Circuit Court for Prince George's County
Case No: C-16-CR-22-000661

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2070

September Term, 2023

AMOS RASHAD REFFELL

v.

STATE OF MARYLAND

Beachley,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 15, 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).

After a jury trial in the Circuit Court for Prince George's County, Amos Rashad Reffell, appellant, was found guilty of attempted first and second-degree murder, conspiracy to commit first-degree murder, first-degree assault, conspiracy to commit first-degree assault, use of a firearm in the commission of a crime of violence, possession of a firearm when prohibited, carrying a handgun in a vehicle upon public roads, carrying a loaded handgun in a vehicle upon public roads, and two counts of reckless endangerment.[1] He was sentenced to incarceration for a total term of fifty years.[2] This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following four questions for our consideration:

> I. Did the trial court err in admitting hearsay?
>
> II. Did the trial court deprive appellant of his right to confront and cross-examine the witnesses?
>
> III. Did the trial court err in admitting a handgun and evidence of its recovery?

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[1] In June 2023, appellant was tried in the Circuit Court for Prince George's County on the same charges. After a hung jury, the court declared a mistrial.

[2] Appellant was sentenced to incarceration for a period of twenty-five years for attempted first-degree murder, a concurrent term of twenty-five years for conspiracy to commit first-degree murder, a consecutive term of ten years for use of a firearm in the commission of a felony or crime of violence, a consecutive term of ten years for possession of a firearm after a disqualifying conviction, a concurrent term of three years for possession of a loaded handgun in a vehicle, a consecutive term of five years for reckless endangerment, and a concurrent term of five years for the second count of reckless endangerment. All other convictions merged for sentencing purposes.

IV. Did the trial court err in denying appellant's motion for judgment of acquittal?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

This case arises out of a shooting that occurred on June 2, 2022, at the Henson Creek apartment complex in Temple Hills, Maryland. Numerous calls reported the shooting to 911, and a gray Dodge Charger was identified as a suspected vehicle. In one call, an individual reported, "I think I'm hit" and gave the address of 3400 Brinkley Road, apartment 203, in the Henson Creek apartment complex. In another call, an individual, who gave a different apartment number, reported that a grayish Charger with tinted windows backed up and sped off out of the apartment complex.

In June 2022, Mark Reid worked as a driver for the ride services Uber and Lyft. He drove a silver 2015 Hyundai Elantra. On one occasion on a date he did not recall, he heard gunshots while at the Henson Creek apartment complex. At trial, he was shown a photograph of a parking lot at the apartment complex, which was admitted in evidence as State's Exhibit 20. Reid testified that he was dropping off his passengers, that he believed there were two passengers, and that he was parked "where that burgundy car is" in the photograph.

The passengers exited the back seat of Reid's Elantra and walked "in front of the car." Reid did not know where they were walking, and did not see them enter an apartment building, because he "was ready to put [his] car in reverse and leave." He could not leave, however, because there was one car on his side and another behind him. At that point, he

"heard shots" for "[p]robably about a minute or two[,]" but he did not know where the shots were coming from. According to Reid, "[a] couple of shells hit the windshield" of his car. He "bent down, looking at the car behind [him] so [he] could leave." He did not see anyone shooting a gun. Reid testified that he was "scared" and "in fear of [his] life[.]" He could not recall what kind of car was behind him.

On cross-examination, Reid was asked if he had ever been in a situation before where he had heard gunshots. He responded that he had "been in a lot of situations, but not just, you know, particularly gunshots." After the event, Reid left the apartment complex. He looked at his windshield but did not see any cracks, and he did not see any bullet holes in his car.

According to Prince George's County Police Detective O'Neil Banton, who responded to the apartment complex, there were bullet holes in the awning of the apartment building at 3400 Brinkley Road and the doors and door jams of apartments 203, 301, and 302. There was also blood at the entrance, and twenty-one shell casings were recovered from the apartment complex.[3]

Tyshawn Smith acknowledged that he had been to the Henson Creek apartments, but he did not recall being there in 2022. He denied ever using Uber for a ride and did not remember sustaining an injury on June 2, 2022. Nor did he recall meeting with emergency personnel or police officers on that date. Medical records admitted in evidence showed

[3] Corporal Ashley Rider of the Prince George's County Police Department collected video surveillance footage from the property manager at the Henson Creek apartment complex. That video footage was not admitted in evidence at trial.

that, on June 2, 2022, Smith was brought by ambulance to the emergency room at University of Maryland Capital Region Medical Center complaining of a gunshot wound and pain in his left leg, right ankle, and head. Smith testified that he did not see his name anywhere in the medical records.

Prince George's County Police Detective Michael Norris responded to the University of Maryland Capital Region Medical Center because the victim of the shooting was transported there. At the hospital, he recognized the shooting victim as Tyshawn Smith, whom he had encountered on a prior occasion. A nurse provided Detective Norris with a bullet fragment recovered Mr. Smith.

Frank Flowers was a Prince George's County Police Officer on June 2, 2022. On that date, at about 6:05 p.m., he went to 3400 Brinkley Road in response to the call for a shooting. A redacted version of his body-worn camera was admitted in evidence. Officer Flowers went to apartment 203 and saw that there were holes in and by the door. He was let inside and observed one person, Tyshawn Smith, suffering from injuries, one behind his ear and one on his foot. Smith was taken away from the apartment complex by ambulance.

Corporal Willie James Stover, III, of the Prince George's County Police Department, was working as a patrol officer on June 2, 2022. He was advised of the call for a shooting and informed of a suspect vehicle described as a gray Dodge Charger. While traveling to the apartment complex, he observed a Dodge Charger traveling at a high rate of speed pass him. Corporal Stover made a u-turn and followed it. Corporal Stover's vehicle was equipped with a dashboard camera, and the video from that camera was

admitted in evidence and played for the jury. Corporal Stover broadcast to other officers what was happening and advised them of the location and direction of travel of the Charger. Other officers joined in the pursuit. Ultimately, the Charger was involved in a motor vehicle collision at the intersection of St. Barnabas and Stamp Roads, about two miles from where the shooting had occurred.[4] After the collision, four individuals, all of whom were dressed in dark clothing and wearing gloves and black ski masks, exited the Dodge Charger and fled from the scene. Corporal Stover and other officers engaged in a foot pursuit. At trial, Corporal Stover identified appellant as one of the individuals who fled from the front seat of the Dodge Charger.

