Md. at 551. Stated another way, extrinsic “evidence which is otherwise irrelevant cannot become relevant simply because it is capable of being contradicted, and will thereby impeach the witness.” *Smith*, 273 Md. at 158. As such, a court must ask: would the evidence be relevant if the witness had not testified? *See Anderson*, 220 Md. App. at 523 (“Without being relevant to any fact or issue in the case, the evidence had no substantive value and would not have been admissible independently, that is, if the appellant had not testified.”). If the extrinsic evidence is not relevant, and thus inadmissible, the “cross-examiner is bound by the answer of the witness.” *Smith*, 273 Md. at 157.

Even if the extrinsic evidence used for impeachment is relevant to a fact that is of consequence in the case, the court may still use its discretion to exclude the evidence under Rule 5-403. Trial judges have discretion in determining “whether the introduction of certain impeachment evidence would enmesh the trial in confusing or collateral issues.” *Merzbacher*, 346 Md. at 413–14 (the Court further stated that it is the trial courts, not the appellate courts, that are in the “best position” to make this determination). Similarly, trial judges have the discretion to prohibit relevant evidence when it is cumulative. *Id.* at 414–15 (where the trial judge excluded defendant’s evidence relating to a State witness’s credibility, offered during cross-examination of that witness, because said evidence was cumulative). However, this discretion also allows the courts to admit irrelevant and collateral extrinsic evidence for impeachment purposes. *Aron v. Brock*, 118 Md. App. 475, 497 (1997). “One might expect the exercise of such discretion where the matter is collateral

in a strict sense but forms the linchpin of the witness's testimony.” *Id.* (quoting Alan D. Hornstein, *The New Maryland Rules of Evidence: Survey, Analysis and Critique*, 54 Md. L. Rev. 1032, 1054–56 (1995)).

In essence, the rules of evidence that apply to substantive evidence, particularly Maryland Rules 5-401 through 5-403, equally apply to extrinsic evidence. Both types of evidence must be relevant to a material issue to be admissible, and, even if relevant, both substantive and extrinsic evidence are subject to the court's discretion to exclude for “unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Md. Rule 5-402; 5-403. Likewise, a criminal defendant's right to present a defense and cross-examine witnesses, while it may not be *unreasonably* denied or limited, is also subject to these rules of evidence. *Smith v. State*, 371 Md. 496, 504–05 (2002) (*Smith II*).

i. Standard of Review

The determination of whether evidence is relevant under Rule 5-401 and therefore admissible under Rule 5-402 is reviewed under an abuse of discretion standard. *Brooks v. State*, 439 Md. 698, 708 (2014); *see also Bernadyn v. State*, 390 Md. 1, 7 (2005) (“We review rulings on the admissibility of evidence ordinarily on an abuse of discretion standard.”); *Thomas v. State*, 429 Md. 85, 97 (2012) (“[O]n review, we will not disturb the trial court's evidentiary rulings absent error or clear abuse of discretion.”); *Devincentz*, 460 Md. at 553 (“[W]e ordinarily apply the abuse of discretion standard when reviewing evidentiary rulings.”). This includes decisions to curtail cross-examination. *Simmons v.*

State, 392 Md. 279, 296 (2006) (“A trial court does not abuse [its] discretion when it excludes cross-examination that is irrelevant.”)

Furthermore, a decision to exclude relevant evidence under Rule 5-403 because of its “danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence” is also reviewed under an abuse of discretion standard. Md. Rule 5-403; *Newman v. State*, 236 Md. App. 533, 556 (2018). In *Oesby v. State*, this Court noted:

This final balancing between probative value and unfair prejudice is something that is entrusted to the wide discretion of the trial judge. The appellate standard of review, therefore, is the highly deferential abuse-of-discretion standard. The fact that we might have struck the balance otherwise is beside the point. We know of no case where a trial judge was ever held to have abused his discretion in this final weighing process. As a practical matter, that will almost never be held to have occurred. A properly disciplined appellate court will not reverse an exercise of discretion because it thinks the trial judge’s decision was wrong. That would be substituting its judgment for that of the trial court, which is inappropriate if not forbidden. Reversal should be reserved for those rare and bizarre exercises of discretion that are, in the judgment of the appellate court, not only wrong but flagrantly and outrageously so.

