Circuit Court for Charles County
Case No. 08-K-17-000241

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1505

September Term, 2021

ANTHONY D'ANGELO WILKINS

v.

STATE OF MARYLAND

Graeff,
Arthur,
Reed,
JJ.

Opinion by Reed, J.
Graeff, J., concurs in the judgment only

Filed: February 21, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case stems from a shooting that occurred early on February 4, 2017, outside of Beer 4 U, a bar in Waldorf, Maryland ("Waldorf Shooting"). During the incident, three individuals were struck by bullets discharged by Anthony Wilkins ("Appellant"). One of these individuals was fatally shot. Appellant was tried in the Circuit Court for Charles County from July 19, 2021, to July 27, 2021. On July 27, 2021, the jury convicted Appellant of second-degree murder; attempted second-degree murder; two counts of using a firearm in a crime of violence; three counts of reckless endangerment; two counts of second-degree assault; wearing, carrying, or transporting a handgun on the person; and possession of a firearm following a disqualifying conviction.

In bringing his appeal, Appellant presents two questions for appellate review:

1. Did the Circuit Court commit reversible error by allowing the State to introduce and repeatedly highlight evidence of a separate, unrelated shooting involving Appellant?

2. Did the Circuit Court commit reversible error by allowing the State, during its redirect examination of a key witness, to play a highly prejudicial video recording from the witness's interview with police without laying any evidentiary foundation for the video?

As laid out below, we reverse the circuit court's decisions on both grounds. The circuit court erred by allowing the State to introduce evidence with a broad scope regarding a separate shooting at police officers in Emporia, Virginia ("Virginia Shooting"), exceeding the limited scope of identifying Appellant's possession of the firearm used in the Waldorf Shooting. The circuit court also failed to establish a proper foundation to include extended and highly prejudicial hearsay from a witness's police interrogation video that negatively depicted Appellant's state of mind and failed to provide a limiting

instruction following its introduction. Thus, the circuit court committed two reversible errors.

FACTUAL & PROCEDURAL BACKGROUND

(A) February 4, 2017 Events:

This case pertains to a shooting that occurred early in the morning on February 4, 2017, outside of a bar named Beer 4 U in Waldorf, Maryland ("Waldorf Shooting"). The trial established the following facts. Beginning the night of February 3rd and early into the morning of February 4th, 2017, Appellant and two of his friends were involved in an altercation with Emmanuel Perkins ("Perkins") in the bar's bathroom. Perkins was the DJ at the bar.

Following the altercation, Appellant and his friends exited the bar. Subsequently, Perkins and a large crowd exited the bar into the parking lot. Once outside, Perkins saw Appellant and his friends, and pointed them out to the large crowd in the parking lot. Shortly thereafter, Appellant fired shots into the crowd, which struck three individuals. These individuals include Miaquita Gray ("Gray"), Anthony Thomas ("Thomas"), and Steven Mason ("Mason"). One bullet fatally struck Gray and the second bullet grazed Thomas' leg. The third bullet struck Mason near his pants pocket; however, he did not sustain any injuries due to the location of his cell phone.

(B) The Trial:

A trial was held in the Circuit Court for Charles County from July 19, 2021, through July 27, 2021. During the trial, neither party disputed key facts leading up to the Waldorf Shooting that tie Appellant to the gun, including that (1) the Appellant had an altercation

in the Beer 4 U bathroom, (2) Appellant was in possession of a firearm while in the bathroom, (3) while outside of Beer 4 U, Appellant discharged the same firearm that was in his possession while in the bathroom, and (4) that the firearm recovered on Appellant during the Virginia Shooting was the one used in the Waldorf Shooting.[1] However, Appellant contended that he merely fired warning shots into the air when the crowd began moving towards him and did not intend to shoot into the crowd. The State contended that Appellant purposefully shot into the crowd and that Appellant's actions were premeditated. The State called thirty-six witnesses to the stand; however, Kenyatta Chase ("Chase") was one of the very few witnesses who testified that she saw and conversed with Appellant at the bar. Chase testified that she went to Beer 4 U with some friends on February 4, 2017. While there, she also hung out with Appellant. Chase states that she later went outside with Appellant and a crowd of about fifteen to twenty people. Afterwards, Chase heard gunshots. During the trial, the State presented expert testimony that shell casings collected at the scene of the Waldorf Shooting and the bullet that fatally struck Gray were all shot from the same black and silver gun that was in Appellant's possession during the Virginia

[1] In the State's reply brief, they contested in a footnote that identity was at issue in the case. However, in reviewing the trial record, the issue of identity was regarding who initially brought the gun to the bar and who possessed it at various moments during the altercation in the bathroom. The possession and nature of the interaction between Appellant and Perkins in the bathroom were relevant for the purpose of the charges stemming from the assault and battery of Perkins, not the gun's subsequent use outside of the bar. Additionally, during opening arguments, it was made clear that Appellant was claiming self-defense, admitting that he had fired the weapon: "Anthony, fearing for himself and his friends, raises the DJ's gun and fires a few warning shots into what he thinks is the air above the crowd."

Shooting.[2]

(i) The State admits evidence of an unrelated shooting in Emporia, Virginia.

During the circuit court trial, the State had three different witnesses who all testified about a separate subsequent shooting in Emporia, Virginia on February 12, 2017. The circuit court referred to this as the "Virginia Shooting." According to the circuit court witnesses, eight days after the Waldorf Shooting, Appellant was in a house in Emporia, Virginia. While police officers were investigating an incident unrelated to Appellant at said house, Appellant exited the house with a handgun and shot at the police officers. In response, the officers shot Appellant and placed him into custody. Prior to the trial for the Waldorf Shooting, Appellant filed a motion *in limine* to exclude evidence regarding the Virginia Shooting pursuant to Maryland Rules 5-402, 5-403, and 5-404(b).[3] The State did not respond to the motions.