Corporal Salvador Acosta of the Prince George's County Police Department participated in the pursuit of the Dodge Charger, observed the four occupants bail out of the vehicle, and participated in the foot pursuit of the individuals who fled from the scene. Corporal Acosta apprehended an individual whom he identified at trial as appellant. Corporal Acosta testified that he did not lose sight of appellant while chasing him. Video from Corporal Acosta's body-worn camera was played for the jury. No weapons were recovered from appellant's body. After apprehending appellant, Corporal Acosta remained on the scene to protect evidence. He recovered three shell casings from the crash scene.

Prince George's County Police Detective Demarco Garcia testified that he recovered a black "Glock .40 caliber handgun" from the opposite side of a fence near where

[4] At trial, Dontray Smith identified the gray Dodge Charger as belonging to him. He said the car had been stolen from a gas station on May 1, 2022, and that he had reported the incident to the police. He did not see the person or persons who took his car.

appellant was apprehended. It had an extended magazine inserted at the time it was recovered, and there was a round in the chamber.

Prince George's County Police Detective William Bankhead conducted a search of the Dodge Charger and recovered three loaded firearms, two of which were Anderson Manufacturing "AM-15" style firearms and one was an AK-47-style firearm. One of the firearms was found on the front passenger floorboard leaning against the front passenger seat. Detective Bankhead also found behind the front passenger seat a duffel bag containing a loaded magazine and ammunition.

Corporal Tara Mattingly of the Prince George's County Police Department's Firearms Examination Unit testified as an expert in firearms and tool mark examination. She test fired each of the four firearms recovered. All four of the firearms were semi-automatic weapons and each operated properly. She compared the test-fired cartridge cases to fired cartridge cases recovered from the scene and concluded that "the microscopic imperfections were consistent[,]" that there was "sufficient agreement," and that they were "consistent with being fired by the same firearm."

We shall include additional facts as necessary in our discussion of the questions presented.

DISCUSSION

I.

Appellant contends that the trial court erred in admitting, over objection, inadmissible hearsay by Detective Bankhead, Corporal Stover, Detective Garcia, and

Officer Flowers. He argues that certain statements by Detective Bankhead, Corporal Stover, and Detective Garcia were introduced to prove the truth of the matter asserted, namely that the gray Dodge Charger from which appellant was seen exiting after a crash was the same vehicle that had transported the shooters to the apartment complex where the shooting occurred. In addition, appellant challenges the trial court's decision to admit video from Officer Flowers's body-worn camera that contained a declaration by Smith that he was shot as he was getting out of an Uber.

A. Standard of Review

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Maryland Rule 5-801(c). "Except as otherwise provided by [the Maryland Rules] or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802.

We ordinarily review admissibility of evidence under an abuse of discretion standard. *Colkley v. State*, 251 Md. App. 243, 263, *cert. denied*, 476 Md. 268 (2021). Whether evidence qualifies as an exception to the rule against hearsay presents a question of law for the circuit court, which we review without deference. *Wise v. State*, 471 Md. 431, 442 (2020). We scrutinize the circuit court's factual findings for clear error. *Gordon v. State*, 431 Md. 527, 538 (2013). Under the clear error standard, "'[w]e do not second-guess the [trier of fact's] determination where there are competing rational inferences available.'" *State v. Manion*, 442 Md. 419, 431 (2015) (quoting *Smith v. State*, 415 Md.

174, 183 (2010)). Even if evidence was improperly admitted, the error must be prejudicial to warrant reversal. Md. Rule 5-103(a) ("Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling[.]"); *Urbanski v. State*, 256 Md. App. 414, 439 (2022) ("[I]f the evidence was not properly admitted, on review, we would apply the longstanding principle that improperly admitted evidence must be prejudicial to warrant reversible error.").

B. Statements of Detective Bankhead, Corporal Stover, and Detective Garcia

1. Detective Bankhead

We shall begin by examining the statements of Detective Bankhead, Corporal Stover, and Detective Garcia. On direct examination, Detective Bankhead was questioned about his participation in the events of June 2, 2022. When asked where he responded, Detective Bankhead answered:

> So, I responded to the 2300 block of Olsen Street, which was within Temple Hills, Prince George's County, Maryland. I responded to that location to assist patrol units who had just recently been involved in a police pursuit in which several individuals had fled from the vehicle, which those officers were pursuing pursuant to a shooting investigation call.

The court overruled defense counsel's objection to that testimony. Appellant argues that Detective Bankhead's statement was hearsay introduced to prove the truth of the matter asserted, "namely, that the gray Dodge Charger from which [a]ppellant was seen to exit after a crash was the same vehicle that had transported the shooters to the scene of the Henson Creek Apartments shooting." In support of that argument, he points to the State's closing argument, in which the prosecutor stated that appellant exited "the same car that

was throwing shots at Tyshawn Smith at 3400 Brinkley Road, the same car that crashed at 4500 St. Barnabas Road and Stamp Road." He further argues that the testimony was not justified simply because it explained why the police were pursuing the Charger.

