Circuit Court for Baltimore City
Case No. 121286027

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2030

September Term, 2022

JERMAINE DAVIS

v.

STATE OF MARYLAND

Tang,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: January 10, 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).

Following the non-fatal shooting of Chelton Harland, a jury in the Circuit Court for Baltimore City found Jermaine Davis, Appellant, guilty of attempted second-degree murder, use of a firearm in the commission of a felony or crime of violence, possession of a regulated firearm after a disqualifying conviction, and possession of a handgun in connection with a crime against a person within 100 yards of a park, church, school, public building or other place of public assembly in Baltimore City. The court sentenced Mr. Davis to a total term of forty-six years of incarceration.[1]

Mr. Davis presents three questions for our review:

1. Did the lower court abuse its discretion in admitting a CityWatch video which the State failed to authenticate?
2. Did the lower court abuse its discretion in admitting consciousness-of-guilt evidence?
3. Did the lower court abuse its discretion in denying Mr. Davis's request to postpone trial?[2]

For the reasons that follow, we will affirm the judgments of the circuit court.

BACKGROUND

On August 2, 2021, members of the Baltimore City Police Department responded to a shooting in front of Tameka Feaster's house. There, police observed that Mr. Harland

[1] Mr. Davis was sentenced as follows: twenty-five years for second-degree attempted murder, ten years for use of a firearm in the commission of a felony or crime of violence, ten years for possession of a regulated firearm after a disqualifying conviction, and one year (plus a $1,000 fine) for possession of a handgun in connection with a crime against a person within 100 yards of a park, church, school, public building or other place of public assembly in Baltimore City. The court ruled that "[a]ll of those sentences are to be served consecutively and none of it is suspended."

[2] We rephrase Mr. Davis's arguments only to clarify the standards of review applicable to these decisions of the circuit court. We discuss these standards below.

suffered non-fatal gunshot wounds to his legs. Mr. Harland is Ms. Feaster's cousin. Mr. Harland was uncooperative with the police investigation and did not testify at trial. A warrant for Mr. Davis's arrest was issued the day after the shooting.

Ms. Feaster testified as follows. Mr. Davis was her "ex-boyfriend[,]" and they dated for "[f]ourteen years, on and off." On the day of the shooting, "Mr. Davis and [Ms. Feaster's] family went out to the National Aquarium." Later that day, Ms. Feaster and Mr. Davis got into an argument, and Mr. Davis left Ms. Feaster's house around 7:30 p.m. About two hours later, Mr. Davis returned to Ms. Feaster's house. There, Mr. Davis argued with Mr. Harland. That argument stemmed from "a money dispute about [fifteen] dollars." At that point, Ms. Feaster "asked Mr. Davis to leave, which he did."

Ten minutes later, Ms. Feaster, her son, and Mr. Harland exited the house. Ms. Feaster testified as follows about what happened next:

> I seen the muzzle and a bang come across the bush in front of my house. Once I seen the muzzle and the bang, I proceeded to grab my child and turn around to push him through the door. Second shot, third shot, fourth shot, fifth shot. At this point, ears are ringing, I turned around, my cousin is falling on me, blood is all over me. Nothing I can do at this point.
>
> I don't see nobody. I just see fire. That's it. That's all. Just trying to protect the safety of my kid, my home and my self [sic] at this point.

When the State asked Ms. Feaster where Mr. Davis was at the time of the shooting, she first testified that Mr. Davis "had left ten minutes prior to the situation." Ms. Feaster also initially denied telling the police who shot Mr. Harland.

Then, the court held a recess to determine whether Ms. Feaster's recorded statements to police could be admitted as substantive evidence. After the recess, Ms. Feaster testified that she saw Mr. Davis shoot Mr. Harland:

[THE STATE]:	Ms. Feaster, I'm going to circle back to something we talked about earlier. Can you tell the jurors who, if anyone, did you tell the police shot your cousin?
[MS. FEASTER]:	Jermaine.
[THE STATE]:	Could you speak up, please?
[MS. FEASTER]:	Jermaine.
[THE STATE]:	And when you told the police that it was Jermaine, who were you referring to, the defendant?
[MS. FEASTER]:	The defendant to my right.
[THE STATE]:	Okay. And when you told the police that Jermaine is the one who shot your cousin, can you tell us what specifically you saw? What did you see Jermaine do?
[MS. FEASTER]:	I seen Jermaine grip the handle of a gun that was right beside of a bookcase, a black bookcase that was unzippered concealing the weapon. He ran up onto my porch, past this bush and that's when I seen the bang.
[THE STATE]:	And by the bang, you mean the gunshots?
[MS. FEASTER]:	Yes.
[THE STATE]:	And who was the defendant shooting at, for the record?
[MS. FEASTER]:	Per se, I want to say my cousin.
[THE STATE]:	And what happened to your cousin when the defendant starting shooting?
[MS. FEASTER]:	He was shot in his groin, once in his hip, once in his lower, what, right leg? At that point, he fell on top of me and, like I said, shots just continued to go off.
[THE STATE]:	And after the defendant shot your cousin, did you see where he went?
[MS. FEASTER]:	He went to the right -- towards the park, Braddish Avenue.

Additional facts will be included as they become relevant to the issues.