[2] Bullet fragments were also recovered from the Waldorf Shooting scene. However, the fragments were not suitable for forensic analysis, so they could not provide conclusive evidence of their origin.

[3] Maryland Rule 5-402 states:

> Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

Md. Rule 5-402. Relatedly, Maryland Rule 5-403 pertains to the exclusion of relevant evidence, stating:

> Although 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

On January 25, 2021, the circuit court conducted a motions hearing. There, the State argued that the Virginia Shooting was relevant to the Waldorf Shooting because the Virginia Shooting evidence was relevant to prove the shooter's identity and consciousness of guilt. In response to the State's identity argument, Appellant offered to stipulate that he did possess the same gun used in the Waldorf Shooting during the Virginia Shooting. Ultimately, the circuit court denied Appellant's motion *in limine*, holding that the Virginia Shooting's evidence was probative of identity and consciousness of guilt. However, in its ruling, the circuit court stressed that any reference to the Virginia Shooting should be brief:

> For me, this should be a quick moment in the trial. Not a long moment. Not a dwelled upon moment. Not an opportunity for the State to argue at closing, he must be guilty because look what he hangs out with, or he must be a bad guy because he owns guns, or he, you know, fires shots at the police, etc. . . . I do think that it can quickly transition to a theory of where it would be unfairly prejudicial.

Appellant objected to the circuit court's ruling regarding the inclusion of the Virginia Shooting and continued to object throughout the trial court proceedings.

During trial, the State asked Detective Sergeant Christopher Rook of Greensville

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Md. Rule 5-403. In relevant part, Maryland Rule 5-404(b) pertains to other crimes, wrongs, or acts. Specifically, it states:

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

Md. Rule 5-404(b).

County, Virginia; Special Agent Dustin Weymouth-German of the Virginia State Police; and Captain Jerry Wright of the Emporia Police Department to testify about the Virginia Shooting. Prior to Detective Sergeant Rook's testimony, the State proffered his testimony and emphasized statements such as "Mr. Wilkins comes out of the house with two firearms at his side, raises them, fires at police, is fired back on, and goes down." Based on this proffer, Judge Bragunier said the testimony was "highly relevant" and supported proving the "identity and consciousness of guilt" of the Appellant. Images of bloody clothing recovered from the Virginia Shooting were also presented at trial. Appellant objected to including the testimony, and the trial court overruled the objection but noted Appellant's continuing objection.

The State used their testimony, as well as the case's opening and closing statements, to highlight the Virginia Shooting. Particularly, in the State's closing argument, the State asserted the following:

> It was about eight days later that the police in Emporia, Virginia are investigating a totally unrelated incident, totally unrelated, didn't know Mr. Wilkins was there, February 12th. And they come to this house, and at one point, and you heard from Detective Rook from Emporia, he testified as to what happened. And he saw defendant, Mr. Wilkins, come outside, gun blazing, with that silver and black handgun, the same silver and black handgun that was used to kill Ms. Gray. He comes out, gun blazing, and he is shot and taken into custody.
>
> So yes, ladies and gentlemen, the same gun that he used to kill Ms. Gray with . . . The same gun that he used to kill Ms. Gray with, he used to fire on the police. Now let me ask you this, ladies and gentlemen, if someone coming out of a house . . . comes out of a house, pointing a gun and firing at police[4]

[4] After the State's Attorney said this line in his closing, Appellant's attorney objected. At the bench, the following exchange occurred:

> . . . The handgun that was recovered in Virginia is the same handgun that killed Ms. Gray. And that should show you two things, the identity of the killer, and the consciousness of guilt that that killer had.

Appellant objected to each instance the State referred to the Virginia Shooting.

(ii) The State plays a video recording to show the truth of the statements made in it.

During trial, the State called Kenyetta Chase, one of the few who admitted to interacting with Appellant at the bar, to the stand. The State introduced two out-of-court statements Chase made to the police during a February 8, 2017, interview with the police about the Waldorf Shooting. However, during direct examination, Chase mentioned that she did not recall certain details from the Waldorf Shooting. In response, the State showed Chase statements from her February 8, 2017, interrogation to refresh her recollection. After reading and acknowledging her statement to the police, Chase stated that she was not sure of the accuracy of it because she "was in shock" during the police interview.

Subsequently, the State tried to include Chase's written statement to police from the

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> [APPELLANT'S ATTORNEY]: This is beyond what the ruling was. You are making this a central portion of your closing. I am going to move for a mistrial if you mention the Virginia shooting again. I'm talking about shooting at police.
>
> JUDGE BRAGUNIER: That already came out.
>
> SAO ATTORNEY SHAW: I mean, it shows identity and consciousness of...you know, I will just mention identity and consciousness of guilt, that's all. And I will move on.
>
> JUDGE BRAGUNIER: Overruled. Motion for mistrial denied.

After the objection was overruled, the State continued their closing as quoted above.

February 8, 2017, interrogation into evidence as an exhibit, but Appellant's counsel objected, and the Parties' attorneys approached the bench to discuss the objection. During the bench conference, the State and Appellant agreed that the State could ask Chase to read a part of the statement into the record as a past recollection recorded, but not introduce the written record into evidence as an exhibit. Afterwards, Chase testified that based on her prior written statement, she told the police that she saw Appellant with a gun in his hand; the security guard was trying to calm Appellant down; and she heard three gunshots fired.

During cross-examination, Appellant's counsel asked Chase about her interactions with the police officer during the recorded interrogation about the Waldorf Shooting. Specifically, Appellant's counsel asked whether the police officer told Chase that she was not a suspect in the Waldorf Shooting, and whether the officer told Chase she would be clearing her name by truthfully recounting the incident.