2. Corporal Stover

At trial, Corporal Stover was questioned as follows about his response to the call for service on June 2, 2022:

> Q. Do you remember responding to a call on June 2nd, 2022?
>
> A. I do.
>
> Q. And can you tell us about your response and what you believed you were responding to?
>
> A. The dispatcher advised there was a call for a shooting at an address, and I started heading to that direction.
>
> Q. Okay. And when you arrived – strike that. Where were you when you got the call, if you remember?
>
> A. I was currently on the area of 23rd Parkway in Temple Hills.
>
> Q. Did you have an idea of whether or not there was a vehicle, like a suspect vehicle, a vehicle involved in the shooting?
>
> A. I did, yes.
>
> Q. And what was that vehicle?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [CORPORAL STOVER]: I was informed that the suspect vehicle –
>
> [DEFENSE COUNSEL]: Objection.

> THE COURT: Overruled.
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> [DEFENSE COUNSEL]: Well, he said, "I was informed." Okay. Yes, Your Honor.
>
> The trial judge asked counsel to approach the bench and then stated:
>
> What about the testimony that the objection – I mean, literally, the reason to make a ruling is because, "I heard," does not automatically make something hearsay. In fact, if he was talking about what he did and why he did it, which means the exception (inaudible) effectively here by statute. Thank you.
>
> The prosecutor resumed questioning Corporal Stover as follows:
>
> Q. All right. Continuing on. So you mentioned that it was – what kind of car?
>
> A. It was a gray Dodge Charger.
>
> Q. And when you received – when you were informed that it was a gray Dodge Charger, what did you do after that in response?
>
> A. Once I started heading to the direction of the call for service, while traveling to the call for service, I observed a gray Dodge Charger traveling at a high rate of speed. Once it passed me, I had to make a three-point turn to get behind the car.

Appellant challenges the court's decision to admit Corporal Stover's statements that "[t]he dispatcher advised there was a call for a shooting at an address" and that he "was informed that the suspect vehicle . . . [was] a gray Dodge Charger." As with Detective Bankhead's statements, appellant argues that Corporal Stover's statements were introduced to prove the truth of the matter asserted, specifically that the gray Dodge Charger he was seen to exit after the crash was the same vehicle that transported the shooters to the apartment complex. Again, he points to the prosecutor's closing argument and argues that

the State relied upon the truth of Corporal Stover's statements to link appellant to the shooting through the gray Charger.

3. Detective Garcia

Appellant contends that the trial court erred in admitting the testimony of Detective Garcia that "[o]fficers requested more units for a bailout from a vehicle that was seen leaving the shooting." At trial, Detective Garcia testified that on June 2, 2022, he "put [himself] onto a call" for a "contact shooting," which he explained was "[a] shooting in which someone is confirmed to be injured due to the shooting." He explained that when the call for the shooting went out, he was patrolling "that immediate corridor" and "[u]pon the shooting going out, [o]fficers requested more units for a bailout from a vehicle that was seen leaving the shooting." Defense counsel objected and the trial judge overruled that objection. As with the testimony of the other officers, appellant argues that Detective Garcia's statement constituted inadmissible hearsay.

C. Analysis

In support of his arguments as to all three law enforcement officers, appellant relies on *Zemo v. State*, 101 Md. App. 303 (1994). In that case, the defendant was convicted of breaking and entering a gas station. *Id.* at 305. At trial, a detective gave testimony about events leading up to Zemo's arrest, the fact that he was advised of his *Miranda* rights, and that, thereafter, he chose to remain silent. *Id.* at 305-06. Writing for this Court, Judge Moylan explained the detective's testimony as follows:

> [The detective] testified, over objection, that he received evidence about the crime from a confidential informant, that the informant's information put him

> on the trail of the appellant and other suspects, that other parts of the informant's information were corroborated and turned out to be correct, and that, acting on the informant's information, he arrested the appellant. The only possible import of such testimony was to convey the message that the confidential informant 1) knew who committed the crime, 2) was credible, and 3) implicated the appellant. Both the confrontation clause and the rule against hearsay scream out that the appellant was denied any opportunity to confront that confidential accuser.

Id. at 306.

We concluded that the detective's testimony was improperly used to corroborate the informant's version of events. *Id.* The detective recounted his observations of the crime scene and his investigation. *Id.* at 307. Thereafter, he recounted "events as to which he had no direct knowledge and which were themselves without relevance" and "imparted cryptic reports from unnamed sources" who did not appear at trial. *Id.* Defense counsel objected and argued that the detective's investigation had no bearing on appellant's guilt or innocence, but the State maintained throughout that it was imperative to lay out the course of the detective's investigation, and the court allowed that testimony. *Id.* at 309-10. Moreover, the detective testified that Zemo was advised of his *Miranda* rights and had chosen to remain silent even though no statement was offered for admission in evidence, and both the fact that Zemo was interviewed and his silence were immaterial. *Id.* at 315.

As Judge Moylan explained, "[b]oth the confrontation clause and the rule against hearsay" were violated. [5] *Id.* at 306. In rejecting the State's argument, we noted that "[t]he

[5] At the outset of the opinion, Judge Moylan made very clear that the holding in *Zemo* was directed to sustained and deliberate lines of inquiry. He explained:

(continued…)

jury, of course, has no need to know the course of an investigation unless it has some direct bearing on guilt or innocence. That an event occurs in the course of a criminal investigation does not, *ipso facto*, establish its relevance." *Id.* at 310. Judge Moylan described the detective's testimony as follows: "In the last analysis, Detective Augerinos had not one shred of admissible evidence bearing on the criminal agency of the appellant. Yet by the end of Detective Augerinos's testimony, the finger of presumptive guilt was already pointing unmistakably at the appellant." *Id.* at 316.