DISCUSSION

I. The trial court did not abuse its discretion in admitting the CityWatch surveillance video.

A. Parties' Contentions

Mr. Davis argues that the trial court erred in admitting a portion of a "CityWatch" video that depicted the shooting before Detective Mitchell Ramsey arrived on scene. According to Mr. Davis, because Detective Ramsey did not have first-hand knowledge of what occurred prior to his arrival, he could not authenticate the pre-arrival portion of the video. Mr. Davis does not dispute that the "video is what is maintained in the CityWatch camera system." Instead, citing Maryland Rule 5-901(b)(9),[3] and *Washington v. State*, 406 Md. 642, 653 (2008),[4] Mr. Davis questions whether the video

" . . . is an accurate presentation of the events it purports to depict." He argues that the

[3] Rule 5-901(b)(9), "*Process or System*," is one example of the kind of evidence that may be used for authentication. It provides that a proffered exhibit or testimony may be authenticated based on "[e]vidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result." Md. Rule 5-901(b)(9).

[4] This appeal was submitted on brief in December 2023. Then the appeal was stayed in May 2024, pending the Supreme Court's decision in *Mooney v. State*, 487 Md. 701 (2024). The Supreme Court issued its opinion in *Mooney* in August 2024. Complying with the stay order, Mr. Davis and the State then "apprise[d] this Court of their positions in light of the Supreme Court's decision" in *Mooney*. Mr. Davis claims that reversal is still required under *Mooney*, and the State argues that *Mooney* supports affirmance.

State, as the proponent of the video, did nothing to show the process by which the video was made, its quality, or that it was generally reliable.

The State counters that the court properly exercised its discretion by determining that the video was sufficiently authenticated. According to the State, the video was authenticated in several ways: as a self-authenticating public record, through the testimony of Detective Ramsey, and through the testimony of Ms. Feaster.

B. The CityWatch Video

At trial, Detective Ramsey was the State's first witness. Detective Ramsey was among the first officers to arrive on scene after the shooting, and he testified about what he observed:

> I observed an individual lying on the ground on the sidewalk and two other people huddled around, obviously trying to hold and support this individual. As soon as I exited the vehicle, there was a large amount of blood that this individual had already lost. Once we, myself and a few other officers had gotten in close proximity, we began the process of just medically evaluating this individual to see exactly where they were struck by what we believed to be gunfire. Quickly we located . . . the gunshot wounds, specifically to the thigh region and approximately, I believe, around the knee region on the opposite leg. Just based on the level of blood that had already been lost, we began life-saving measures to try to attempt to save this individual's life.

Detective Ramsey testified that there was a law enforcement surveillance camera near the location of the shooting:

[THE STATE]:	Now, let me ask you, this area, are you aware of whether or not there are any law enforcement cameras in that area?
[DET. RAMSEY]:	Yes, there are.
[THE STATE]:	Where is there a camera near to that location that we observed the 2500 block of Edmondson Avenue?

[DET. RAMSEY]: Immediately west of that location at the intersection of Edmondson Avenue and Braddish Avenue.

[THE STATE]: Okay. And have you ever reviewed any CityWatch camera footage that was taken and recorded from that camera on the night of August 2, 2021 at that location at around 9:30 p.m.?

[DET. RAMSEY]: Yes, I have.

[THE STATE]: And let me ask you this, are you in the footage that you observed from that location?

[DET. RAMSEY]: I am.

[THE STATE]: And is it a fair and accurate recording?

[DET. RAMSEY]: It is.

At that point, Mr. Davis's counsel objected. During the bench conference that followed, defense counsel argued: "[Detective Ramsey] only appears in a small portion towards the end of the camera footage[,]" and therefore "[Detective Ramsey] could not possibly testify to the events that he's pictured in the camera, he didn't actually see them." Defense counsel objected to the portion of the video that did not depict Detective Ramsey, "unless we get to the evidentiary foundations that are required by [*Washington v. State*, 406 Md. 642 (2008)] and [*Jackson v. State*, 460 Md. 107 (2018)]."

The State countered by arguing as follows:

> . . . I'm also moving in a certification of that videotape as being a public record certification. This is taken from the CityWatch camera system. The certification states that these are records that were created at or near the time of the occurrence and the matters set forth that they are records that were made in the ordinary course of regular business activity, that it's a regular activity to keep those records, that there are no circumstances to indicate the law [sic] of trustworthiness of them and that they're kept and maintained in the ordinary regular course of procedures. It's certified by the CityWatch operator who recorded it but also more to the point, it's a continuous video, that the officer is in it, and the fact that it is a continuous rotating camera

> video, certainly permits the inference that the entire thing is fair and accurate if the entire latter part of it is fair and accurate.

The certification accompanying the video contained the following affirmations:

1. That the records were created at or near the time of the occurrence of the matters set forth by (or from information transmitted by) a person with knowledge of those matters;
2. That the records were made and kept in the course of regularly conducted business activity;
3. That it is the regular practice of this business to keep the records as these were kept;
4. That there are no circumstances that would otherwise indicate that the records lack trustworthiness; and
5. That the records were properly kept and maintained in accordance with the regular procedures of this business.

The prosecutor then proffered: "I'm only going to play a portion of [the CityWatch video] because Ms. Feaster will testify to some of the remaining portion, I think it's more relevant to put it through the detective than through her, but I'm just offering it into evidence through him to play a portion of [the video]."