142 Md. App. 144, 167–68 (2002). As such, trial courts are “given wide latitude in controlling the admissibility of evidence.” *Taneja v. State*, 231 Md. App. 1, 11 (2016).

An abuse of discretion occurs when “no reasonable person would take the view adopted by the court,” or when the ruling is “clearly against the logic and effect of facts and inference before the court,” or “beyond the fringe of what that court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 13–14 (1994) (citations omitted). Trial court decisions reviewed under this standard “will not be reversed simply because the appellate

court would not have made the same ruling.” *Id.* at 14; *see also Newman*, 236 Md. App. at 557 (“We approve many discretionary calls that we ourselves might not have made. We reverse only egregiously bad calls as abuses of discretion.”). Whether an appellate court finds an abuse of discretion “depends on the particular facts of the case [and] the context in which the discretion was exercised.” *King v. State*, 407 Md. 682, 696 (2009) (quoting *Myer v. State*, 403 Md. 463, 486 (2008)).

ii. Admissibility of the State’s Motion to Compel Testimony

The motion in question requested that the trial court issue an order compelling the testimony of State’s witness, Keenan Turner, and further indicated that “Turner has advised the State that he will assert his privilege against self-incrimination and will refuse to testify without an order compelling him to do so.” The court granted the State’s request and issued an order compelling Turner to testify. Defense counsel attempted to enter the State’s motion to compel into evidence during Turner’s cross-examination, when he denied that he wanted to assert his Fifth Amendment right against self-incrimination. The State objected, arguing that the motion was extrinsic evidence and thus inadmissible, to which the court agreed and excluded the motion from evidence.

Lee claims on appeal that the motion serves as substantive evidence to prove that Turner intended to invoke his Fifth Amendment right, rather than for impeachment purposes. Lee argues that Turner’s statement within the motion is admissible hearsay as an

adopted party admission under Rule 5-803(a)(2).⁴ Alternatively, Lee argues that Turner’s statement memorialized in the motion is admissible as double hearsay under Rule 5-805⁵ because Turner’s statement to the State was about “future action” which is admissible hearsay under Rule 5-803(b)(3) and the prosecutor’s statement in the motion about Turner’s intent is admissible hearsay as a party admission under Rule 5-803(a)(1).⁶ Lee further argues that because hearsay is substantive evidence, the rule limiting extrinsic evidence for impeachment purposes does not apply to the admissibility of the motion.

As discussed *supra*, both substantive and extrinsic evidence are subject to Maryland Rules 5-401 through 5-403. To be admissible, both must be relevant to a fact that is material to the case. Md. Rule 5-401. Even if found relevant, the court has the discretion to exclude such evidence if its probative value is outweighed by other considerations. Md. Rule 5-

⁴ Maryland Rule 5-803(a)(2) reads: “The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (a) Statement by Party-Opponent. A statement that is offered against a party and is: [...] (2) A statement of which the party has manifested an adoption or belief in its truth [...]” Md. Rule 5-803(a)(2).

⁵ “If one or more hearsay statements are contained within another hearsay statement, each must fall within an exception to the hearsay rule in order not to be excluded by that rule.” Md. Rule 5-805.

⁶ Maryland Rule 5-803(a)(1) and (b)(3) read, in relevant part: “The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (a) Statement by Party-Opponent. A statement that is offered against a party and is: (1) The party’s own statement, in either an individual or representative capacity [...] (b) Other Exceptions [...] (3) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant’s then existing condition or the declarant’s future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.” Md. Rule 5-803(a)(1)-(b)(3).

