Circuit Court for Prince George's County
Case No. CT190848X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1357

September Term, 2022

RENDELL MARKEITH JOHNSON

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 11, 2024

In July 2019, after a four-day trial, a jury in the Prince George's County Circuit Court found Rendell Markeith Johnson guilty of killing two men found shot to death in Capitol Heights. On appeal, Mr. Johnson argues that the circuit court erred by (1) admitting testimony that Mr. Johnson previously had possessed a gun and (2) by limiting his closing argument at trial impermissibly. We find no error and affirm.

I. BACKGROUND[1]

In the late night of April 6 and the early morning of April 7, 2019, Trevor Frazier and Raymond Giles were discovered gravely injured with gunshot wounds in and near a parked car in Capitol Heights. Officers of the Prince George's County Police Department ("PGPD") responded to the scene and a paramedic confirmed one of the men had died. The second, found still breathing on the ground near the car, was transported to the hospital where he died later. A medical examiner confirmed the causes of death as homicide by gunshot wounds at close range. Police never recovered a firearm but found 9 mm cartridges and bullet fragments at the scene that were fired from one firearm.

Detective Ruben Paz led the investigation in the case and identified Mr. Johnson as a suspect. Eventually Mr. Johnson was charged with two counts of murder, two counts of use of a firearm in the commission of a crime of violence, and one count of illegal possession of a firearm. The State later *nol prossed* the illegal possession of a firearm charge.

[1] We recount the facts as they were adduced at trial. We view the evidence in the light most favorable to the State as the prevailing party. *See State v. Krikstan*, 483 Md. 43, 63–64 (2023).

Mr. Johnson was tried before a jury from July 19 to July 25, 2022. The State contended that Mr. Johnson shot the victims to exact revenge after Mr. Johnson's romantic partner, Destiny Montez, admitted to having an affair with Mr. Frazier while she and Mr. Johnson were dating. Mr. Johnson, on the other hand, told the jury that the victims had planned to rob a drug dealer and were killed by that drug dealer in the process:

> [COUNSEL FOR MR. JOHNSON]: Now, the State has this theory. And they gave you a bunch of facts. They said Rendell had a fight with his girlfriend because his girlfriend slept with Trevor, had a relationship with Trevor.
>
> And he got mad and he said, "I'm going to kill him." And then he killed him. That's what they said. And they have to prove that to you. Okay? What you will hear though from that witness box is that unfortunately there were two young men who lived in Frederick County, came to Prince George's County in a leased car to do a drug robbery.
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> [THE STATE]: Objection.
>
> THE COURT: Approach for a second, please.
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> (Counsel approached the bench, and the following ensued:)
>
> [THE STATE]: Your Honor, that is a totally inappropriate statement to make in opening about the intent of the victims in this case. It is just inappropriate. And I am going to ask for it to be stricken.
>
> [COUNSEL FOR MR JOHNSON]: Judge, it is in the police reports, the police reports, that that's what they were—I have Detective Paz's notes. That that's what they were coming here to do.
>
> [THE STATE]: There's a lot of stuff in notes.
>
> THE COURT: I'll remind both of you of what, as has been repeated several times, any statement either of you make at this point is not any evidence in the case.
>
> Number two, any statement that you do make and then don't subsequently prove that to the jury is fair game for the other party to point out to the jury that that's never been proven.

> Obviously, something that's in the detective's notes may or may not be anything more than pure speculation. So I caution both parties. But in opening statements, I'll give both attorneys wide discretion that any statement they make to the jury would be their obligation to prove.
>
> [THE STATE]: I'm still renewing my motion to ask that that statement be stricken.
>
> THE COURT: I am going to deny that request.

Mr. Johnson identified Douglas Whitley as the drug dealer who committed the murders, and his counsel told the jury that the police "got the wrong guy. And there was so much evidence along the way that should have showed them who the right guy was. And you're going to hear about that."