When the State first moved the CityWatch video and the accompanying certification into evidence, the court sustained defense counsel's objection and ruled that additional foundation was required. The State then asked Detective Ramsey additional questions about the authenticity of the video:

[THE STATE]:	And just to ask you regarding this footage, you've had a chance to review it; correct?
[DET. RAMSEY]:	Yes.
[THE STATE]:	Tell me something, with regard to CityWatch cameras, how do they record from your knowledge, not in terms of like the mechanics of it but just -- how -- what does the camera do, does

it stay in a fixed spot or does it turn around, how does it -- what does it actually record?

[DET. RAMSEY]: It doesn't stay in a fixed spot, it's on an automatic pan and there's assigned operators in a unit that actually physically operate the cameras.

[THE STATE]: When it's rotating, is it sort of off or is it always recording or how does it work in that sense?

[DET. RAMSEY]: No, it's always recording.

[THE STATE]: And so in this footage, are there any parts that are there before you arrive on scene? In other words, is the camera still rolling at all times before and after you were there?

[DET. RAMSEY]: Yes.

[THE STATE]: Okay. And in terms of where it's looking, is it always looking in the same location, namely the part where you're in it or does it continue to rotate?

[DET. RAMSEY]: No, it continues to rotate on an auto-pan.

Then, over defense counsel's objection, the court admitted a copy of the CityWatch video and the accompanying business record certification. Detective Ramsey testified that the CityWatch footage included events that were also captured on his body-worn camera footage:

[THE STATE]: What are we looking at here, if you can tell us?

[DET. RAMSEY]: The crime scene to the left where the victim is just on the steps in the 2500 block of Edmondson.

[THE STATE]: And in this scene here, I guess, did we see this already but from a different angle?

[DET. RAMSEY]: Yeah, probably, my body worn camera.

[THE STATE]: Okay. So just so I'm clear, well, you're saying the lower left so if we're just here marking it, it's seven minutes and [forty-seven seconds] in,

pointing out the lower left corner here, what is -- who are these folks here in relation to what we saw earlier? Just to get our bearings?

[DET. RAMSEY]: Myself and the other officers that responded while rendering aide.

[THE STATE]: Okay. And arriving on scene also is what?

[DET. RAMSEY]: The Baltimore City fire truck.

[THE STATE]: Okay. Now, again actually for now, I'm not going to ask you anymore questions about this video, that will be for somebody else. Let me take it off the screen.

Later at trial, Ms. Feaster testified about the events shown on the CityWatch footage:

[THE STATE]: Okay. So I know it was a little bit [of] distance there as you were looking in small, but if I go back then to [the CityWatch video] and kind of have it zoomed in here, as we're approaching the eight-minute mark --

[MS. FEASTER]: That's me and [Mr. Davis] fussing.

[THE STATE]: Okay. And I want to come back around now to almost approaching the ten-minute mark. I'm going to pause it here for just a moment, back up slightly.

And as we come here to 9:52, do you recognize any of the people in that moment?

[MS. FEASTER]: That's my cousin on the ground, that's [Mr. Davis] shooting.

. . .

[THE STATE]: Okay. And what, if anything, is the defendant holding there in that moment? What was he holding in his hands?

[MS. FEASTER]: A gun.

C. Analysis

"An appellate court reviews for abuse of discretion a trial court's determination as to whether an exhibit was properly authenticated." *Mooney v. State*, 487 Md. 701, 717 (2024). *Accord Sykes v. State*, 253 Md. App. 78, 90 (2021). "Pursuant to Maryland Rule 5-901(a), authentication of evidence . . . is a condition precedent to its admissibility, and the condition is satisfied where there is sufficient evidence 'to support a finding that the matter in question is what its proponent claims.'" *Sykes*, 253 Md. App. at 91 (quoting Md. Rule 5-901(a)). Ultimately, "[w]hat matters is that the proponent of the video must demonstrate that the evidence is sufficient for a reasonable juror to find by a preponderance of the evidence that the video is what it is claimed to be." *Mooney*, 487 Md. at 730.

"Video footage can be authenticated in different ways under the rules governing authentication, including through the testimony of a witness with knowledge under Maryland Rule 5-901(b)(1), circumstantial evidence under Maryland Rule 5-901(b)(4), or a combination of both[.]" *Mooney*, 487 Md. at 730. *Cf. Jackson*, 460 Md. at 116 (noting that the threshold for authentication is "slight").[5] "There need not be a witness with

[5] The State argues in the alternative that the trial court properly admitted the CityWatch video as a self-authenticating certified public record. We disagree.

Although the State said it was "moving in a certification of [the CityWatch video] as being a public record certification[,]" the foundational elements offered by the State were not those of a certified public record. *See* Md. Rule 5-902(4) (permitting self-authentication of "[a] copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office" that has been certified, by an authorized person or custodian, through a Rule- or statute-compliant certificate.)

personal knowledge of every single event depicted in a video for the video to be authenticated." *Mooney*, 487 Md. at 730.