403. Therefore, it is inconsequential whether the motion was being offered as substantive evidence to prove the truth of the matter asserted or whether it was being offered as extrinsic evidence for impeachment purposes. Either way, the motion to compel must first be relevant to be admissible. Secondly, the motion's probative value must outweigh the other considerations listed in Rule 5-403. Only if the evidence (the motion to compel) passes the tests of relevancy and probative value do you get to the hearsay arguments. That being said, we first analyze whether the motion to compel is relevant in the case *sub judice*.

1. Relevancy of Turner's Intent Alleged in the Motion

The main issue at controversy in this case is whether Lee murdered Lyons. Thus, we must ask: does the fact that Turner wanted to assert his privilege against self-incrimination (as memorialized in the motion to compel) tend to prove or disprove whether Lee was guilty or not guilty of murdering Lyons? The fact that Turner wanted to invoke his Fifth Amendment right alone is not enough to prove or disprove Lee's guilt. *See McChan v. State*, 9 Md. App. 317 (1970) (indictments and arrest warrants of appellant's co-defendants were irrelevant to appellant's guilt and thus inadmissible).

If Lee's defense was that it was Turner who murdered Lyons instead of Lee, the fact that Turner wanted to invoke his Fifth Amendment right might have been relevant to Lee's guilt. While a defendant is permitted to present evidence of an alternative suspect, that "evidence must be sufficiently relevant, rather than 'cast[ing] a bare suspicion upon another.'" *Taneja*, 231 Md. App. at 10 (quoting *Holmes v. South Carolina*, 547 U.S. 319,

323–24 (2006)); *see also Harris v. State*, 242 Md. App. 655, 666 (2019) (alternative suspect evidence that did not exculpate the appellant was properly excluded).

Three witnesses who were present during the incident testified that Lee was the one who stabbed Lyons and Lyons’s DNA was found on Lee’s clothing. Because there is no evidence to suggest that Turner was the murderer, the mere fact that he wanted to invoke his Fifth Amendment right would not pass the “bare suspicion” needed for the defense to present him as a viable alternative suspect. *See Taneja*, 231 Md. App. at 19 (“tension between neighbor and victim not sufficient to permit introduction of alternative suspect evidence.” (citing *Commonwealth v. Buckman*, 461 Mass. 24, 29-32 (2011))); *Worthington v. State*, 38 Md. App. 487, 381 (1978) (evidence of victim’s gambling debts to show others may have motive to assault the victim was properly excluded when no other evidence was presented to support this theory). Furthermore, Lee concedes that this case is not about “who dunnit” but rather whether the murder was “self-defense-or-not.”

Therefore, our analysis turns on whether Turner’s desire to invoke his Fifth Amendment right is relevant to Lee’s self-defense⁷ claim. Two of the three witnesses,

⁷ The jury instruction for self-defense used at Lee’s trial reads, in pertinent part: “You have heard evidence that the defendant acted in self-defense. Self-defense is a complete defense and you are required to find the defendant not guilty if all of the following four factors are present:

- (1) the defendant was not the aggressor or, although the defendant was the initial aggressor, he did not raise the fight to the deadly force level;
- (2) the defendant actually believed that he was in immediate or imminent danger of bodily harm;
- (3) the defendant’s belief was reasonable; and

Ulloa and Turner, testified that Lyons was the aggressor in the fight. Ulloa also testified that McDonald joined Lyons in cornering Lee and drew a knife, to which McDonald even admitted to having a knife on his person during the incident in his testimony. McDonald testified that Hugo began hitting Lee with a cane and that both McDonald and Turner threw something at Lee during the fight. Thus, most of the witness testimony at trial tends to support Lee's self-defense theory. However, Turner's statements to the police on the day of the incident portrayed Lee as the aggressor, which the jury learned about when a recording of the interview was played at trial.

Lee argues on appeal that Turner's intention to invoke his Fifth Amendment right is important to Lee's self-defense claim because:

[It] tends to show [Turner's] concern about something. Was it just fear of testifying? Or was it because [Turner] lied: his statement to police painted Mr. Lee as the aggressor; whereas at trial [Turner] said Lyons attacked. Was [Turner] concerned about lying to the police? About his participation?