Ms. Montez, Mr. Johnson's ex-girlfriend and mother of his child, testified for the State and explained that she spoke to police three times. She told officers initially that Mr. Johnson denied killing one of the victims, but later informed them that Mr. Johnson admitted the murders to her. She stated that Mr. Johnson and Mr. Frazier knew each other and that during an argument after Mr. Frazier's funeral, Mr. Johnson admitted to shooting both victims. Ms. Montez testified as well that Mr. Johnson would sometimes contact her through a "[Wi-Fi] only" number and that he lived with his grandmother, "Ms. Shirly," near the crime scene.

According to Ms. Montez, the whole situation stemmed from her recurring relationship with Mr. Frazier, with whom she cheated on Mr. Johnson in 2019. She stated after she told Mr. Johnson, he "said that he would kill [her] and anybody that [she] slept with." During the argument, Mr. Johnson admitted to Ms. Montez that he had killed Mr. Frazier and Mr. Giles—"[h]e said that he had shot them" and that Mr. Giles was "collateral

damage." Mr. Johnson told Ms. Montez that he pistol-whipped Mr. Frazier, and that Mr. Giles tried to run away. She insisted that she was not trying to get back at Mr. Johnson, who is the father of her son.

Over objection, the State asked Ms. Montez whether she had ever seen Mr. Johnson with a gun before:

> [THE STATE]: Have you ever seen Mr. Johnson with a gun before?
>
> [COUNSEL FOR MR. JOHNSON]: Objection.
>
> THE COURT: Approach.
>
> (Counsel approached the bench, and the following ensued:)
>
> [COUNSEL FOR MR. JOHNSON]: I don't see how this is relevant. It is 404B.
>
> [THE STATE]: It is just to provide, show any opportunity he has a gun that he's capable.
>
> [COUNSEL FOR MR. JOHNSON]: Just the fact that the—I mean, the Supreme Court just made very clear that gun ownership is a normal fact of life in the United States. Merely having a gun does—that's not enough of—I mean, I think what you're trying to say is opportunity under the 404B exceptions. But, that's like saying he had an opportunity to drive the car so he could have been in the area at the time. So it is simply a thing that many people have and—
>
> THE COURT: And that's a point you can bring out. But I think that the State is permitted to ask the question: Has she ever seen him with a gun.
>
> [COUNSEL FOR MR. JOHNSON]: I believe that the context in which she is going to say that she has seen him with a gun is even more potentially prejudicial so . . .
>
> [THE STATE]: And presumably, I think that's referencing another incident, but I have made it clear not to address that. I am simply going to ask yes or no if she's seen him with a gun and nothing further.
>
> THE COURT: Okay. Make sure.

[THE STATE]: Yes, Your Honor. All right.

The State went on to ask Ms. Montez, "without elaborating any further, . . . [h]ave you ever seen Mr. Johnson with a gun before?" She replied, "Yes." Mr. Johnson did not question Ms. Montez about the timing, circumstances, or context of the incident during cross-examination.

Shirly Johnson, Mr. Johnson's grandmother, confirmed that at the time of the incident she lived with Mr. Johnson on a street adjacent to the crime scene. Her landline phone number, which ended in 5616, was used by Mr. Johnson when he lived there and was later found to have called Mr. Frazier's number that night. She also testified that Douglas Whitley lived across the hall from her.

Mr. Whitley, Shirly Johnson's neighbor and the drug dealer Mr. Johnson implied in his opening statement was the killer, testified on behalf of the State and verified that he was neighbors with Shirly Johnson. Mr. Whitley acknowledged that he was incarcerated for committing an armed carjacking that allegedly involved a 9 mm handgun. And he admitted that he had prior convictions for drug charges and robbery and that he "ha[d] sold before drugs in the past," although he stated he "was not selling drugs" on the night of the murders. His home was searched in connection with this case and police found a firearm, but it wasn't the gun used in the crime.