Here, the CityWatch video was authenticated based on a combination of testimony from those with personal knowledge that it was what it purported to be and circumstantial evidence tending to show the same. Detective Ramsey testified that he had reviewed the footage and was depicted in it. He testified that the footage represented a "fair and accurate recording[.]" Additionally, and although Detective Ramsey was not present for the entirety of the events depicted in the video, he testified (also from personal knowledge) about the location of the shooting and events thereafter, all of which was captured on the video. This testimony was additional evidence, albeit circumstantial, that the video was what it purported to be. Under these circumstances, there was sufficient evidence for a reasonable juror to find in favor of authentication. *Mooney*, 487 Md. at 708–09 (holding that video evidence "was properly authenticated through a combination of the testimony of a witness with knowledge under Maryland Rule 5-901(b)(1) and circumstantial evidence under Maryland Rule 5-901(b)(4)").

Moreover, after Detective Ramsey testified, Ms. Feaster testified from personal knowledge about the events depicted on the video that occurred before Detective Ramsey

Instead, the State's foundation more nearly (but not perfectly) satisfied that required for a certified business record under Md. Rules 5-902(12) and 5-803(b)(6). What was missing from the State's foundation was an indication that the State had notified the defense of its intent to offer the video as a certified business record, as Md. Rule 5-902(12) requires.

arrived on scene. She testified that she was depicted in the video. She testified that the video depicted Mr. Davis shooting Mr. Harland. The State argues that "[i]t would elevate form well over substance to reverse simply because an item of evidence was admitted *early*." We agree. Even if Detective Ramsey's testimony were insufficient to establish the authenticity of the CityWatch video, Ms. Feaster's testimony provided ample evidence of authenticity as to the events on the video that occurred prior to Detective Ramsey's arrival.

Mr. Davis's contention that the State failed to show the process by which the video was made, or its quality, is unpersuasive. To be sure, video evidence may be authenticated by a witness who, though not having any personal knowledge about what is depicted in the video, nonetheless describes the process by which the video was made. This is known as the "silent witness" theory of authentication. *See Washington v. State*, 406 Md. at 652 (2008) ("[T]he silent witness method of authentication allows for authentication by the presentation of evidence describing a process or system that produces an accurate result."). But the "silent witness" theory is not the only way to authenticate video evidence. Video evidence may be authenticated in other ways, and here, it was authenticated through a combination of personal knowledge testimony and circumstantial evidence. Under these circumstances, additional authentication using the "silent witness" theory was unnecessary.

For all these reasons, the court properly exercised its discretion by admitting the CityWatch surveillance video.

II. The trial court did not abuse its discretion in admitting the jail calls.

A. Parties' Contentions

Next, Mr. Davis contends that the court "erred in admitting, over objection, four recorded telephone calls purportedly made by Mr. Davis." According to Mr. Davis, "[t]hese calls did nothing to establish their proffered relevance as 'consciousness of guilt' because they merely expressed a desire to not be arrested or incarcerated pursuant to a known warrant, while saying nothing concerning actual guilt vel non as to the charges." Mr. Davis also claims that the recorded telephone calls were unduly prejudicial because his knowledge of the arrest warrant stemmed from his parole officer. Thus, according to Mr. Davis, there was a legitimate alternative explanation for his statements, and the admission of his statements "could only be rejoined by introducing the prejudicial fact of his parole status."

Additionally, Mr. Davis argues that admitting the jail calls was not harmless. He points out that the State relied on the calls in its closing argument, playing recordings of them and providing its interpretation of statements made during the calls. The State claimed that because no one had told Mr. Davis of the warrant, or to turn himself in, Mr. Davis's statements during the calls meant that he knew he had committed a crime.

The State responds that the admission of Mr. Davis's post-arrest statements was not an abuse of discretion. These statements were relevant to establish consciousness of guilt because "[a] reasonable juror could infer that an innocent person would not decide to go 'on the run' or otherwise go into hiding." In addition, the State claims that Mr. Davis failed to preserve his argument as to the unduly prejudicial effect of these

statements. In the alternative, the State argues that Mr. Davis's argument lacks merit and that that the court took the proper course of action by admitting the evidence and allowing the parties to advance their competing interpretations of Mr. Davis's statements to the jury.

B. The Post-Arrest Statements (The Jail Calls)

At a pre-trial hearing, the State said it would introduce Mr. Davis's jail calls as consciousness-of-guilt evidence:

> But what the calls effectively say, there are five calls, they're all placed in the days immediately after Mr. Davis was arrested and brought to Central Booking.
>
> And paraphrasing them as -- essentially, the State is offering them as evidence of consciousness of guilt. The defendant refers to himself as having, quote, been on the run. He refers to -- he asks several people who turned him in and other similar types of phrases. And the State believes, given that no one had made contact with Mr. Davis, there had been no, you know, police activity attempting to speak with him in reference to this prior to the arrest warrant, the fact that Mr. Davis himself believed that he was, quote, on the run and wonders who, quote, turned him in, I believe is evidence that he was aware that he had done something for which there would be a need to hide and something for which someone might alert law enforcement as to his location and whereabouts.

Defense counsel responded that Mr. Davis knew about the warrant through his parole officer, and thus he was "merely trying to figure out how the police found him."