In *Frobouck v. State*, 212 Md. App. 262 (2013), we considered whether the trial court erred in admitting testimony by police officers about why they went to a certain location. *Id.* at 281. When asked at trial why he responded to a location, a sheriff's deputy

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> As we begin to examine the tainted testimony of Detective Augerinos, it is important to note what we are *not holding* and what we are *not even suggesting*. We are not counseling an overreaction to every passing or random injection of some arguably prejudicial material into a trial. A few smudges of prejudice here and there can be found almost universally in any trial and need to be assessed with a cool eye and realistic balance rather than with the fastidious over-sensitivity or feigned horror that sometimes characterizes defense protestations at every angry glance. We are not talking about the expected cuts and bruises of combat. What we are objecting to in this case, rather, is a sustained and deliberate line of inquiry that can have had no other purpose than to put before the jury an entire body of information that was none of the jury's business. We are not talking about a few allusive references or testimonial lapses that may technically have been improper. We are talking about the central thrust of an entire line of inquiry. There is a qualitative difference. Where we might be inclined to overlook an arguably ill-advised random skirmish, we are not disposed to overlook a sustained campaign.

Id. at 306.

said he "was dispatched there for a suspected marijuana grow." *Id.* Defense counsel objected on hearsay grounds. *Id.* The trial judge instructed the jury that the deputy's statement was admitted for "a non-hearsay purpose[,]" not for the truth of the matter asserted, and was merely a "statement or assertion that the deputy received to take some further action." *Id.* Thereafter, another law enforcement officer testified that he responded to the location because he was called by the deputy. The court admitted that testimony "for a non-hearsay purpose" and "not necessarily that the statement is truthful, but he received this statement and took some action." *Id.* Relying on *Zemo*, Frobouck argued that the trial court erred in admitting prejudicial hearsay because the reasons for the officers' appearance at the location were not relevant to a material issue in the case, but conveyed to the jury the message that appellant's guilt was a foregone conclusion. *Id.* at 281-82.

We held that the objected-to statements of the officers were not offered to prove the truth of the matter asserted, that there was a "marijuana grow," but "to explain *briefly* what brought the officers to the scene in the first place." *Id.* at 283. We noted that "[t]his was not a 'sustained and deliberate' line of questioning like that in *Zemo* which we held to have served 'no legitimate purpose.'" *Id.* (quoting *Zemo*, 101 Md. App. at 306). Nor was it intended to put before the jury the testimony of someone who was not testifying in the case. *Id.*

Unlike *Zemo*, the case at hand did not involve police testimony that was improperly used to corroborate an informant's version of events. Moreover, this case differs from *Zemo* in that the testimony of each law enforcement officer was brief, and none of the testimony

involved sustained and deliberate questioning. Detective Bankhead's testimony was a single statement about the information he received that caused him to respond to the scene. It was not offered to prove the truth of the matter asserted, that individuals had fled from a vehicle, or that there was a shooting that caused officers to pursue the car. The detective's statement was not the central thrust of an entire line of inquiry. It was neither totally irrelevant nor highly prejudicial.

Corporal Stover's testimony consisted of brief statements about information he received that caused him to respond to the scene. As with Detective Bankhead's testimony, Corporal Stover's testimony was not offered to prove the truth of the matter asserted, that individuals had fled from a vehicle, or that there was a shooting that caused officers to pursue the Dodge Charger. Unlike in *Zemo*, Corporal Stover's testimony was not a sustained line of questioning that served no legitimate purpose, and it was not the subject of an entire line of inquiry.

As with the other officers, Detective Garcia's statement was brief, and his testimony was not offered to prove the truth of the matter asserted, that there was a bailout from a vehicle that had been seen leaving a shooting, but merely to explain what caused him to respond to the scene. Unlike in *Zemo*, Detective Garcia's testimony was not a sustained line of questioning that served no legitimate purpose. Considering both *Zemo* and *Frobouck*, we conclude that the statements of the officers were not inadmissible hearsay, and reversal is not required. In his reply brief, appellant points out that the trial judge did not give the jury a curative instruction to clarify the non-hearsay purpose of the testimony

of the three officers. Appellant has not, however, directed us to any place in the record where he requested a curative instruction or objected to the trial court's decision not to give one. As a result, that argument is not properly before us. Md. Rules 8-131(a), 4-323.

D. Officer Flowers's Statement

Appellant contends that the trial court erred in overruling his objection to the introduction of body-worn camera video from Officer Flowers that contained a statement by Smith that he was shot as he was getting out of an Uber.[6] He argues that the statement constituted hearsay that was not admissible under any exception and that he was prejudiced by it because it helped establish that Smith was shot at the apartment complex by him. The trial court found that "everything on the video from the audio perspective, from the officer arriving at the location until the officer walking out of the apartment with Mr. Smith" was admissible under Maryland Rule "5-803(b)(1), (b)(2), and/or (b)(3)." Those rules provide exceptions to the general rule that hearsay is not admissible as follows:

> (b) **Other exceptions. —**
>
> (1) **Present sense impression. —** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
>
> (2) **Excited utterance. —** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

[6] The trial judge excluded the audio portion of Officer Flowers's body-worn camera video that showed Tyshawn Smith stating his name, date of birth, and address, as well as everything on the video that occurred after Officer Flowers and Smith left the apartment building.

> (3) **Then existing mental, emotional, or physical condition. —** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

In deciding to admit Smith's statements as recorded on Officer Flowers's body-worn camera, the trial judge explained:

> The statements of Mr. Smith, however, the [c]ourt finds are exceptions to the hearsay rule under 5-803(b)(1), present sense impression. He talks about how he is feeling dizzy. So it's a present sense impression. He talks about the startling event, the shooting as he was getting out of the Uber. He also talks about his then mental, emotional and physical condition, again, talking about feeling dizzy, talking about the injury to his head. So all of those are talking about his then existing condition.

The court also ruled that the first voice on the video and the voice of an officer asking if anyone was shot were admissible as excited utterances under Rule 5-803(b)(2).

Appellant maintains that the excited utterance exception did not apply to the hearsay statements by Smith because ten minutes had passed since the shooting, there was enough time for Smith "to reflect and fabricate," and he was no longer in danger from the shooters, who had fled the scene. We do not find that argument persuasive. Preliminarily, it appears from the record that the court relied on the present sense impression exception in admitting the statements of Smith. Nevertheless, assuming that the court's reference to the excited utterance exception was intended to indicate the court's reliance on that exception as well, we find no basis for reversal.