Mr. Whitley explained that he was questioned by police, and he told them that he didn't know the victims. He did, however, know Mr. Johnson by the nickname "Fats" and, once questioned about the phone records, recalled that he allowed Mr. Johnson to borrow

his cellphone on the night of the murders. Mr. Johnson had told him that "he couldn't find the people's house that he needed to call for a ride" and that Mr. Whitley decided to help by letting Mr. Johnson use his phone. He verified that his cellphone number in April 2019 ended in 8998. He thought that Mr. Johnson might have borrowed the phone for only ten or fifteen minutes, "give or take," but he wasn't sure.

Detective Paz testified that after learning the identities of the victims, police spoke with family members who gave them Douglas Whitley's name. Detective Paz obtained the call detail records for Mr. Whitley's cellphone number (ending in 8998), and discovered that the phone twice called Mr. Frazier's phone, the last call occurring around 11:56 p.m. on April 6th. Detective Paz also saw that a number ending in 5616 (the number for Shirly Johnson's landline) called Mr. Frazier's phone around 10:50 p.m. He recalled finding that a "[Wi-Fi] only" number had called Mr. Frazier's number earlier in the day. Mr. Whitley became a person of interest due to the phone records showing "conversations that he had close to the time of the murder."

During cross-examination, the court allowed defense counsel to ask Detective Paz about information that the victims may have been planning a drug robbery:

> [COUNSEL FOR MR. JOHNSON]: . . . And you came up with information that the reason the deceased Trevor Frazier and Raymond Giles in this case were coming down from Frederick was to rob a drug dealer?
>
> [THE STATE]: Objection.
>
> THE COURT: Approach.
>
> (Counsel approached the bench, and the following ensued:)
>
> [THE STATE]: I'm moving to strike that statement about the reason they were coming here. Because one is hearsay. And

this is prejudicial against the victims to the extent the decedent is prejudiced. But there's no basis or reason for that questioning to be asked about what the motive of the victims were in coming here.

If the State can't ask about who did fingerprints and we need that person here, then—

THE COURT: Overruled.

[COUNSEL FOR MR. JOHNSON]: Thank you judge.

(Counsel returned to the trial tables, and the following ensued:)

[COUNSEL FOR MR. JOHNSON]: You can answer the question.

[DETECTIVE PAZ]: Correct.

* * *

[COUNSEL FOR MR. JOHNSON]: . . . And your theory was that Douglas Whitley was the drug dealer, right?

[THE STATE]: Objection.

THE COURT: What's the objection?

[THE STATE]: Characterization.

THE COURT: He's asking the detective if it was his theory.

You may answer.

[DETECTIVE PAZ]: Yeah, I had a theory that he could have been involved in whatever it is that was happening.

[COUNSEL FOR MR. JOHNSON]: And so to be clear, you have information that two people are coming from Frederick County to rob a drug dealer.

[THE STATE]: Objection.

[COUNSEL FOR MR. JOHNSON]: We don't know if it's true or not. But that's—

THE COURT: Rephrase the question.

[COUNSEL FOR MR. JOHNSON]: You believed that based on your investigation that you were following, two people were coming from Frederick County to do a drug deal?

[THE STATE]: Same objection, Your Honor. I'll make it an ongoing—

> THE COURT: Overruled. You may answer.
>
> [DETECTIVE PAZ]: I was following up on information I had that they may have come to Prince George's County to do a drug deal.
>
> [COUNSEL FOR MR. JOHNSON]: And to rob a drug dealer, correct?
>
> [DETECTIVE PAZ]: Correct.

When Detective Paz interviewed Mr. Whitley, he denied any involvement and explained that he loaned his phone to Mr. Johnson the night of the murders. Detective Paz testified that after verifying that Mr. Whitley was not associated with either victim and had never called Mr. Frazier in the past, he stopped regarding Mr. Whitley as a person of interest.