> **[APPELLANT'S ATTORNEY]:** In fact, you even told the police officer who was questioning you that you don't want to be in this thing?
> **[KENYATTA CHASE]:** Yes.
> **[APPELLANT'S ATTORNEY]:** And you also said, or excuse me, yes, and you also said that you wanted to clear your name?
> **[KENYATTA CHASE]:** Yes.
> **[APPELLANT'S ATTORNEY]:** And at that night, the police officer who was questioning you, he ever said, "Ma'am, no need to worry about that, you are not a suspect." He never said that, did he?
> **[STATE'S ATTORNEY]:** Objection.
> **[KENYATTA CHASE]:** No.
> **[JUDGE BRAGUNIER]:** Sustained.
> **[APPELLANT'S ATTORNEY]:** The detective said, "You can clear your name by telling the truth." Isn't it what he said?
> **[KENYATTA CHASE]:** Yes.
> **[STATE'S ATTORNEY]:** Objection, Your Honor.
> **[JUDGE BRAGUNIER]:** Okay, approach, please.

Following the State's objection, the State asserted during a bench conference that the question mischaracterized what the police officer said during the interrogation. In response, the circuit court suggested that the Appellant play two portions of the interrogation for clarity. The first clip included:

> **[POLICE OFFICER]:** Um—
> **[KENYATTA CHASE]:** I just don't want to be . . . like, I don't want to be in this thing.
> **[POLICE OFFICER]:** Well, you are in.

The subsequent clip included:

> **[POLICE OFFICER]:** Okay?
> **[KENYATTA CHASE]:** So like, like what am . . . like, how do I clear my name out of it? Like, you know what I am saying?
> **[POLICE OFFICER]:** You clear your name by telling us the truth.
> **[KENYATTA CHASE]:** Okay.

During redirect, the State asked three questions regarding Chase's state of mind following the incident and if she was arrested for the incident. The State's questions did not establish that Chase could not recall her prior statements, nor did they pertain to the details Chase discussed in the prior video clips regarding her claim that she felt pressured by the officer to make a statement. Subsequently, the State played longer portions of the video where Chase and the officer discussed details of the Waldorf Shooting that did not pertain to direct or cross-examination. Appellant's counsel objected to the State playing an extended video of Chase's interrogation. However, the court overruled the objection, stating that the longer portions of the video could supplement the Appellant's clips. Rather than addressing the inconsistencies in Chase's statements or countering the claims of coercion, portions of the additional video clips show Chase speculating on the Appellant's

state of mind and the intentions of his actions. These additional statements that Appellant objected to include:

> **[KENYATTA CHASE]**: . . . Ant [Appellant] still had a gun in his place . . . he still had a gun in his hand. And he just kinda nudged me, like, nudged me or something, like nudged me, like, either to turn around or do what you know, like, turn around.
> **[POLICE OFFICER]**: Don't try to, okay.
> **[KENYATTA CHASE]:** I didn't like, no, like he nudged me to be like, "Come on," like, you know what I'm saying?
> **[POLICE OFFICER]:** Okay.
> **[KENYATTA CHASE]:** Like nudged me like, you know, like, "Turn around so you don't see whatever I'm about to do," or whatever. And I didn't actually see him do anything.
> **[POLICE OFFICER]:** Okay?
> **[KENYATTA CHASE]:** But I know that, like, he had the, he had the gun in his hand like this. Like, you know what I'm saying, he had the gun in his hand like this.
> . . .
> **[KENYATTA CHASE]:** So, he like nudged me, and then you know, I turned around. I turned around and he started shooting, or whatever.

Neither party questioned Chase about this nudge outside of the testimony presented in the video. During their closing arguments, the State referred to and emphasized Chase's statements about the nudge and what she believed it implied.

Ultimately, the jury acquitted Appellant of first-degree murder and all charges pertaining to Appellant's alleged robbery of Perkins at Beer 4 U. However, the jury convicted Appellant of second-degree murder; attempted second-degree murder; two counts of using a firearm in a crime of violence; three counts of reckless endangerment; two counts of second-degree assault; and wearing, carrying, or transporting a handgun.

DISCUSSION

A. Parties' Contentions

Appellant contends that the circuit court made two reversible errors. First, Appellant

contends that the circuit court should not have allowed the State to repeatedly include and emphasize evidence from the Virginia Shooting because it is inadmissible pursuant to Maryland Rule 5-404(b). Appellant states that the Virginia Shooting evidence was not admissible to prove identity, nor was it admissible to prove consciousness of guilt. As such, Appellant contends that the Virginia Shooting evidence is inadmissible under Maryland law since the State failed to provide valid, non-propensity reasons for introducing the Virginia Shooting evidence.

Secondly, Appellant argues that the circuit court erred when it allowed the State to play the extended version of witness Kenyatta Chase's police interrogation during Chase's redirect examination because the State lacked the evidentiary basis to do so. Appellant contends that the State solely played the interrogation video to prove the truth of Chase's assertions that implicated Appellant in the Waldorf Shooting. Appellant further contends that the video constitutes hearsay, no hearsay exception applied, and the Rule of Completeness doctrine or "opening the door doctrine" did not apply. As a result, Appellant maintains that the circuit court made two reversible errors that require the court to reverse his convictions and conduct a new trial.

The State contends that the evidence from the Virginia Shooting was admissible because it demonstrated the shooter's identity and consciousness of guilt. Specifically, that Appellant used the same black and silver handgun during the Virginia Shooting as used in the Waldorf Shooting, which the State argues assists in establishing Appellant's identity as the shooter. Regarding the consciousness of guilt argument, the State contends that Appellant fled to Emporia, Virginia because he was aware that police obtained an arrest

warrant for the Waldorf Shooting, believed the officers came to the Virginia home to arrest him, and Appellant discharged his weapon to repel the arrest. The State contends this type of reaction is indicative of someone who knows they have committed a crime and is evading capture for their prior criminal conduct. In turn, the State believes that the circuit court did not err in admitting the Virginia Shooting evidence.