The rationale behind the excited utterance exception is that "the inherent untrustworthiness of hearsay is overcome when the circumstances are such that they render the declarant's reflective capabilities inoperative." *Cooper v. State*, 163 Md. App. 70, 97 (2005) (citing *Parker v. State*, 365 Md. 299, 313 (2001)). To be admitted as an excited utterance, the proffered statement must be "'made at such a time and under such circumstances that the exciting influence of the occurrence clearly produced a spontaneous and instinctive reaction on the part of the declarant who is still emotionally engulfed by the situation.'" *State v. Harrell*, 348 Md. 69, 77 (1997) (cleaned up) (quoting *Deloso v. State*, 37 Md. App. 101, 106 (1977)). The time between the startling event and the declarant's statement is not alone determinative. *Id.* Whether a statement constitutes an excited utterance requires a totality of the circumstances analysis, in which a court assesses whether the foundation for admissibility has been met, "'namely personal knowledge and spontaneity.'" *DeLeon v. State*, 407 Md. 16, 29 (2008) (emphasis omitted) (quoting *Parker*, 365 Md. at 313).

Here, Smith had been shot a matter of minutes before the police arrived. When the police arrived, Smith was bleeding from his head and was getting dizzy. The voices of the other people in the apartment were raised and, as the trial judge noted, "[e]veryone was speaking in a way that showed that they were in an excited state, again, by the legal definition, excited." The court's factual findings were not clearly erroneous, and they supported a finding that the proffered statement by Smith was an excited utterance.

Even if that was not the case, the facts supported the finding, explicitly made by the trial court, that the proffered statement was admissible as a present sense impression. The excited utterance and present sense impression exceptions overlap, but they are based on somewhat different theories. *Booth v. State*, 306 Md. 313, 324 (1986). Both exceptions "preserve the benefit of spontaneity in the narrow span of time before a declarant has an opportunity to reflect and fabricate." *Id.* But, with respect to the present sense impression exception, we have explained:

> In Lynn McLain, Maryland Evidence, Sect. 803(1), Professor McLain described the exception as it is currently applied in Maryland:
>
> > In order for a statement to be admissible as a present sense impression, there is no requirement that the declarant have been startled, excited, or upset about the event perceived. This is as it should be, because there is support for the position that unexcited statements tend to be more accurate than excited ones. Thus a sportscaster giving a "play by play" account is stating present sense impressions, as is a police officer speaking into a wire and describing what she is seeing.
> >
> > The statement must have been made either during the declarant's perception of the event or condition in question or immediately afterwards. Anything more than a slight lapse of time between the event and the statement will make the statement inadmissible.
> >
> > Before a present sense impression will be admissible, there must be a showing that the declarant was speaking from first-hand knowledge.

Mason v. State, 258 Md. App. 266, 291 (2023) (emphasis omitted).

In the instant case, minutes after being shot, Smith, who was bleeding and feeling dizzy, conveyed to Officer Flowers, who had arrived to render assistance, that he was shot

as he exited an Uber. We do not perceive error in the trial court's ruling. Smith's brief statement was admissible as a present sense impression, and reversal is not required.

Even if the challenged statements were inadmissible, appellant would fare no better. Any error in admitting the statements would have been harmless beyond a reasonable doubt because the statements were cumulative of other evidence admitted at trial. An error in admitting evidence is harmless if the reviewing court is "'satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict.'" *Nicholson v. State*, 239 Md. App. 228, 244 (2018) (citation omitted) (quoting *Dionas v. State*, 436 Md. 97, 108 (2013)); *see also Dove v. State*, 415 Md. 727, 743-44 (2010) ("Evidence is cumulative when, beyond a reasonable doubt, we are convinced that there was sufficient evidence, independent of the evidence complained of, to support the appellant's conviction[.]" (cleaned up)).

Here, recordings of the 911 calls showed that gunshots were fired at the apartment building, that a person thought he was hit, that someone "got shot in the head," and that a grayish dark Charger with tinted windows sped from the apartment complex. In addition, Smith identified himself in court, video footage captured Smith's injuries at the scene, Smith's medical records, which reflected his injuries, were admitted in evidence, Detective Bourget testified that he recognized Smith as he sat on an ambulance gurney based on a past interaction, and Detective Norris recovered from a nurse at the hospital a bullet fragment that had been recovered from Smith's body. In light of the other evidence

presented at trial, any error in admitting the evidence complained of would be harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976) ("[U]nless 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, such error cannot be deemed 'harmless' and a reversal is mandated.").

II.

Appellant contends that the statements of Detective Bankhead, Corporal Stover, and Detective Garcia violated the Confrontation Clause of the Sixth Amendment to the United States Constitution because he had no opportunity to cross-examine the declarants. According to appellant, the trial court admitted all three instances of hearsay "without inquiring as to the basis of [his] objections, which thereby preserved" his Sixth Amendment argument. With respect to Officer Flowers's testimony, appellant argues that Smith's statements on the video from Officer Flowers's body-worn camera were testimonial because "the primary purpose in the police interrogation of [him] was the investigation of a crime." Appellant asserts that, although he did not mention the Sixth Amendment by name, he clearly referred to it when he complained about a lack of opportunity to cross-examine Smith. We disagree and explain.

The Confrontation Clause of the Sixth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, *see Langley v. State*, 421 Md. 560, 567 (2011), provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" U.S. CONST.

amend. VI. "The 'main and essential purpose' of the Confrontation Clause is to ensure that the defendant has an opportunity for effective cross-examination of adverse witnesses, 'which cannot be had except by the direct and personal putting of questions and obtaining immediate answers.'" *Taylor v. State*, 226 Md. App. 317, 332 (2016) (quoting *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974)).