During closing argument, counsel for Mr. Johnson claimed again that the victims were planning a drug robbery:

> So, Mr. Smith says who is the connection between these four people? These four people we're talking about is Trevor, Raymond, Douglas Whitley and Rendell Johnson. The connection is Rendell. That can be true without Rendell having killed Trevor and Raymond. Douglas Whitley is a drug dealer. Trevor and Raymond, according to the police investigation, came down from Frederick with the intention of robbing—
>
> [THE STATE]: Objection.
>
> [COUNSEL FOR MR. JOHNSON]: That was the testimony.
>
> [THE STATE]: Which was objected to.
>
> THE COURT: I'll sustain the objection.
>
> [COUNSEL FOR MR. JOHNSON]: You heard what the detective said about what their investigation shows. Douglas Whitley is selling drugs. Maybe Trevor and Raymond are looking for him. Maybe they're looking to do something else. We didn't hear much about how, if at all, they followed up on

> those leads, but that's the motive. Rendell can be the connection without being the killer.

And the defense went on to point the finger at Mr. Whitley:

> [Y]ou know who else had motives, means, and opportunity? Douglas Whitley. Motive. Drug deal gone ba[d]. Means. You know he's armed. . . . He, obviously, had the opportunity because he had his phone all night and his phone was in the area of the murder.

The jury convicted Mr. Johnson of all four counts and the circuit court imposed a combined sentence of two consecutive terms of life imprisonment. Mr. Johnson timely appealed his convictions.

II. DISCUSSION

Mr. Johnson presents two questions on appeal,[2] which we have reworded: *first*, whether the circuit court erred in permitting Ms. Montez to testify she had seen Mr.

[2] Mr. Johnson phrased his Questions Presented as follows:

> 1. Did the circuit court err in admitting other crimes/bad-acts evidence under Md. Rule 5-404(b)?
>
> 2. Did the circuit court impermissibly limit closing argument by preventing defense counsel from highlighting critical testimony elicited during the trial?

The State phrased its Questions Presented as follows:

> 1. Did the circuit court properly admit Destiny Montez's testimony that she saw Johnson with a gun before the shootings occurred?
>
> 2. Did the circuit court soundly exercise its discretion in sustaining the State's objection concerning a small portion of defense counsel's closing argument?

Johnson possess a firearm, and *second*, whether the circuit court limited Mr. Johnson's closing argument properly.

We review *de novo* the question of whether admitted evidence constitutes a "bad act" under Maryland Rule 5-404(b). *Baltimore County v. AECOM Servs.*, 200 Md. App. 380, 397 (2011) (*quoting Powell v. Breslin*, 195 Md. App. 340 (2010)). Likewise, the standard of review in determining the evidence's relevance is *de novo* as well. *State v. Simms*, 420 Md. 705, 724 (2011). We review a circuit court's limitation of closing arguments for abuse of discretion. *Ware v. State*, 360 Md. 650, 682 (2000).

A. The Circuit Court Did Not Err In Permitting Ms. Montez To Testify That She Had Seen Mr. Johnson Possess A Firearm Before The Shootings.

Mr. Johnson argues *first* that the circuit court erred in allowing Ms. Montez to testify that she had seen him possessing a firearm because her testimony constituted "bad acts" evidence that violated Maryland Rule 5-404(b). The State contends that the testimony was relevant, that it wasn't bad acts evidence, and that even assuming it was, it satisfied the means and opportunity exceptions to Rule 5-404(b). We agree with the State.

During direct examination, the State asked Ms. Montez if she "had ever seen Mr. Johnson with a gun before." Defense counsel objected, arguing it was not relevant and was impermissible under Rule 5-404(b). The State countered that the evidence would reveal "any opportunity he has a gun" and "that he's capable." The circuit court allowed it. Ms. Montez was asked, "Have you ever seen Mr. Johnson with a gun before?" to which she responded, "Yes." There was no mention of the legality of his possession, the type of

firearm, or the exact time she saw him with a firearm. During its closing argument, the State used this testimony to argue premeditation, that Mr. Johnson "had the means to kill" because Ms. Montez "told us he had a gun."