[...]

This case was not about "who," but "why." Did Lyons attack first? Did McDonald pull a knife? Did Turner assault Mr. Lee? Only three witnesses there testified: Ulloa, McDonald, and Turner. Between the three, there were five different narratives: McDonald's; and then Ulloa's and Turner's to police, and then at trial, respectively. Ulloa [sic] and Turner's trial testimony describe Lyons as the aggressor, and Ulloa claims McDonald and Lyons even cornered Mr. Lee.

But Turner's statement to police painted Mr. Lee as the instigator and contradicted his defense-friendly testimony. If jurors knew that Turner was concerned about self-incrimination, they might be more likely to think his inconsistencies were not out [of] fear, or memory loss, but

(4) the defendant used no more force than was reasonably necessary to defend himself in light of the threatened or actual harm."

See also MPJI-Cr 5:07 SELF-DEFENSE, MPJI-Cr 5:07.

rather, consciousness of guilt. Imagine defense counsel, armed with the motion to compel, arguing in closing: “Turner wanted to plead the Fifth because *he knew he lied to police*. That is why he wanted to exercise his right to silence here. He was worried about incriminating himself.” And also remember that Turner *denied* that he wanted to plead the Fifth. But Mr. Lee was never able to respond. So jurors never had a chance to consider Turner’s intent to remain silent [...]

While it is unclear, it appears that Lee is arguing that Turner’s intention to invoke his Fifth Amendment right resulted from a consciousness of guilt for: 1) lying to the police during his interview about Lee having been the aggressor; 2) “his participation” (however, it is uncertain whether Lee is referring to Turner’s possible participation in the murder of Lyons or just the fight in general); or 3) assaulting Lee during the fight. According to Lee, these reasons are relevant to his self-defense argument. Because our probative value holding *infra* is dispositive, we need not decide whether Turner’s intent to invoke his Fifth Amendment right is relevant to Lee’s self-defense argument.

2. Probative Value to Lee’s Self-Defense Claim

Next, we assume, *arguendo*, that Turner’s intent to invoke his Fifth Amendment right is relevant and analyze whether its probative value to prove Lee’s self-defense claim outweighs any “unfair prejudice, confusion of the issues, [jury misleading], or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Md. Rule 5-403. We then consider whether the trial court abused its discretion in making the determination to exclude the motion to compel the testimony of Turner.

The essence of Lee’s argument appears to be that Turner’s desire to invoke his Fifth Amendment right is evidence that he lied to the police during the interview on the day of

the incident, when Turner portrayed Lee as the aggressor, and that Turner told the truth during his testimony that Lyons was the aggressor instead. The fact that Turner intended to invoke his Fifth Amendment right, and the motion that memorialized this intent, is cumulative to the testimony presented at trial. Again, two of the three witnesses, Ulloa and Turner, testified at trial that Lyons was the aggressor in the fight, not Lee. Turner assured the jury he was telling the truth in his testimony.⁸ Moreover, Turner essentially admitted on redirect examination that he lied to the police during the interview because he “wanted to help [Lyons].”⁹ Turner further explained for the jury that he was ordered to appear in court, that he was arrested and brought to the court by law enforcement, that he advised the court he wanted immunity before testifying, that he was granted immunity and ordered to testify by the court, and that he was nervous and scared to testify.

During the criminal prosecution of Merzbacher, defense counsel attempted to introduce a civil complaint filed by a State witness against Merzbacher to expose the witness’ potential bias, but the trial court excluded it from evidence. *Merzbacher*, 346 Md. at 414. The witness on cross-examination admitted that she had a pending lawsuit against

⁸ “[STATE]: Okay. And are you telling us the truth here today in your testimony?

[TURNER]: Yes.”

⁹ “[STATE]: When you were talking to Detective Ruben, a statement that we watched a little bit ago, did you change your mind about telling him that you were asleep, versus telling him that you saw the fight happen, because you were threatened in some way? Or because you wanted to help Cornelius [Lyons, the victim][?]”