In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court "redefined many of the core principles for evaluating whether a criminal defendant has the right to require the prosecution to produce the declarants of extrajudicial statements so that the defendant can confront and cross-examine them." *Taylor*, 226 Md. App. at 333. Among these was the Court's determination that the Confrontation Clause applies exclusively to the testimonial hearsay of a non-testifying declarant. *Crawford*, 541 U.S. at 51; *see also Smith v. Arizona*, 602 U.S. 779, 784 (2024) ("The [Confrontation] Clause's prohibition 'applies only to testimonial hearsay[.]'" (quoting *Davis v. Washington*, 547 U.S. 813, 823 (2006))); *Derr v. State*, 434 Md. 88, 106 (2013) ("[T]he Confrontation Clause only applies when an out-of-court statement constitutes testimonial hearsay."). The Court thus imposed "two limitations on the reach of the right to confront witnesses." *Derr*, 434 Md. at 106. Under *Crawford*, the Confrontation Clause only applies to statements that are both (1) hearsay (*i.e.*, "out-of-court statements offered and received to establish the truth of the matter asserted") and (2) testimonial. *Id.* at 106-07. In *Davis*, the Supreme Court explained:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively

> indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

547 U.S. at 822.

In a criminal trial, "the court has no discretion to admit 'testimonial evidence' that would violate the defendant's Sixth Amendment rights under the Confrontation Clause." *Davies v. State*, 198 Md. App. 400, 411 (2011) (citing *Crawford*, 541 U.S. at 68). Accordingly, "'[w]e . . . apply the *de novo* standard of review to the issue of whether the Confrontation Clause was violated[.]'" *Id.* (quoting *Snowden v. State*, 156 Md. App. 139, 143 n.4 (2004), *aff'd*, 385 Md. 64 (2005)); *see also Taylor*, 226 Md. App. at 332 ("We review the ultimate question of whether the admission of evidence violated a defendant's constitutional rights without deference to the trial court's ruling.").

In the case before us, the statements of Detective Bankhead, Corporal Stover, and Detective Garcia were not introduced for the truth of the matter asserted. Nor were they testimonial in nature. *See McClurkin v. State*, 222 Md. App. 461, 476 (2015) (stating that a statement is testimonial when "'a reasonable person in the declarant's position would have expected his statements to be used at trial – that is, when the declarant would have expected or intended to bear witness against another in a later proceeding'" (cleaned up) (quoting *United States v. Jones*, 716 F.3d 851, 856 (4th Cir. 2013), *cert. denied*, 571 U.S. 983 (2013))). The primary purpose of the statements was to allow law enforcement officers to meet an ongoing emergency that was happening in real time. *See State v. Lucas*, 407 Md. 307, 323 (2009). The statements of the three law enforcement officers were not

testimonial and, as a result, did not implicate the Confrontation Clause. Similarly, Smith's statements to Officer Flowers were not testimonial. They were made to describe the recent shooting that resulted in Smith's injury and to enable Officer Flowers to render assistance to Smith. The Confrontation Clause was not implicated by Smith's statements.

III.

Appellant contends that the trial court erred in overruling his objection to the admission of Detective Garcia's body-worn camera video and to the admission of the firearm that was recovered from behind a fence that separated appellant and the weapon. Detective Garcia testified that, after the call for the shooting went out, he arrived at the perimeter of the crash scene. The prosecutor showed Detective Garcia several photographs, and he identified them as "the house that I responded to on the perimeter of the bailout" and stated that they were fair and accurate depictions of the place to which he responded on June 2, 2022. When the prosecutor sought to admit the photographs identified as State's Exhibits 8, 9, and 11, defense counsel objected on the ground that they were not relevant. The prosecutor argued that the evidence was relevant, stating:

> Your Honor, there's a firearm that was recovered just over by the fence from w[h]ere the Defendant was apprehended that was shown by the overhead birds eye view of the location were Acosta testified he observed and apprehended the Defendant. That location PFC Garcia responded to. He hasn't testified yet, but it's where a firearm was recovered.

The court reserved ruling on defense counsel's objection until it heard "additional testimony for this proffer."

Immediately thereafter, Detective Garcia identified video from his body-worn camera, based on the presence of his name affixed to the top left corner of the video, and testified that it was a fair and accurate depiction of events that occurred. When the prosecutor sought to admit the video in evidence, defense counsel objected, and the following exchange occurred:

> [DEFENSE COUNSEL]: . . . [T]here hasn't been a proper foundation laid for this. So I have, excuse me, I might say stuff and I have two different particular objections. Number one, I understand that's the officer, but he's trying – what looks like that footage is a (inaudible at 2:06:06). There's been no foundation laid. There's been no proffer. Anything that has it connected to anything. He don't even talk about it, so he cannot state – by entering this at this particular time what's the contents of this video, I don't think there's been proper foundation of even why we're even discussing this.
>
> So, there's been no mention how this area is connected to anything or what makes them think that he gets on the stand, everybody is going to (indiscernible) nothing happened on Riviera Street so I don't even know why the State is (inaudible).
>
> THE COURT: So all of that goes to weight and not admissibility. Onto the first thing he said going to foundation was he testified that it's his body-worn camera. He testified that's a fair and accurate representation of what he was doing after getting a call to respond to the crash, or respond to the bailout on Riviera Street and there hasn't been ultimately (inaudible).
>
> Any additional foundation of these things should be laid?
>
> [DEFENSE COUNSEL]: I mean, again, how a connection to this particular –
>
> THE COURT: And that goes to the weight, it does not go to the admissibility.
>
> [DEFENSE COUNSEL]: But it has no connection – okay. And then – okay. That's fine.
>
> THE COURT: All right. Thank You.

Over that objection, the body-worn camera video was received in evidence. After reviewing portions of the video and answering questions about the discovery of the gun, the photographs identified as State's Exhibits 8, 9, and 11 were admitted over objection.