Maryland Rule 5-401 defines "relevant evidence" 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." A trial court has no discretion to admit irrelevant evidence. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 620 (2011). But the threshold required to show relevance "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). Maryland Rule 5-404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." A "bad act" is "an activity or conduct, not necessarily criminal, that tends to impugn or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit." *Klauenberg v. State*, 355 Md. 528, 549 (1999). And in *Klauenberg v. State*, the Supreme Court of Maryland held that evidence of prior firearm possession, without any indication of illegality, does not constitute a "bad act" under Rule 5-404(b). *Id.*

That solves the question here. The State never claimed that Mr. Johnson's gun possession was illegal, nor was it implied during Ms. Montez's testimony. To the contrary, Mr. Johnson is presumed to have possessed the firearm lawfully. *See Wheeler v. State*, 88 Md. App. 512, 527 n.10 (1991) ("We . . . fail to see how showing someone a gun is 'other crimes' evidence. Showing someone a gun, without more, is, as far as we know, not a crime

unless a criminal statute is violated."). For that reason, testimony about Mr. Johnson's past firearm possession was not evidence of a "bad act" in violation of Maryland Rule 5-404(b).

Mr. Johnson claims that *Dobson v. State*, 24 Md. App. 644 (1975), is "dispositive and requires reversal in this case." He argues that under *Dobson*, evidence of prior firearm possession is impermissible "bad act" evidence if it doesn't connect the previous firearm possession to the crime at hand. But as the State points out, *Dobson* resolved an unrelated issue and concerns Maryland Rule 5-404(a),[3] not (b). *Francois v. State*, 259 Md. App. 513, 529 (2023) (*Dobson* "does not stand for the proposition that proof of prior gun possession is never relevant in a gun case. It stands for the proposition that rebuttal evidence is not relevant if it does not rebut anything."). In *Dobson*, the defendant was charged with armed robbery and kidnapping. 24 Md. App. at 645. He called his father as a witness to try and establish that police had planted the revolver that they purportedly had found in a search of his house. *Id.* at 655. The revolver had been stolen approximately one week after the kidnap-robbery for which Dobson was charged. *Id.* On cross, the State asked the father whether he'd ever seen his son with a gun, and he said that he hadn't. *Id.* at 656. In rebuttal, the State called a separate witness who testified, over objection, that he had seen the defendant with a gun four months before the robbery. *Id.* at 658.

On appeal, we held that the witness's testimony was not proper rebuttal of the father's testimony because the witness had not said that the defendant's father "was present

[3] Rule 5-404(a)(2)(A) permits an accused to "offer evidence of the accused's pertinent trait of character. If the evidence is admitted, the prosecution may offer evidence to rebut it."

and saw, or should have seen," the gun that the witness claimed to have seen. *Id.* at 659. More importantly, the gun the witness claimed to have seen could not have been the same weapon found in the search of the defendant's home. *Id.* at 660. We explained that the State could not have used the witness's testimony in its case-in-chief because it would have been "irrelevant for the State to demonstrate that four months before the events giving rise to this case, the [defendant] was seen with a gun in his possession" because it "d[id] not give rise to a rational inference that appellant, because of such possession, also possessed other weapons at a later time" because it "did not serve to rebut anything the defense had demonstrated or implied." *Id.*

Mr. Johnson argues similarly that his possession of a gun in the past was irrelevant to whether he had committed these murders. But here, Ms. Montez testified during the State's case-in-chief that she had seen Mr. Johnson with a gun before. Evidence of his possessing a firearm in the past, if true, would make it more likely that he possessed a firearm at some later time. He never disputed that the weapon Ms. Montez saw him possess was not the weapon used in the crime and he chose not to go into the context of Mr. Johnson's possession of the gun on cross-examination to try and negate the inference that it was the same weapon used in the crime. "It is always relevant to show that the defendant before the date of the crime had in his possession the means for its commission." *Hayes v. State*, 3 Md. App. 4, 8 (1968). The testimony met the "very low bar" for relevance. *Williams*, 457 Md. at 564. The evidence of the gun had at least some tendency to "make the existence of [a] fact that is of consequence to the determination of the action more

probable . . . than it would be without the evidence," Md. Rule 5-401, and the circuit court did not err in concluding that it was relevant.