[TURNER]: Yeah. I wanted to help Cornelius, really. You know.

[STATE]: And did you see on the video where you told the police that the fight started because the dude came at Cornelius for no reason?

[TURNER] Yes. I seen [sic] it.”

Merzbacher and in that suit, she was seeking around twenty-million dollars in damages. *Id.* While our Supreme Court agreed that the pending lawsuit was relevant to the witness' potential bias against the defendant, the Court found no abuse of discretion on behalf of the trial court for excluding the civil complaint from evidence because it was cumulative. *Id.* The Court stated, “[i]n our view, however, this evidence would have been merely cumulative of the fact that [the witness] had an incentive to testify in a manner supportive of her other legal endeavors.” *Id.* at 414–15.

Likewise, in our case here, Turner admitted to the fact which Lee sought to expose – that Turner lied when he told police that Lee was the aggressor. Therefore, the admission of the motion to compel regarding Turner's intent to invoke his Fifth Amendment right would be cumulative to prove this point. Additionally, during his testimony, Turner admitted to being granted immunity and ordered to testify by the court. *See also Campbell v. State*, 243 Md. App. 507, 534 (2019) (no error in excluding as cumulative a letter in which the victim lied about her stepfather's abuse because the victim already testified that she lied in the letter and that the defendant made her write it); *State ex rel. Hall v. Trimble*, 104 Md. 317, 324 (1906) (no error in excluding as cumulative hospital records that the deceased was treated when it was already shown that the deceased was treated at the hospital for alleged injuries).

Furthermore, we conclude that the admission of the motion to compel to show Turner's “participation” would confuse the issues and mislead the jury. On appeal, Lee questions Turner's participation in the fight and whether Turner assaulted Lee during the

fight, but Lee failed to ask Turner during his cross-examination about this theory. The fact that Turner intended to invoke his Fifth Amendment right does not necessarily help to prove that Turner assaulted Lee during the fight when Turner was never questioned on the stand about whether he assaulted Lee in the first place. From the record, it appears that the motion to compel was offered to impeach Turner, since defense counsel attempted to admit it after Turner denied having the intent to invoke his Fifth Amendment right. However, it is perplexing that Lee would try to impeach Turner when his testimony supports his self-defense claim. For these reasons, the admission of the motion to compel would likely confuse the jury.

In *Smith II*, defense counsel attempted to introduce evidence of an alleged conspiracy between a State witness, co-defendant, and co-defendant's lawyer to discredit their testimony against Smith. *Smith II*, 371 Md. at 504–06. However, our Supreme Court noted that this theory was “so unclear” and that:

Even if we were to excuse the lack of formal proffer of evidence to support such a conclusion, there was no indication of what counsel wished to explore – what questions he wanted to ask. In the face of an objection on the ground of relevance, there was no assertion that [counsel] intended to inquire as to any of the facts or circumstances that might serve to establish a connection between the [document in question] and the testimony of [the witnesses].

[...]

If there was any relevance inferrable [sic] from this void, it was certainly marginal at best, which invokes the discretion accorded both under the cases cited and under Maryland Rule 5-403 to exclude even relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. [...] [D]efense counsel admitted that the issue was confusing, as indeed it was. Had counsel made a clear proffer or even identified the questions or types of questions he desired to ask, the trial court may have had some better

idea of how to draw a balance under Rule 5-403. On this record, however, we cannot say that the judge abused his discretion in precluding counsel from wandering off onto smoke-filled tangents.

Id. at 505-06. Similarly, here, because it is unclear for what purpose the motion was being offered, we conclude that its admission would have likely confused and misled the jury. *See also Rodriguez v. State*, 191 Md. App. 196, 230 (2010) (no error in denying cross-examination of victim, that would have served only to confuse the jury, when defense failed to offer any factual predicate questions).