The trial court ruled that it would admit portions of four calls but declined to admit the fifth. Of the four, the first two occurred on September 10, 2021, the day after Mr. Davis was arrested at a home in Essex, Maryland. That home was not leased to Mr. Davis. A search of it (the result of a search and seizure warrant) turned up none of Mr. Davis's belongings. The third and fourth calls were in the early morning hours of

September 11, 2021. Below, we set forth the portions of the four calls that the trial court admitted.[6]

The **first call** was on September 10, 2021, starting at 10:28 a.m., and was placed to a phone number ending in 6239.[7]

MR. DAVIS:	[indiscernible] hello.
CALLER:	Yes.
MR. DAVIS:	**Did you turn me in?**
CALLER:	No, I did not.
MR. DAVIS:	**Look, can you look in your car and [indiscernible] and tell me what's the last four digits. I'm trying to figure out if my stuff still in there. The last four digits to that –**
	[Indistinct and overlapping voices]
CALLER:	3839.
MR. DAVIS:	What is it, 3839? You sure it's 3839?
CALLER:	Yeah.
MR. DAVIS:	Oh, got to go.

The **second call** started five minutes after the first call started. It was placed to a phone number ending in 3839.

CALLER:	Hello.

[6] Those portions of the jail calls that the trial court admitted were placed on a disc and the disc was admitted as State's Exhibit 7-D. Portions of the admitted calls were played at various times during the hearing on the State's motion in limine, the State's case-in-chief, and the State's closing argument. Because Exhibit 7-D was not published in its entirety to the jury, however, or otherwise played in open court, the transcripts do not offer a complete rendition of what's on Exhibit 7-D. The trial court listened to the calls before ruling on their admissibility. The bolding is ours.

[7] From each of the four calls, we have deleted the automated announcement at the beginning indicating that the call came from Maryland Correctional Facility and that it would be recorded.

MR. DAVIS:	Hello.
	[Indistinct and overlapping voices]
CALLER:	Hey, baby.
MR. DAVIS:	Man, I had the wrong number wrote down, right. I had to call that f[**]king Sam to get your f[**]king number.
CALLER:	That's so funny [indiscernible] you remember my number.
MR. DAVIS:	No, but look -- I ain't got much time but I could really try to run it down real quick. Look, look though, alright**, I got a copy of my warrant like, how you think, how you think they found me?** It's talking about -- it basically said the camera seen somebody shoot you, and the girl said I was her boyfriend for fourteen years and she identified me and said I shot her cousin. Which she lying -- she said -- and then she say I ran up the street. They said he see a person on camera, but they couldn't tell who it was but she --
CALLER:	Right.
MR. DAVIS:	-- later identified me and said it was me. They that than an unidentified male was caught on camera aiming a black gun at the n[****]r while he was on the ground but they never they seen anybody saw me shoot [indiscernible] --
CALLER:	Right.
MR. DAVIS:	But the law -- it's crazy. It's **-- I could beat this s[**]t -- I'm gonna beat this s[**]t. I just got to sit for a little bit.**
CALLER:	I really don't know who the f**[**]**k could've said something or what [indiscernible] -- I don't know.
MR. DAVIS:	**It was either Saul or Sandy. I just called Sam and asked her, like, did you turn me in?**

The **third call** started about half a day later, just after midnight on September 11, 2021, at 12:06 a.m., and was placed to the same phone number as the second call.

CALLER:	[indiscernible] Hello.
	[indistinct voices and noise]
MR. DAVIS:	You want, you want to know some crazy s[**]t? I'm sitting here thinking**. I think it was [Ty] [indiscernible] that turned me in.** [indiscernible]
CALLER:	[indiscernible] downtown?
CALLER:	I'm down central booked. **Um, I mean, s[**]t yo, I wanna know who's really turned me in.**

The **fourth call** started less than an hour after the third call had started, on September 11, 2021, at 12:45 a.m., and was placed to the same phone number as the second and third calls.

CALLER:	Right.
MR. DAVIS:	Yeah, I told them the 13th which is [indistinct] preliminary decision they going to throw it out, indict me, drop some charges or add some more.
CALLER:	Yeah.
MR. DAVIS:	Yeah, so after that I should be good.
CALLER:	[indiscernible] the 13th?
MR. DAVIS:	Yeah, at 1 o'clock. That's on the [indistinct] but, you won't be [indiscernible], don't worry about it. It ain't even that serious. [indiscernible] when I get downtown, start going to court then, I would want you to show up if you can.
CALLER:	Right.
MR. DAVIS:	Yeah, if you can. I'm sorry. I didn't mean to leave you like that. I just thank God that we was able to smooth things out before, you know, s[**]t went to s[**]ts.
CALLER:	Yeah. Yeah, that s[**]t would have troubled me up for real.
MR. DAVIS:	Yeah, it f[***]king, it would have f[**]ked me up. I ain't gonna lie. [indiscernible] 'Cause I mean, I just, you know, you know, I really do

> love you and I don't want [indistinct]. I really felt some kind of way a little on the tip like, like d[**]n she would've opened up. **As soon as I get on the run, I mean, I can't, I can't ask her to marry me, get my name tatted, none of that s[**]t. Like, like, I definitely want you to be my baby mama. Like, I don't know, I don't want you to think just because I'm behind these walls, in prison, that's why I think it's all like this.** I mean, personally, you should know that I feel like we could [indiscernible].

CALLER: Yeah.

MR. DAVIS: I gotta, I gotta go, babe.

CALLER: I love you.

CALLER: I love you more, babe.