Having determined that the evidence was relevant and not "bad acts" evidence, Mr. Johnson argues additionally that the circuit court still erred in admitting the testimony because it was unfairly prejudicial to the point where its probative value was outweighed. Under Rule 5-403, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." But Mr. Johnson didn't raise an objection under Rule 5-403 and it's not preserved for appellate review. "It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg*, 355 Md. at 541. *See* Md. Rule 8-131(a).

B. The Circuit Court Did Not Abuse Its Discretion When Limiting A Portion Of Mr. Johnson's Closing Argument.

Mr. Johnson's *second* contention is that the circuit court limited his closing argument impermissibly when it sustained an objection to his argument that the victims were planning a drug robbery. Specifically, defense counsel stated that the victims, "according to the police investigation, came down from Frederick with the intention of robbing . . . ." After the State's objection was sustained, defense counsel narrowed the wording by stating, "You heard what the detective said about what their investigation shows. Douglas Whitley is selling drugs. Maybe Trevor and Raymond are looking for him.

Maybe they're looking to do something else." Considering the record, the circuit court did not abuse its discretion.

Generally, attorneys have a considerable latitude in presenting their closing arguments. *Degren v. State*, 352 Md. 400, 429 (1999). Counsel may "state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence." *Wilhelm v. State*, 272 Md. 404, 412 (1974), *abrogated on other grounds in Simpson v. State*, 442 Md. 446, 458 n.5 (2015). Because the circuit court "is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case," we give deference to the circuit court in regulating closing arguments and its decision will not be reversed "unless there is a clear abuse of discretion that likely injured a party." *Ingram v. State*, 427 Md. 717, 726 (2012); *Ware v. State*, 360 Md. 650, 682 (2000). This Court must find that "'no reasonable person would take the view adopted by the [circuit] court or when the court acts without reference to any guiding rules or principles.'" *Alexis v. State*, 437 Md. 457, 478 (2014) (*quoting North v. North*, 102 Md. App. 1, 13 (1994)).

Mr. Johnson argues that defense counsel's claim regarding the victims' plan to rob a drug dealer was a permissible statement to make at closing "to remind the jury of Detective Paz's allowed testimony about Frazier's and Giles' possible plans." But that wasn't what he argued—he stated the investigation showed the victims "came down from Frederick with the intention of robbing." The evidence on the subject was more vague. Detective Paz testified that he "was following up on information [he] had that [the victims]

may have come to Prince George's County to do a drug deal." In response to the objection, Mr. Johnson narrowed his argument appropriately—that the investigation considered it a *possibility*. The court had the ultimate discretion to determine whether Mr. Johnson presented sufficient evidence of such a plan and its limitation here was reasonable. *Wilhelm*, 272 Md. at 412 (defense counsel must present enough evidence to allow a reasonable and legitimate inference).

Also, any error was harmless. The State argues that "[Mr.] Johnson fails to meaningfully explain how the court's relatively miniscule limitation on defense counsel's closing argument was so beyond the fringe that it amounted to an abuse of the circuit court's broad discretion, and the record reveals that no prejudice arouse from the limitation." We agree. Mr. Johnson was given wide latitude to present his theory that the victims planned to rob Mr. Whitley and that Mr. Whitley was the murderer. *See Porter v. State*, 455 Md. 220, 234 (2017) (harmless error is "error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record" (*quoting Bellamy v. State*, 403 Md. 308, 333 (2008)).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.