Moreover, if the purpose for offering the motion to compel is intended to support Lee's self-defense claim and prove that Turner assaulted Lee, the motion is cumulative for this purpose as well. As indicated *supra*, Ulloa testified that McDonald joined Lyons in cornering Lee and drew a knife; McDonald even admitted in his testimony to having a knife on his person during the incident. McDonald testified that Hugo began hitting Lee with a cane and that both McDonald and Turner threw something at Lee during the fight. Thus, most of the witness testimony at trial tends to support Lee's self-defense theory, making the motion to compel unnecessary cumulative evidence. *See also U.S. v. Burgess*, 691 F.2d 1146, 1153-54 (4th Cir. 1982) (no error in excluding defendant's cumulative evidence that merely reemphasized defense-in-chief).

Considering the cumulative nature of the motion to compel, as well as its tendency to confuse or mislead the jury, weighed against the debatable relevance and meager probative value of the motion to compel as discussed previously, we hold that the trial court did not abuse its discretion in excluding the motion from evidence. We reiterate that trial

courts have a wide latitude in the admissibility of evidence, and they are in a better position than the appellate courts to make those calls. *Taneja*, 231 Md. App. at 11; *Merzbacher*, 346 Md. at 413–14. In light of this holding, we need not address Lee’s hearsay arguments. A court is not obligated to entertain hearsay exceptions for evidence that is otherwise irrelevant and inadmissible. As such, the State’s preservation argument is equally moot.

b. Harmless Error

Assuming, *arguendo*, that the trial court did err in excluding the motion to compel from evidence, we hold that such error was harmless. Our Supreme Court concluded that an error is harmless when the appellate court can “declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict” and is “satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict.” *Smallwood v. State*, 320 Md. 300, 308 (1990) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). Furthermore, “it is not the possibility but the probability of prejudice which is the object of the appellate inquiry.” *Crane v. Dunn*, 382 Md. 83, 101 (2004) (quoting *State Deposit Ins. Fund Corp. v. Billman*, 321 Md. 3, 17 (1990)). Factors to consider include “the importance of the witness’ testimony [], whether the testimony was cumulative, the presence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.” *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986). We are reluctant

to reverse verdicts for harmless errors in admitting or excluding evidence. *See Crane*, 382 Md. at 91–92.

Here, we conclude that there is no reasonable possibility that the verdict would have been different had the motion to compel the testimony of Turner been admitted into evidence because of the cumulative nature of the motion and the strength of the State’s case. Lee’s main purpose in offering the motion to compel was to support his self-defense claim and show that Turner lied to police on the day of the incident when he told them Lee was the aggressor. However, there was already significant evidence presented at trial that supported Lee’s self-defense claim and thus the motion to compel is cumulative for this purpose. We follow the “longstanding approach of considering the cumulative nature of an erroneously admitted [or excluded] piece of evidence when conducting harmless error analysis.” *Gross v. State*, 481 Md. 233, 237 (2022).

For example, three of the four witnesses present during the fight which led to Lyons death testified at trial. Two of those three witnesses, Ulloa and Turner, testified that Lyons was the aggressor in the fight. Ulloa also testified that McDonald joined Lyons in cornering Lee and drew a knife, to which McDonald even admitted to having a knife on his person during the incident in his testimony. McDonald testified that Hugo began hitting Lee with a cane and that himself and Turner threw something at Lee during the fight. The motion to compel and the fact that Turner may have intended to invoke his Fifth Amendment right adds nothing new to Lee’s self-defense argument.

In *Gross v. State*, the trial court admitted into evidence a video recording of the victim disclosing the sexual abuse she sustained to a social worker. *Gross*, 481 Md. at 237. This Court held, and the Supreme Court affirmed, that the trial court erred in admitting such recording. *Id.* However, the jury heard the victim's same account of the abuse through other evidence presented during the trial, therefore the video recording was cumulative, and its admission was a harmless error. *Id.* Where the jury was already aware of the matter or issue in question, similar to the case here, the admission or exclusion of evidence cumulative to that matter or issue is a harmless error.