Thereafter, Detective Garcia was shown State's Exhibit 83, a gun that he described as a black, .40 caliber, Glock handgun. He testified that he recovered the gun from the scene of the incident, and, at the time he recovered it, there was an extended magazine inserted in it. When asked where he had seen the handgun, Detective Garcia stated at "the scene of this incident." When asked, "[w]hat scene," he responded, "[o]f the firearm recover/bailout contact shooting." Appellant's objection to that statement was overruled. When the State sought to admit the handgun in evidence, the following occurred:

> [DEFENSE COUNSEL]: Objection. May I voir dire, or –
>
> (Counsel approached the bench and the following ensued:)
>
> THE COURT: I don't know that I've ever questioned or cross-examined a (indiscernible at 2:19:49) on direct before I objected to, a known objection to an item of evidence. Expert witnesses, we voir dire.
>
> [DEFENSE COUNSEL]: So I'm objecting. There's been no connection made with the gun to my client. There's been no – nothing. And right now all we're doing is saying, okay, this officer is on the scene. That's why I asked to voir dire because there's been no additional testimony of how this gun is connected to him, how, you know, how they're even proceeding forward (indiscernible).
>
> So right now we just got a person who went into another (indiscernible) or something and they're saying it's relevant to this case and there's been no evidence or testimony of how this is even connected or anything.
>
> THE COURT: So your objection is relevance. Yes?

> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: Overruled. Step back.
>
> [DEFENSE COUNSEL]: And then – well – all right, Your Honor.
>
> THE COURT: Tell me more clear the reason you're objecting to it.
>
> [DEFENSE COUNSEL]: The reason I'm objecting is –
>
> THE COURT: There's testimony that this gun was recovered over by the fence where your client was apprehended. So that might come into the weight of the evidence. All of the things that you want, you're going to be able to argue to the jury if they remain in the state that they're in. They've taken (indiscernible at 2:21:16).
>
> It does not, however, go to the admissibility of the evidence. It goes to the weight. So I think that there is at least circumstantial evidence to show the relevance to this jury. Thank you.
>
> (Counsel returned to the trial tables and proceedings resumed in open court[.])

Over that objection, the court admitted the gun into evidence.

Appellant argues that the handgun "and the evidence regarding its discovery were not relevant[,]" that the trial court abused its discretion "by categorizing [his] objections as pertaining merely to the 'weight,' not the 'admissibility,' of the evidence[,]" by failing to specify the circumstantial evidence that showed relevance, and by failing to note that no forensic evidence or eyewitness linked the gun to appellant. He also challenges the testimony of Corporal Mattingly because she never specified which items of evidence and which firearms she compared. He points to her report, which included the phrase, "two ammunition components originated from the same source with no unexplained differences," and argues that she failed to "identify which 'two ammo components' or

which 'source' were indicated." Appellant maintains that the admission of the handgun enabled the State to argue, in closing, that as he was running from the police, he tossed the gun over the fence, and that moments later, Detective Garcia conducted a search and found the gun near to where he was apprehended. According to appellant, the prejudice arising from the admission of the handgun, and the evidence of its recovery, outweighed its probative value and, therefore, it should have been excluded under Maryland Rule 5-403. Alternatively, he asserts that the failure to exclude the evidence under Rule 5-403 was plain error "exempt from the preservation requirement." We disagree.

A. Standard of Review

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018) (citing *State v. Simms*, 420 Md. 705, 727 (2011)). Generally, all relevant evidence is admissible. Md. Rule 5-402. "Still, a trial court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice or other countervailing concerns." *Montague v. State*, 471 Md. 657, 674 (2020); *see also* Md. Rule 5-403 ("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."). We do not exclude relevant evidence merely because it is

prejudicial, however, as "[a]ll evidence, by its nature, is prejudicial." *Williams*, 457 Md. at 572. Rather, relevant evidence may be excluded when it is *unfairly* prejudicial in a way that *substantially* outweighs its probative value. *Montague*, 471 Md. at 674. Unfair prejudice outweighs probative value if it "'tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission.'" *Id.* (quoting *State v. Heath*, 464 Md. 445, 464 (2019)); *see also* Md. Rule 5-403. The threshold determination of whether evidence is relevant is a legal conclusion that we review without deference. *Fuentes v. State*, 454 Md. 296, 325 n.13 (2017). A trial court has no discretion to admit irrelevant evidence. Md. Rule 5-402. If we determine that evidence was relevant, "our review shifts to a consideration of whether the trial court's ruling was a sound exercise of discretion." *Molina v. State*, 244 Md. App. 67, 127 (2019).

B. Analysis

Physical evidence such as the handgun is admissible where there is a reasonable probability that it was connected with appellant or the crime. *Aiken v. State*, 101 Md. App. 557, 573 (1994). The lack of a positive connection with appellant or the crime "affects only the weight of the evidence." *Id.* (quotation marks and citations omitted). For that reason, evidence of the discovery of the handgun was relevant because there was a reasonable probability that it was connected to the crimes with which appellant was charged. Police found the fully loaded gun on the opposite side of a fence very near to where appellant was apprehended after fleeing from police officers following his exit from a vehicle that matched the description of a vehicle reportedly at the scene of the shooting. The evidence

also showed that appellant was wearing clothing similar to that worn by others who exited the Dodge Charger including dark colored clothes, gloves, and a ski mask that partially covered his face.

Detective Garcia identified the weapon found near the fence as a black "Glock .40 caliber handgun" with an extended magazine inserted and with a round in the chamber. Detective Bankhead testified that three firearms were found in the Dodge Charger; two Anderson Manufacturing or AM-15 style firearms, and one AK-style firearm. One of the AM-15 style firearms had a white shoestring tied around the trigger guard.