Regarding the police interrogation video, the State contends that the circuit court exercised proper discretion when allowing the State to play portions of Chase's interrogation because the portions played were relevant to show inconsistencies between her testimony at trial where she did not recall if she had seen Appellant with a gun, and statements made to the police four days after the Waldorf Shooting where she states she did see Appellant with a gun. In addition, the State sought to include the additional video clips to counter Appellant's assertion that Chase was pressured into making the statements in the police interrogation video.

B. Standard of Review

This Court uses an abuse of discretion standard of review "[w]hen the trial judge's ruling involves a weighing of both the probative value of a particular item of evidence, and of the danger of unfair prejudice that would result from the admission of that evidence." *Ruffin Hotel Corp. of Maryland, Inc. v. Gasper*, 418 Md. 594, 620 (2011) (internal quotations and brackets omitted) (citation omitted). A trial court abuses its discretion when its decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Alexis v. State*, 437 Md. 457, 478 (2014) (quoting *Gray v. State*, 388 Md. 366, 383 (2005)).

Additionally, "a trial court's rulings on the admissibility of evidence are reviewed for abuse of discretion." *Gordon v. State*, 431 Md. 527, 533 (2013). However, "[a] trial court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo*." *Paydar v. State*, 243 Md. App. 441, 452 (2019) (quoting *Bernadyn v. State*, 390 Md. 1, 8 (2005)). A trial court does not have discretion to admit irrelevant evidence. *State v. Simms*, 420 Md. 705, 724–25 (2011) ("Maryland Rule 5–402 . . . makes it clear that the trial court does not have discretion to admit irrelevant evidence . . . .") (quoting *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 620 (2011)).

C. Analysis

I. Whether the circuit court should have admitted the Virginia Shooting evidence as other crimes evidence to prove identity and consciousness of guilt.

During the trial, the State argued that the Virginia Shooting was admissible because Appellant's usage of the same gun in Virginia identified him as the shooter in the Waldorf Shooting. Further, the State contended that the Virginia Shooting evidence was admissible to prove Appellant's consciousness of guilt by showing Appellant fled after the Waldorf Shooting. Alternatively, Appellant contends that the Virginia Shooting evidence was not admissible to prove identity because identity was not at issue in the trial court case over who committed the Waldorf Shooting. Appellant also states that the circuit court erred in admitting the Virginia Shooting evidence to demonstrate Appellant's consciousness of guilt. We address each argument in turn.

A. Virginia Shooting Evidence and Identity Argument

According to the Maryland Rules of Evidence, "evidence of other crimes, wrongs, or other acts. . . is not admissible to prove the character of a person in order to show action in the conformity therewith." Md. Rule 5-404(b). "Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413." *Id.* Accordingly, courts have held that evidence of other crimes is admissible when such evidence tends to aid in identifying the accused as the person who committed the crime charged. *Mollar v. State*, 25 Md. App. 291, 293 (1975) (quoting 1 Wharton's Criminal Evidence, § 243).

In *Faulkner*, the Court further clarified the admissibility of "other crimes" evidence and its restrictions. *State v. Faulkner*, 314 Md. 630, 634 (1989). Generally, "evidence of a defendant's prior criminal acts may not be introduced to prove he is guilty of the offense for which he is on trial." *Id*. at 633 (quoting *Straughn v. State*, 297 Md. 329, 333 (1983)). Such evidence may predispose the jurors to believe the defendant is guilty and cause prejudice. *Id.* However, the court may admit the evidence of other crimes if it meets the requirements of the three-part *Faulkner* test. *Browne v. State*, 486 Md. 169, 190–93 (2023) (quoting *Faulkner*, 314 Md. at 634).

First, the court must determine whether the other criminal evidence is "substantially relevant to some contested issue in the case" and is "not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *Faulkner*, 314 Md. at 634. Even if the evidence is offered for the alternative purposes under Rule 5-404(b), it "should be subjected to rigid scrutiny by the courts." *Id*. at 634 (citing *Ross v. State*, 276

Md. 664, 671 (1976)). A trial court needs to determine that the issue "is genuinely contested in that case and that the evidence has more than a minimal bearing on the issue." *Browne*, 486 Md. at 192–93 (citations omitted).

Next, if the evidence is specially relevant, then the trial court must determine if the defendant's involvement in the other crime is established by clear and convincing evidence. *Oesby v. State*, 142 Md. App. 144, 164 (2002) (quoting *Solomon v. State*, 101 Md. App. 331, 338–39 (1994)). The trial judge must be persuaded "that the alleged crime did, indeed, take place before he allows evidence of it to come into evidence." *Id.* (quoting *Solomon*, 101 Md. App. at 338–39). The appellate court's only concern is if there was some basis that a rational fact-finding judge could determine that the "other crime" took place. *Id.* at 165.

Finally, the court must ensure that the probative value of the other crimes evidence is carefully weighed against any undue prejudice resulting from admission. *Solomon*, 101 Md. App. at 339. "Underlying this prong of the test is the concern that other crimes or bad acts evidence is generally more prejudicial than probative." *Browne*, 486 Md. at 193 (quoting *Streater v. State*, 352 Md. 800, 810 (1999)) (internal quotations omitted).

Turning to the identity exception under Rule 5-404(b), the Maryland Supreme Court has set out scenarios where that exception applies. *Emory v. State*, 101 Md. App. 585, 610–11 (1994) (quoting *Faulkner*, 314 Md. at 637–38). These include admitting evidence for "the defendant's identity. . . through a ballistics test" or "the defendant's prior theft of a gun, car or other object used in the offense on trial." *Id.* (quoting *Faulkner*, 314 Md. at

637–38). [5] Other crimes evidence may be admitted under the identity exception if the same object used in a current crime was used in another crime. *Simms v. State*, 39 Md. App. 658, 663–666 (1978). The other crimes evidence must be nearly identical in method as the current matter at hand for the court to apply the identity exception. *Emory*, 101 Md. App. at 611 (quoting C. McCormick, Evidence, § 190 at 559–560 (E. Cleary ed., 3d ed. 1984)). In other words, for other crimes evidence to be admitted under the identity exception, the evidence must be "so unusual and distinctive as to be like the signature." *Faulkner*, 314 Md. at 638–39 (quoting *McKnight v. State*, 280 Md. 604, 613 (1977)).