Additionally, Turner admitted on the stand that he lied when he told police that Lee was the aggressor. Moreover, during his testimony Turner admitted to being granted immunity and ordered to testify by the court. Therefore, the admission of the motion to compel would be cumulative to prove this point as well. *See Dalmo Sales of Wheaton, Inc. v. Steinberg*, 43 Md. App. 659, 679 (1979) (harmless error in excluding recording of witness statement when witness admitted to having made the statement at trial). Lee's purpose for wanting to admit the motion to compel appears somewhat counterintuitive because the motion tends to accentuate Turner's lack of credibility, while Turner's testimony at trial supported Lee's self-defense claim. If admitted, the motion was just as likely to have the opposite effect that Lee desired.

An appellate court also considers the strength of the prosecution's case in determining whether an error was harmless. Here, when the police arrived at the scene of the murder, Turner and McDonald immediately informed them that Lee was the murderer.

Additionally, Lee was located and arrested about a mile away from the apartment. A show-up identification was conducted by police shortly after the incident and McDonald identified Lee as Lyons's murderer. Moreover, Lee's clothing revealed traces of Lyons's DNA on it. Furthermore, three of the four individuals who witnessed the murder, Ulloa, Turner, and McDonald, all testified at trial that Lee stabbed Lyons, resulting in his death. Even Lee admits there is no question as to who killed Lyons. Because of the strength of the State's case, there is no reasonable possibility that the motion to compel, or the fact that Turner may have intended to invoke his Fifth Amendment right, would have changed the outcome of this case.

For these reasons, we hold that even if the trial court's exclusion of the motion to compel was in error, it was, beyond a reasonable doubt, a harmless one.

c. Judicial Notice

Next, Lee argues that the authenticity of the motion to compel could have been judicially noticed as a "court document" under Rule 5-201(d) even if Turner could not identify the motion. The State counters that the trial court was not required to take judicial notice of the statements within the motion to compel. Lee responds that because the court granted the motion to compel, it could take judicial notice of the statements made therein under Rule 5-201.

Maryland Rule 5-201 on judicial notice applies only to "adjudicative facts." Md. Rule 5-201(a). The Rule further defines a "judicially noticed fact" as one "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction

of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Md. Rule 5-201(b). This Court has previously noted that the similarity in these two categories is “not so much their nature as public or widely-known, but more their nature as undisputed” *Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 414 (2014).

A trial court’s decision to take judicial notice, or not, is reviewed under the clearly erroneous standard. *Id.* at 413. Under this standard of review, trial courts are given great deference, and their findings will not be reversed unless clearly erroneous, “i.e., unsupported by any substantial evidence.” *Baltimore Gas and Elec. Co. v. Flippo*, 112 Md. App. 75, 102 (1996). Particularly with judicial notice, “there is a legitimate range within which notice may be taken or declined and there is efficacy in taking it, when appropriate.” *Abrishamian*, 216 Md. App. at 414 (quoting *Smith v. Hearst Corp.*, 48 Md. App. 135, 141 (1981)).

We agree with the State and find no error in the trial court declining to take judicial notice of the motion to compel which memorialized Turner’s intent to invoke his Fifth Amendment right. Turner’s intent is not “capable of accurate and ready determination” and is certainly “subject to reasonable dispute.” Md. Rule 5-201(b). *See also Lerner v. Lerner Corp.*, 132 Md. App. 32, 40–41 (2000) (the trial court properly declined to take judicial notice of the corporation’s offer to sell stock, as its veracity is “subject to reasonable dispute” and is not “capable of accurate and ready determination.”). Moreover, trial courts do not typically take judicial notice of “facts relating specifically to the parties involved.”

Abrishamian, 216 Md. App. at 414; *see also Walker v. D'Alesandro*, 212 Md. 163, 169 (1957) (appellate court found error in trial court taking judicial notice that defendant took certain actions in his official capacity as mayor of Baltimore City).