During closing argument, the State contended that the calls evinced consciousness of guilt. For example, the State told the jury the following:

> . . . the very thing [Mr. Davis is] thinking about is I want to know who turned me in. Not I want to know what on earth these crazy charges are that I've never heard of and I have no idea who these people are or what it's all about, it's just who turned me in for it.

And then, later, the State added:

> On the run from what? You heard the Detective, no one had come to him and said, you know, hey, you come turn yourself in for this warrant that we happen to have for you, they were looking for him. And he knows that because he knows that he committed a crime. That is called consciousness of guilt.

In response, defense counsel argued that the calls did not evince consciousness of guilt, and instead, the calls merely showed that Mr. Davis had learned of the warrant and that he did not want to turn himself in.

C. Analysis

Evidence is relevant if it makes "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. Jail calls are generally admissible if they are relevant. *See* Md. Rule 5-402. We review the court's determination of relevance under a de novo standard of review. *State v. Simms*, 420 Md. 705, 725 (2011). Even if legally relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). The court's "ruling on the admissibility of evidence under Rule 5-403 is reviewed for abuse of discretion." *Montague v. State*, 471 Md. 657, 673–74 (2020).

"A person's post-crime behavior often is considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind." *Thomas v. State*, 372 Md. 342, 352 (2002). "Applying our accepted test of relevancy, guilty [behavior] should be admissible to prove guilt if we can say that the fact that the accused behaved in a particular way renders more probable the fact of their guilt." *Id*. (cleaned up). To determine the probative value of consciousness-of-guilt evidence, the Supreme Court of Maryland adopted a test from the United States Court of Appeals for the Fifth Circuit:

> [T]he probative value of the evidence "depends upon the degree of confidence with which four inferences can be drawn: (1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3)

> from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged."

Thomas, 372 Md. at 352 (quoting *United States v. Myers*, 550 F.2d 1036, 1049 (5th Cir. 1977)). *See also Harrod v. State*, 261 Md. App. 499, 516 (2024) ("The probative value of guilty behavior depends on the degree of confidence with which [those] four inferences may be drawn[.]"). Although these factors refer to flight, they are applied to assess the probative value of other acts that potentially show consciousness of guilt. *See Thomas*, 372 Md. at 353.[8]

Moreover, in determining the relevance of consciousness-of-guilt evidence, we do not examine a defendant's post-crime behavior in isolation. *Snyder v. State*, 361 Md. 580, 592 (2000)(examining relevance of defendant's failure to inquire into status of police investigation into his wife's murder in conjunction with other evidence (or lack thereof) and concluding that defendant's failure to inquire had only slight probative value). "Instead, the test of relevance is whether, in conjunction with all other relevant evidence, the evidence tends to make the proposition asserted more or less probable." *Id.* (citing

[8] The State responds that Mr. Davis's Md. Rule 5-403 argument is unpreserved because "defense counsel never argued that [the jail calls] should be excluded on this . . . basis[,]" and "[a]t most, defense counsel argued this 'alternative explanation' for Davis's conduct left the calls without probative value." At the pre-trial hearing, defense counsel sought to exclude the jail calls because "the prejudice far outweighs any probative value[.]" That argument is sufficient to preserve Mr. Davis's claim of undue prejudice under Md. Rule 5-403. *See* Md. Rule 4-323(c) (confirming that, for the purposes of trial court review or appeal, a sufficient objection occurs when "a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.").

Spector v. State, 289 Md. 407, 434 (1981)). Thus, evidence that is not probative of guilt when viewed in isolation may be so when viewed in conjunction with other evidence.

We see no error in the trial court's admission of the jail calls. Mr. Davis's post-arrest statements satisfy the test adopted in *Thomas*. On the calls, Mr. Davis persistently asked who "turned [him] in." He posed this question to the person he called during the first call. He apparently called "Sam" and asked her, "did you turn me in?" A few minutes later, Mr. Davis called a third person and asked, "how you think they found me?" The next day, Mr. Davis speculated that it was "Ty" that turned him in, and again stated that he wanted to know who "really" turned him in. In the final call, Mr. Davis referenced being "on the run[.]"

From Mr. Davis's questions and statements, the jury could reasonably infer that Mr. Davis knew he was guilty of the charged crimes.[9] Asking or accusing multiple people who turned him in and how he had been found, and his statement that he was "on the run," suggested that Mr. Davis did not want to be turned in or found. Further, and as the State argued in closing, from Mr. Davis's questions, the jury could reasonably infer that what Mr. Davis wanted to know was who had turned him in for the crimes he had committed.

Mr. Davis's other statements during the calls reasonably suggest that same thing. Specifically, when he asked how he'd been found, it was in reference to "[his] warrant"

[9] That inference was also supported by other evidence at trial, including Ms. Feaster's in-court identification of Mr. Davis and the CityWatch video.

and the evidence likely described in the Application for Statement of Charges that would have accompanied the warrant. After summarizing some of that evidence, Mr. Davis stated that he was "gonna beat this" after "sit[ting] for a little bit." From these statements, particularly Mr. Davis's evaluation of the strength of the State's allegations, and his prediction that he could "beat" the charges, the jury could reasonably infer that Mr. Davis knew that he was guilty and that that was the reason he did not want to be found.[10]

Mr. Davis's reliance on *Thompson v. State*, 393 Md. 291 (2006), is unpersuasive. The issue in *Thompson* was whether the court properly gave a flight instruction when the defendant had an alternative explanation for his flight that was unrelated to the charged crimes and the defendant chose not to reveal that explanation to the jury because it would have prejudiced the defendant. 393 Md. at 315. The Supreme Court of Maryland held that the trial court erred in giving the flight instruction because the defendant would have been "prejudiced by the revelation of the 'guilty' explanation for his flight." *Id*.