[5] The full list of identity purposes is:

> (a) the defendant's presence at the scene or locality of the crime on trial;
> (b) the defendant was a member of an organization whose purpose was to commit crimes similar to the one on trial;
> (c) the defendant's identity from a handwriting exemplar, "mug shot," or fingerprint record from a prior arrest, or his identity through a ballistics test;
> (d) the defendant's identity from a remark made by him;
> (e) the defendant's prior theft of a gun, car or other object used in the offense on trial;
> (f) that the defendant was found in possession of articles taken from the victim of the crime on trial;
> (g) that the defendant had on another occasion used the same alias or the same confederate as was used by the perpetrator of the present crime;
> (h) that a particular *modus operandi* used by the defendant on another occasion was used by the perpetrator of the crime on trial;
> (i) that on another occasion the defendant was wearing the clothing worn by or was using certain objects used by the perpetrator of the crime at the time it was committed; or
> (j) that the witness' view of the defendant at the other crime enable him to identify the defendant as the person who committed the crime on trial.

Emory v. State, 101 Md. App. 585, 610–11 (1994) (quoting *Faulkner*, 314 Md. at 637–38).

"When identity is in issue, as when a criminal defendant . . . , raises an alibi defense, proof of other crimes . . . committed by the defendant may be admitted." *Emory*, 101 Md. App. at 612 (citation omitted). As an example, in *Simms v. State*, the trial court allowed the State to introduce the gun and bullet evidence from the defendant's other crimes to characterize the defendant's identity and intent. 39 Md. App. at 661. The defendant denied involvement in the murder, assault, and rape of three different individuals. *Id.* at 660. At trial, he provided alibi witnesses and evidence others had access to the gun involved in the crimes, but admitted that the gun belonged to him. *Id.* at 661. The police located the gun after a search of the defendant's home. *Id.* at 660. Upon appeal, this Court concluded that the trial court rightfully admitted the other crimes evidence because ballistics testimony established that the same gun, which killed one victim and wounded another victim, also wounded the victim in *Simms*. *Id.* at 665. Additionally, the appellant had possession and owned the gun on the dates the crimes were committed. *Id.* In looking at the totality of the circumstances, we concluded that the other crime evidence, along with the victim positively identifying the appellant as the person who shot a prior victim, clearly supported the inference that appellant also shot the victim of the trial case. *Id.* Accordingly, we concluded that the evidence of the defendant's previous use of the firearm in the commission of a different crime was highly probative as to the defendant's identity in the *Simms* case and, therefore, was admissible. *Id.* at 666.

However, in instances where the defendant admits their identity and presence at the scene of the crime, the evidence of other crimes to prove identity may not be admitted because identity is not a genuinely contested issue. *Emory v. State*, 101 Md. App. 585, 612

(1994). In *Emory*, "the defense offered no alibi or a claim of misidentification or functional equivalent thereof" and therefore identity was not "genuinely contested" in the case, so the identity evidence was inadmissible. *Id.* Similarly, in *Tichnell v. State*, the defendant admitted his identify at the outset of trial, so the identity exception was inapplicable. 287 Md. 695, 713 n.5 (1980). Under the related signature crime exception in *Hurst v. State*, the Supreme Court of Maryland reasoned that "signature crime evidence is useful in identifying a defendant who claims that he was not the person who committed the crime," but only if that evidence is "so unusual and distinctive as to be like a signature." 400 Md. 397, 414 (2007) (quoting *Faulkner*, 314 Md. at 638). The Court reasoned that the State was unable to apply the identity exception to admit the other crime evidence because identification was not a contested issue, since the defendant's only defense was consent. *Id.* The Court further went on to distinguish the two events, stating that the events did not occur in the same location or in the same type of community, making the two events not sufficiently similar to satisfy the identity exception. *Id.* at 415.[6]

[6] The State also offers *Wilkerson v. State*, 139 Md. App. 557 (2001), where the trial court admitted a handgun that was used in another criminal act, eight days apart, as evidence to identify the defendant. *Id.* at 572. However, we find *Wilkerson* is inapplicable to this case and apply the reasoning in cases such as *Hurst*. The State's argument fails because the scenario surrounding the Waldorf Shooting greatly differs from the Virginia Shooting. In *Wilkerson*, we held that the trial court's determination under the standard for Rule 5-404(b) was proper. 139 Md. App. at 572. Particularly, we reasoned that because the appellant possessed the same weapon during a robbery on March 13th as they did in a robbery on March 5th, and under similar circumstances, the trial court rightfully admitted the other crime evidence. *Id.* at 572.

As the court notes in *Hurst*, the scenarios surrounding the other crime evidence must be sufficiently similar to satisfy the identity exception, that the evidence is "so unusual and distinctive as to be like a signature." 400 Md. at 414. In applying the facts to this case, we

Like in *Simms*, the Appellant used the same gun in two distinct instances. Accordingly, the State argues that because the same weapon was used in both instances, evidence from the Virginia Shooting should rightfully be admitted as evidence under the identity exception to link Appellant to the earlier Waldorf Shooting. Further, the trial court and the State mention that because the Virginia Shooting occurred eight days after the Waldorf Shooting, the Virginia Shooting evidence is highly relevant and thus was rightfully admitted as evidence.