While Lee argues that the motion to compel is a “public” and “court” document subject to judicial notice, what Lee is really asking the trial court to take judicial notice of is the fact that Turner intended to invoke his Fifth Amendment right. This Court similarly held in *Abrishamian* that:

[. . .] Mr. Abrishamian wasn't simply asking the court to notice judicially the existence of the pleadings—he wanted the court to assume the truth of the assertions within those pleadings. Noticing pleadings does not mean accepting what they say as true, only that they exist as public records... The truth or falsity of the arguments remained for the court to decide.

216 Md. App. at 416. In that case, the appellant asked the trial court to take judicial notice of medical bills, pleadings filed in a different case, of the truth or falsity of pleadings filed in the instant case, and regulations under the Health Insurance Portability and Accountability Act (HIPAA). *Id.* We held that the trial court “properly exercised its discretion not to take judicial notice of these non-adjudicative and highly disputed ‘facts.’” *Id.* at 412. We hold likewise in the case before us.

Alternatively, the State’s motion to compel testimony as a public or court document has no bearing on Lee’s guilt of the murder charge and thus was irrelevant and collateral. We return to the general admissibility analysis of the motion on whether it is relevant and probative discussed *supra*. Lee asked the trial court to take judicial notice of the motion in order to authenticate the document required by Rule 5-901, since Turner did not recognize

it.¹⁰ Just because a document can be authenticated, does not mean that the document is automatically admissible. Admissibility of the document is also subject to the application of Maryland Rules 5-401 through 5-403. To be admissible, the document must be relevant to a fact that is material to the case. Md. Rule 5-401. Even if found relevant, the court has the discretion to exclude such evidence if its probative value is outweighed by other considerations. Md. Rule 5-403. Like hearsay – just because a statement falls within a hearsay exception, it does not mean the statement is automatically admissible – the statement is first subject to Rule 5-401 through Rule 5-403. We previously held that the trial court did not abuse its discretion in excluding the motion to compel due to its questionable relevance and scant probative value. As such, the trial court need not entertain the authenticity of irrelevant and inadmissible evidence.

In *Furda v. State*, the defendant was convicted of perjury and giving false information or making a material misrepresentation on a firearm application. 194 Md. App. 1 (2010), *aff'd*, 421 Md. 332 (2011). The trial court declined to take judicial notice, as requested by the defendant, of medical records that were already part of the case file. *Id.* at 66–67. This Court held, “[e]ven assuming, arguendo, that the [medical] records were the

¹⁰ The Rule on authentication begins: “The requirement of authentication or identification as a condition precedent to *admissibility* is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Md. Rule 5-901(a) (emphasis added). Lee relies on Rule 5-901(b)(7), which reads: “By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule: (7) Public Record. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, is from the public office where items of this nature are kept.” Md. Rule 5-901(b)(7).

proper subject of judicial notice, they were not pertinent to the disposition of the Perjury Case.” *Id.* at 68. Likewise, the motion to compel is not pertinent to the disposition of this murder case for all the reasons mentioned prior. We hold that the trial court did not err in refusing to take judicial notice of the motion to compel. Even if we found error in such decision, it was harmless for the same reasons discussed previously.

III. CONCLUSION

For the reasons discussed *supra*, we affirm the judgment of the Circuit Court for Montgomery County. Considering the cumulative nature of the motion to compel, as well as its tendency to confuse or mislead the jury, weighed against the debatable relevance and meager probative value of the motion to compel, we hold that the trial court did not abuse its discretion in excluding the motion from evidence. We further hold that even if the trial court’s exclusion of the motion to compel was in error, it was, beyond a reasonable doubt, a harmless one due to the motion’s cumulative nature and the strength of the State’s case. Lastly, we hold that the trial court did not err in refusing to take judicial notice of the motion to compel, as a trial court need not address the authenticity of inadmissible evidence. As a result of these holdings, analysis of the hearsay and preservation arguments are not necessary.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY IS AFFIRMED.
APPELLANT TO PAY COSTS.**