[10] "Evidence of a defendant's conduct following a crime may be admissible as circumstantial evidence of consciousness of guilt, but not when the conduct is too ambiguous or equivocal to indicate consciousness of guilt." *Rainey v. State*, 480 Md. 230, 256 (2022). Mr. Davis contends that "the lower court erred in receiving this evidence because . . . it was 'too ambiguous and equivocal' to show actual guilt as to the charged offenses[.]" That argument is unavailing because the post-arrest statements were not introduced to show "actual guilt" but as circumstantial evidence of consciousness of guilt. "Just because there may be some innocent, or alternate, explanation for the conduct does not mean that the proffered evidence is per se inadmissible." *Harrod*, 261 Md. App. at 517 (cleaned up). The evidence here was not so ambiguous or equivocal to warrant exclusion at trial. Because a reasonable juror could, under these circumstances, infer that a defendant conscious of his guilt would decide to go "on the run" and inquire about who "turned [them] in[.]"

Here, unlike in *Thompson*, we are not assessing the propriety of a flight instruction. Rather, the issue here is the admissibility of consciousness-of-guilt evidence. Thus, Mr. Davis's reliance on *Thompson* is misplaced. *See also Ford v. State*, 462 Md. 3, 55–56 (2018) (distinguishing *Thompson* in the context of a challenge to the admissibility of consciousness-of-guilt evidence).

Although Mr. Davis argues that he had an alternative reason to evade apprehension for the crimes at issue here, that argument is insufficient to exclude his post-arrest statements, which contained relevant evidence showing his consciousness of guilt. Mr. Davis's attorney could, and did, argue an alternative interpretation of Mr. Davis's statements to the jury in closing argument.[11]

Even if it was error to admit the jail calls, the error, in our view, was harmless and the conviction "will stand" if the error was harmless. *Rainey v. State*, 480 Md. 230, 269 (2022) (quoting *Conyers v. State*, 354 Md. 132, 160 (1999)). "An error is harmless when [a reviewing court] can find, beyond a reasonable doubt, that the error did not influence

[11] To the extent that Mr. Davis argues that admitting the jails calls put him in the untenable (and inappropriate) position of revealing the prejudicial fact that he was on parole as an alternate explanation for what was being talked about in the calls, we disagree. During closing argument, Mr. Davis's counsel did not refer to Mr. Davis's parole status. Instead, defense counsel argued that Mr. Davis's questions about who turned him in were motivated not by consciousness of guilt but rather because he, like anyone, did not want to be locked up. Accordingly, unlike *Thompson v. State,* admitting the jail calls here did not present Mr. Davis with the "Hobson's choice" of implicating himself in another crime in order to explain the calls or offering no explanation for the calls. *See Ford v. State*, 462 Md. at 56 (2018) (discussing *Thompson v. State* and describing choice that Mr. Thompson faced as a "Hobson's choice"). Here, Mr. Davis's defense counsel did offer an explanation and that explanation did not implicate Mr. Davis in another crime.

the verdict." *Rainey*, 480 Md. at 268 (citing *Dorsey v. State*, 276 Md. 638, 659 (1976)). In short, the error must be "unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *Rainey*, 480 Md. at 268–69 (quoting *Bellamy v. State*, 403 Md. 308, 332 (2008)).

Here, Mr. Davis argues that admitting the jail calls was not harmless because the State played the calls to the jury during its closing argument and then revealed to the jury that Mr. Davis had a parole agent. We disagree. During its closing argument, the State played for the jury those portions of the calls where Mr. Davis was asking who turned him in and where he said he was "on the run." But the State did not reveal Mr. Davis's having a parole agent. Instead, the State argued that no one had told Mr. Davis to turn himself in, so from his persistently asking who turned him in while talking about the contents of his warrant, the jury could infer that Mr. Davis was conscious of his own guilt.

Here, the shooting was captured on the CityWatch video that was itself authenticated. Ms. Feaster, an eyewitness to the shooting who knew Mr. Davis, identified him to police as the shooter. And Ms. Feaster identified Mr. Davis in the CityWatch video as the shooter. In the face of this evidence, we are convinced beyond a reasonable doubt that the jail calls did not influence the verdict.

III. The trial court did not abuse its discretion in denying the postponement request and motion for new trial.

A. Parties' Contentions

Mr. Davis claims that the court erred in denying his request to postpone the trial. Mr. Davis also contends that the court erred in denying a motion for new trial based on that postponement request. According to Mr. Davis, he lacked "a meaningful opportunity to review the evidence and consult with his attorney prior to trial," and thus the court erred in denying his postponement request and motion for a new trial.