However, this case differs from *Simms* because Appellant did not deny involvement in the two incidents. In fact, Appellant admitted that he fired a handgun at a crowd outside of Beer 4 U after his altercation with Perkins. Any dispute over identity was limited to the altercation in the Beer 4 U bathroom, a dispute that does not have bearing on who the

do not believe that the Virginia Shooting should have been admitted into evidence because Appellant's actions were not "so nearly in method as to earmark them as the handiwork of the accused"; nor were they "so unusual and distinctive as to be like the signature," as mentioned in *State v. Jones*. 284 Md. 232, 240 (1979) (quoting *McKnight v. State*, 280 Md. 604, 613 (1977); *see also* McCormick on Evidence, § 190.3 (Robert P. Mosteller ed., 8th ed. 2022)).

However, here, the circumstances surrounding the Virginia Shooting and Waldorf Shooting are vastly different in nature and in character to be admitted under the identity exception. In the Waldorf Shooting, Appellant shot his gun openly at a sea of people shortly after engaging in a bar dispute with Beer 4 U's DJ. In the Virginia Shooting, Appellant shot at a police officer in a different community following a standoff with police. Neither instance is similar in nature, unlike in *Wilkerson*, where the defendant used the same handgun to conduct similar robberies. Although both shootings are similar in that they show the Appellant's tendency to impulsively use excessive force in instances he feels threatened, this reaction speaks more to the character of the Appellant than it does provide evidence of a unique "signature" that helps identify the Appellant. As such, admitting evidence from the Virginia Shooting, where Appellant's identity is not at issue and where the scenarios greatly differed, carried a high risk of undue prejudice through the introduction of character evidence.

shooter was in either shooting. Although it could be argued that Appellant's use of the same gun in the Virginia Shooting may constitute as signature crime evidence, the trial court should not have admitted the Virginia Shooting into evidence because Appellant's identification was not a contested issue, as the Supreme Court of Maryland likewise outlines in *Hurst*. As a result, the State is unable to meet the requirements for admission under the first part of the *Faulkner* test.[7]

Accordingly, we hold that identity would not be a proper purpose for the admission of the Virginia Shooting evidence because Appellant's identity was not at issue in the case as it relates to who fired the gun in the Waldorf Shooting. Therefore, the trial court abused its discretion by allowing the evidence of the Virginia Shooting to be entered for this purpose. We turn now to the alternative purpose argued by the State.

B. Virginia Shooting and Consciousness of Guilt Argument

The State argues that the trial court properly admitted the Virginia Shooting evidence because it was admissible to prove Appellant's consciousness of guilt for the Waldorf Shooting. Particularly, the State argues that Appellant fled to Emporia, Virginia to escape the jurisdiction after the Waldorf Shooting. However, Appellant argues that by introducing the Virginia Shooting details into evidence, the State went far beyond the facts

[7] While we hold that the evidence does not meet the first part of the *Faulkner* test, the extent of the evidence entered also fails under the third prong, that the probative value must be carefully weighed against any undue prejudice resulting from admission. *Solomon*, 101 Md. App. at 339. As we discuss in more detail related to the consciousness of guilt below, the extent of evidence offered related to the Virginia Shooting went beyond the evidence needed to establish the Appellant's identity. Calling multiple witnesses, offering bloody clothes into evidence, and characterizing the violent nature of the event were prejudicial when the Virginia Shooting was not the crime at issue in this case.

that might have been permissible to prove consciousness of guilt.

As mentioned above, "evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith." Md. Rule 5-404(b). However, courts have held that evidence of other criminal conduct that tends to show consciousness of guilt constitutes an exception to the "other crimes" rule. *State v. Edison*, 318 Md. 541, 548 (1990). As such, trial courts have the discretion to admit "other crimes" evidence to show consciousness of guilt. *Copeland v. State*, 196 Md. App. 309, 316 (2010). However, the trial court must ensure that the other crimes evidence is not unduly prejudicial. *Id.* (citing *Hunt v. State*, 321 Md. 387, 425–26 (1990)). Therefore, if potential jury hostility or unfair prejudice exceeds the probative value of other crimes evidence, then admitting such evidence constitutes the trial court's abuse of discretion. *Id.* (citing *Hunt*, 321 Md. at 425); *Faulkner*, 314 Md. at 635 (referencing undue prejudice as the final step in the analysis). "[E]vidence of flight following a crime has generally been held admissible to show consciousness of guilt" in Maryland. *Edison*, 318 Md. at 549 (quoting *Bedford v. State*, 317 Md. 659, 664 (1989)).

The State contends that the trial court properly admitted evidence from the Virginia Shooting to show consciousness of guilt. However, in applying the reasoning from *Edison* and *Copeland*, the trial court abused its discretion when admitting the Virginia Shooting evidence. In *Edison*, the Supreme Court of Maryland held that the trial court erred in admitting evidence of the defendant's attempt to shoot an officer who tried to arrest him. 318 Md. at 562. The Court stated that although admission of the defendant's attempt to flee the officer would be admissible to show consciousness of guilt, the details of attempting to

murder the officer "would lend little, if anything, to the establishment of the corpus delicti of the murder . . . or of the criminal agency of Edison in those crimes." *Id.* at 562. The Court reasoned that "the details of the attempted murder would by far be too prejudicial for the slight additional probative value it would give. . . . Such evidence would reach beyond a showing of consciousness of guilt indicated by the flight." *Id*. at 562–63.

Here, like in *Edison*, Appellant shot at a police officer following a prior crime. However, in applying the Supreme Court of Maryland's reasoning in *Edison*, the trial court should not have admitted such evidence to demonstrate consciousness of guilt because "the *details* of the attempted murder would by far be too prejudicial for the slight additional probative value it would give" and "such *evidence would reach beyond* a showing of consciousness of guilt indicated by the flight." *Id*. at 562–63 (emphasis added). As such, the evidence from the Virginia Shooting that discusses *how* Appellant shot at an officer is harmful and violates Md. Rule 5-404(b) because it allows the jury to assume the Appellant's character as a person who has the propensity to use excessive force and unlawfully discharge a firearm when he feels threatened, which goes beyond just the permitted purpose of consciousness of guilt. The circuit court may have admitted information about Appellant traveling to Emporia, Virginia, or brief generalized statements that he resisted arrest to support a potential consciousness of guilt argument.[8] However,

[8] Generalized statements would have allowed the State to counter Appellant's self-defense argument by suggesting a reasonable person would not have resisted arrest if they had thought their alleged prior criminal conduct was a reasonable use of self-defense. This would have allowed the jury to consider the Appellant's alleged guilt without the introduction of highly charged character evidence.

the Appellee exceeded this scope by not just admitting testimony that the Appellant travelled to Virginia, but instead used phrases like Appellant had "guns blazing" toward police officers, offered testimony from multiple officers who were present at the Virginia Shooting, and introduced bloody clothing from the Virginia Shooting. Phrases like "guns blazing" within the closing argument exceeded the consciousness of guilt argument and instead presented highly charged character evidence to the jury.

This Court provides an example of when it is admissible for the trial court to include other crime evidence in *Copeland v. State*. 196 Md. App. 309, 316–17 (2010). Particularly, *Copeland* identifies when the probative value of the other crime evidence outweighs the prejudicial effects, and thus may be admitted into evidence. *Id.* In *Copeland*, the appellant contended that the trial court erred in allowing the State to present evidence of threats made by the appellant against the victim and her family, after his initial offenses, to deter the victim from testifying on behalf of the State. *Id*. at 311. However, we held that the admission of Copeland's subsequent threats was not more prejudicial than probative because "evidence of the threats carried great weight with the jurors in deciding whether Appellant had intimidated her on the day of the charged offense." *Id*. at 317. In sum, we held that the trial court properly applied the *Faulkner* balancing test and properly balanced the probative and prejudicial value of the evidence. *Id.*

As seen with our reasoning in *Copeland*, for the probative value of other crimes evidence to exceed its prejudicial effect, the evidence must carry great weight with the jurors in deciding the matter. Here, the scope and nature of the evidence presented regarding the Virginia Shooting does not assist jurors in determining aspects of the Waldorf

Shooting that were in question. The trial court already identified Appellant as the shooter, since as we discussed above identity was not in dispute. Instead, the admission of the Virginia Shooting fails to satisfy the prejudicial balancing test outlined in *Faulkner*, *Edison*, and *Copeland* by including highly charged character evidence multiple times throughout the trial. As such, the trial court abused its discretion in admitting the Virginia Shooting to demonstrate consciousness of guilt because the extent of the evidence admitted in the trial caused Appellant undue prejudice.

In sum, the circuit court made a reversible error by allowing the State, who failed to establish a valid purpose for the Virginia Shooting, to include the incident into evidence.

The admission of this evidence also did not constitute harmless error. We will not reverse a lower court's judgment if the error was harmless. *Flores v. Bell*, 398 Md. 27, 33 (2007). An 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." *Dorsey v. State*, 276 Md. 638, 659. Here, the Virginia Shooting was heavily emphasized in the State's case, through three witnesses testifying to the details of the shooting and entering evidence related to it, including bloody clothing. In closing arguments, the State used this evidence to characterize how the Appellant came out in the Virginia Shooting "guns blazing" and how he "fired on the police." The danger of admitting these prior bad acts is that "jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted." *Hurst*, 400 Md. at 418 (quoting *Harris v. State*, 324 Md. 490, 496 (1991)). We cannot declare, beyond a reasonable doubt, that the evidence and characterizations of the Virginia Shooting in no

way influenced the convictions of the Appellant. As a result, the error was not harmless.

II. Whether the trial court properly exercised discretion in allowing the State to play Kenyatta Chase's police interrogation video.

Appellant argues that the trial court should not have allowed the State to play the video recording of Kenyatta Chase's police interview during Chase's redirect examination because the State lacked the evidentiary basis to do so. Appellant argues that the State played the video to prove the truth of the matter asserted, which constitutes hearsay, and no hearsay exception applied. Appellant also states that the video was not admissible under the Rule of Completeness, nor as a prior inconsistent statement. In contrast, the State contends that the trial court rightfully admitted the evidence from Chase's police interrogation under the Rule of Completeness because it related to the subject matter.[9]

The doctrine of completeness permits a witness's additional statement to be

[9]The State in their brief argued that this issue was not properly preserved because the sole objection at the trial was beyond the scope of cross-examination. The objection made at trial was "Your Honor, I am going to object to this. We don't believe this is going to be relevant to the scope of the cross, it's not related to the scope of the cross." However, the State and the judge then discussed the admissibility of the video as it related to the rule of completeness. The State argued, "Your Honor, [Appellant] doesn't get to have it both ways. [Appellant] doesn't get to play her clips, which are, you know, five seconds each, and not get to play the clip of the gun, of the victim, with the witness actually talking about the gun. This is absolutely relevant to the matter." Judge Bragunier then responded and said "I am going to allow you to supplement. These comments directly relate to the applicability of the Rule of Completeness."

"The broader principle underlying our preservation decisions focuses on whether the party objecting on appeal gave the circuit court a proper opportunity to avoid or resolve errors during the trial, not on hyper-technicalities." *Smith v. State*, 218 Md. App. 689, 702 (2014). Here, the State and trial judge took it upon themselves to rule on the Doctrine of Completeness and Judge Bragunier ruled that the recording was admissible based on that Doctrine. As we discuss below, the admission was in error and it was properly preserved by the Appellant's objection to the playing of the recording.

admitted into evidence to provide context to other evidence. *Conyers v. State*, 345 Md. 525, 542 (1997). Maryland's doctrine of verbal completeness is partially codified in Maryland Rule 5-106, which states:

> When part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Md. Rule 5-106; *see also Conyers*, 345 Md. at 540–41. As the Supreme Court of Maryland outlines, Maryland Rule 5-106 does not change the requirements for admissibility under the common law doctrine or allow the admission of otherwise inadmissible evidence, "except to the extent that it is necessary, in fairness, to explain what the opposing party has elicited." *Conyers*, 345 Md. at 541 (citing Md. Rule 5-106, Committee Note). In those instances, such evidence is offered merely to explain previously admitted evidence and not as substantive proof and a limiting instruction would be appropriate. *Id.* (citing Md. Rule 5-106, Committee Note). Relatedly, the doctrine of verbal completeness does not allow evidence that is otherwise inadmissible as hearsay to become admissible solely because it's a part of a single writing or conversation. *Id.* at 545 (citing McCormick on Evidence, § 56 (John W. Strong ed., 4th ed. 1991)).