The State responds that the court soundly exercised its discretion in denying the postponement request and motion for new trial. The State suggests that Mr. Davis's eleventh-hour postponement request was spurred by the State's ability to serve a body attachment on Ms. Feaster, who was "the State's identifying witness and Davis's ex-girlfriend[.]" Indeed, Ms. Feaster "had failed to appear the day before" the postponement request. According to the State, the trial court properly exercised its discretion in denying the request for a postponement because "the court had not only secured [Ms.] Feaster's presence, but had also called dozens of jurors to be present at the courthouse in contemplation of serving on the jury at Davis's trial[,]" and "[t]he State had also secured the presence of, at least, its first witness, Detective Mitchell Ramsey."

B. The Postponement Request and the Motion for New Trial

At a hearing the day before *voir dire* and jury selection, the State represented that it had personally served Ms. Feaster with a subpoena, but she failed to appear in court. As a result, the State "prepared and submitted an application for a body attachment and

[asked] the Court to issue the body attachment" for Ms. Feaster. The court issued the body attachment and then considered the admissibility of Mr. Davis's jail calls.

The following day, Mr. Davis's counsel requested to postpone the trial so that Mr. Davis would have more time to review discovery:

> Your Honor, this case has a little bit of an unusual procedural history and I thought that my client was comfortable moving forward given the procedural history but I just want to outline it and I think [the State] will agree with me, in fact we spoke about it last night. In this case, Your Honor, the Public Defender's Office entered my appearance in this matter and it was not brought to my attention that they entered it in the Circuit Court and [the State] did not see that they entered my appearance in the matter and I contacted him when I received a summons for the State and I then proceeded to request discovery from [the State], which quite frankly, the State would have had an obligation to provide discovery to either, whatever attorney's appearance was entered which was mine in December, or Mr. Davis himself, if he was pro se.
>
> . . .
>
> . . . [M]y associate actually reviewed the discovery with Mr. Davis, but Mr. Davis has just indicated that he wanted it placed on the record that he has not had, he doesn't think, sufficient time to review the discovery in this matter and he does in fact want more time to prepare and is therefore requesting a postponement.

The State opposed the postponement request. The court denied the postponement request, ruling as follows:

> The motion is denied, you can sit down, you can have a seat. We sat here all day yesterday, this was not an issue that was raised yesterday. We have now called a jury, we've procured the witness and it's now that Mr. Davis has raised this issue when he could have raised it yesterday at any other time before this, it hasn't been raised, so the motion for postponement is denied.

In January 2023, the parties appeared for sentencing. At that time, defense counsel moved for a new trial based on the denial of the trial postponement request:

> As the Court is aware, shortly before we began trial, Mr. Davis asked for a postponement in the matter and he asked for a postponement citing that he

> did not have sufficient time to prepare with his counsel and had not received a physical copy of his discovery in this matter, and therefore he felt that it was unfair for him to proceed.
>
> He indicated to the Court, it was his position that at the time that the case was called and that we said that we were ready for trial, that his button on the Zoom call was on mute[12] and he was unable to object to my statement and disagree that I was not actually portraying his desires accurately at that moment. So Mr. Davis in addition to that, would like to argue that all of that caused me as his attorney to be ineffective during the course of his trial because he did not have the opportunity to have those materials and he feels that he did not have time to be adequately prepared. Based upon that, Your Honor, I would ask the Court in this matter to order a new trial.

The State opposed the motion, noting that Mr. Davis's request for a postponement occurred after the State had served Ms. Feaster with a body attachment:

> [Mr. Davis] said he was ready, he I think make [sic] a strategic decision that perhaps they wouldn't be able to proceed and then when it turned out otherwise, had buyer's remorse. That's not a basis for a new trial[.]

The trial court denied the motion for a new trial.

C. Analysis

"It is settled that the decision whether to grant a postponement is within the sound discretion of the trial judge." *Mainor v. State*, 475 Md. 487, 499 (2021) (cleaned up). Similarly, when we review a claim that the trial court erred in denying a motion for new trial, the standard of review is for abuse of discretion. *Jackson v. State*, 164 Md. App. 679, 700 (2005). Mr. Davis claims that the court erred in denying the postponement and

[12] The transcript for the April 6, 2022, proceedings does not show that Mr. Davis indicated to the court that his mute button prevented him from objecting to his defense counsel's representation that they were ready for trial. It appears that this claim was not raised until the motion for new trial.

motion for new trial because the State provided discovery shortly before trial. The timeline of events shows that the court did not err in denying those motions.

On April 5, 2022, Ms. Feaster, a key witness for the State, failed to appear in court. Ms. Feaster had been personally served with a subpoena, and the court issued a body attachment for Ms. Feaster. The court stated that "we could still potentially start selecting the jury this afternoon." At the end of the proceedings that day, the court said: "So we are going to be back here for jury selection tomorrow morning." At that time, the defense expressed no hesitation with starting the trial the following day. Ms. Feaster was served with the body attachment before the proceedings resumed on April 6, 2022. Then, Mr. Davis requested—for the first time—a postponement so that he could review the discovery. Appropriately recognizing the sequence of events in its denial of the motion, the court noted that Mr. Davis raised no concerns about proceeding to trial until the State was able to successfully secure the presence of Ms. Feaster, a witness who identified Mr. Davis as the individual who shot Mr. Harland. For all these reasons, the court properly exercised its discretion in denying the motion for postponement and the motion for new trial.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.