In *Newman v. State*, we addressed similar arguments to this case. 65 Md. App. 85 (1985). There, the State attempted to admit a witness's prior pre-trial testimony into evidence to refresh a witness's recollection under the doctrine of verbal completeness. *Id.* at 94. However, we reasoned that because the State did not initially raise an issue regarding the witness's recollection or an issue regarding the accuracy of the witness's statement, the

State lacked a proper basis to admit the witness's prior statement into evidence without prejudice. *Id.* Further, we reasoned that the witness's pre-trial statement was not admissible because it could be used as substantive evidence, which could result in jury prejudice against the defendant. *Id.* at 95. Next, we reasoned that because the witness's prior statements did not refer to the same subject matter contested, but instead included additional incriminating information, it could not be admitted under the doctrine of verbal completeness. *Id.* at 97. Particularly, "rather than explaining and shedding light on the victim's denial of having babysat at appellant's home on New Year's Eve, it merely contains the details of the alleged rape and other occurrences which the victim claimed happened on other occasions." *Id.* As such, we held that the trial court should not have allowed that portion of the statement to be admitted into evidence. *Id.*

Similarly, here, the State attempts to use the Rule of Completeness to include portions of Chase's police interrogation video. However, the State did not play portions of Chase's interrogation to refresh the witness's memory or to check the accuracy of Chase's statement. Instead, the circuit court first asked the Appellant to play two short portions of the video after the State objected and said that the Appellant was mischaracterizing allegedly coercive language used by the detective during the interrogation. The defense then played those two portions of the video and moved on with the cross examination. The State followed this with portions of Chase's interrogation interview that differed from the subject matter or purpose requested.

The portions displayed included substantive evidence about Appellant's state of mind prior to the shooting, not previously introduced, that could be interpreted to prove the

truth of the matter asserted. Specifically, the video clips included statements that the Appellant nudged her as what she believed to be an indication to look away before he shot into the crowd, which did not focus on the investigator's alleged coercion, as requested. During their closing arguments, the State emphasized Chase's statements from the video about the nudge and what she believed it implied, using those statements for the truth of the matter asserted.[10] These statements were in evidence only because the video was played, not because Chase testified to them in court. These statements became central to the State's showing of the premeditation needed for a conviction of first-degree murder. Therefore, and as we similarly reasoned in *Newman*, Chase's prior statements within the interrogation are hearsay that should not have been admitted because they contained substantive evidence that was not previously introduced during trial and differed from the contested subject matter.

[10] The first reference in closing was:

> And this is a very important factor that I want you to remember, and it goes to those three words that I was talking about before, first-degree murder. She mentioned in that clip that the defendant like nudged her at one point, nudged her, almost as if to turn around, don't look at what I am about to do. And then the shots rang off.

Then when later discussing the elements of first-degree murder, the State said:

> And it was premeditated. When Ms. Kenyetta Chase was up here, ladies and gentlemen, and we read her statement into the record, and we watched that video of her being interviewed by the detectives, remember, she said that the defendant nudged her. Almost like, "Turn around, don't look at what I am going to do." That's how she took it.

Additionally, in *Newman*, we held that although the trial court erred by admitting the statement, the error was not harmless beyond a reasonable doubt because the witness's prior statement was cumulative of the victim's trial testimony and, thus, was already discussed in part. *Newman*, 65 Md. App. at 97. Further, we reasoned that the pre-trial statement evidence was not "substantially relevant for some other purpose than to show a probability that [the appellant] committed the crime on trial because he is a man of criminal character." *Id.* at 97–98 (quoting *Ross v.* State, 276 Md. 664 (1976)).

Here, although the State's portion of the police interrogation video contained substantive evidence, the portions of Chase's interrogation video presented did not contain information substantially relevant enough for some other purpose. The admission of these statements was not harmless because similar evidence about the nudge was not previously admitted into evidence. We do not find beyond a reasonable doubt that the nudge and the arguments related to the Appellant's state of mind did not contribute to the Appellant's guilty verdicts.

Notably, Appellant highlights that the circuit court did not abide by Rule 5-106, Committee Note, which states that when a court admits otherwise inadmissible evidence based on the Rule of Completeness, it must give a "limiting instruction that the evidence was admitted not as substantive proof but as explanatory of the other evidence." In the present case, no limiting instruction was given.

In sum, the circuit court committed a reversible error by allowing the State to admit portions of Chase's police interrogation video because the circuit court failed to establish a proper basis for admitting the hearsay evidence and failed to cure its introduction by

providing a limiting instruction.

CONCLUSION

Accordingly, we hold that the circuit court improperly admitted evidence of the Virginia Shooting because Appellant's identity was not at issue, and because including details of a subsequent attempt to shoot a police officer is far too prejudicial to demonstrate Appellant's consciousness of guilt. Further, we hold that the circuit court committed a reversible error by allowing the State to admit portions of Chase's police interrogation video because the circuit court failed to establish a proper basis for admitting the hearsay evidence and failed to provide a limiting instruction following its introduction.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR CHARLES COUNTY FOR A NEW TRIAL; COSTS TO BE PAID BY CHARLES COUNTY.

Judge Graeff concurs in judgment only.