Corporal Mattingly, who by stipulation of the parties testified as an expert in firearms and tool mark examination, test fired four firearms that were submitted for testing. Those firearms were described as (A) a "Glock brand semi-automatic pistol, caliber .40 Smith & Wesson, model 23GEN4, serial number UCR789, with one (1) compatible Glock brand magazine having a capacity of twenty-two (22) caliber .40 S&W cartridges"; (B) "one (1) Radom brand semi-automatic pistol, caliber 7.62 x 39 mm, model Hellpup, serial number PAC1118485, with one (1) compatible American Tactical brand magazine marked as having a capacity of sixty (60) caliber 7.62 x 39 mm cartridges"; (C) "one (1) Anderson Manufacturing brand semi-automatic pistol, caliber .223 Wylde, model AM-15, serial number 18301009, with one (1) compatible Mission First Tactical brand magazine having a capacity of thirty (30) caliber .223 Remington/5.56mm NATO cartridges"; and, (D) "one (1) Anderson Manufacturing brand semi-automatic pistol, caliber .223 Wylde, model AM-15, serial number 18067317, with one (1) compatible Magpul Industries brand magazine

having a capacity of forty (40) caliber .223 Remington/5.56mm NATO cartridges, and one (1) white shoelace[.]" Without objection, she stated that she could take fired bullets, look at them under a microscope, and compare them to each other to see if they have "sufficient agreement."[7] Corporal Mattingly's written report showed that she tested the Glock brand

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[7] About three months before the trial in the instant case, the Maryland Supreme Court issued its opinion in *Abruquah v. State*, 483 Md. 637 (2023). In that case, the Court wrote:

> "the firearms identification methodology employed in this case can support the reliable conclusions that patterns and markings on bullets are consistent or inconsistent with those on bullets fired from a particular firearm. Those reports, studies, and testimony do not, however, demonstrate that that methodology can reliably support an unqualified conclusion that such bullets were fired from a particular firearm."

Abruquah, 483 Md. at 648.

The Court held that "[b]ased on the evidence presented at the hearings … the circuit court should not have permitted the State's expert witness to opine without qualification that the crime scene bullets were fired from [the appellant's] firearm." *Id.* at 698.

The record in the instant case makes clear that defense counsel was aware of the *Abruquah* decision at the time of the trial. He specifically referenced the case after lodging an objection to a demonstrative aid that the State sought to admit. Ultimately, however, defense counsel withdrew that objection. Subsequently, defense counsel lodged several objections because he was unclear about whether Corporal Mattingly was referencing bullets from weapons she test fired or those recovered by police, but he did not lodge any objection based on *Abruquah*.

Appellant does not present an *Abruquah* challenge here. Instead, as at trial, his argument focuses on the lack of specificity and clarity about which items of evidence and which firearms Mattingly was comparing. In his brief, appellant specifically stated that he "is not to be heard to argue that Tara Mattingly's testimony linked that handgun to the crime in question." Instead, he argues:

(continued…)

semi-automatic pistol, caliber .40 Smith & Wesson, model 23GEN4, serial number UCR789. That firearm was examined, found to function properly, and was test fired. Corporal Mattingly concluded that "[c]ompatible cartridges were found" in item number 22131606, which was "one (1) cartridge, caliber .40 S&W, Winchester brand[,]" and item number 22131607, which was "twenty (20) cartridges, caliber .40 S&W, twelve (12) Federal brand, five (5) Speer brand, and three (3) Winchester brand[.]" The evidence presented was sufficient to create a reasonable probability that the gun was connected to appellant and the shooting. The low bar of having any tendency to make any fact more or less probable was met in this case. The absence of forensic or other evidence linking appellant to the gun went to the weight of the evidence and not its admissibility. It was for the jury to weigh the evidence and make the ultimate determination.

Appellant's argument that the probative value of the evidence was outweighed by the risk of unfair prejudice was not preserved properly for our consideration. Appellant did not make that argument before the trial court. Md. Rule 4-323(a) (To preserve an objection, a defendant must object "at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."). Here, the

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> While [Mattingly] testified that 'the microscopic imperfections were consistent,' …, she never specified which items she was discussing. While she also testified that 'these items of evidence … are consistent with being fired by the same firearm,' …Mattingly never specified which 'items' of evidence and which 'firearm' she had compared. While Mattingly's report opined that 'two ammunition components originated from the same source with no unexplained differences, [t]hat report did not identify which 'two ammo components' or which 'source' were indicated.

defense objected on the specific ground of relevance, but did not object specifically on the ground that the risk of unfair prejudice outweighed the probative value of the evidence. *Gutierrez v. State*, 423 Md. 476, 488 (2011) ("[W]hen an objector sets forth the specific grounds for his objection . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified." (quotation marks and citations omitted)). Appellant asserts that the failure to exclude the evidence under Rule 5-403 was plain error "exempt from the preservation requirement." We disagree.

"Plain error review is 'reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). The error complained of here does not fall into that category. Moreover, in order for us to exercise plain error review, four conditions must be met:

> (1) there must be an error or defect – some sort of deviation from a legal rule – that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Id. (cleaned up). Our review of the record reveals no error, much less plain error. Even if appellant had preserved the issue, we would hold that the challenged evidence had substantial probative value and that the trial court could rationally find that the risk of unfair prejudice did not outweigh it. For that reason, we decline appellant's invitation to exercise our discretion to grant plain error review.

IV.

Appellant argues that the trial court erred in denying his motion for judgment of acquittal because "[n]o forensic evidence such as DNA, or tool mark comparison, linked the gun to [him], and no one had testified that he had been seen in possession of that handgun." He further asserts that no evidence placed him "at the scene of the shooting or showed that he had participated in the shooting" as neither Smith nor Reid identified him as being in any vehicle involved in the shooting, and no evidence showed that he occupied the gray Charger at the time of the shooting. Lastly, appellant argues that there was no evidence of a conspiracy between himself and the three individuals who exited the Charger. He maintains that his exit from the Charger, which had weapons in it, the evidence showing him wearing the same black clothing, gloves, and ski mask as the other occupants of the vehicle, and the retrieval of the gun from the other side of a fence all occurred after the shooting, and there was no evidence to show that he acted in concert with others before or during the shooting.

A. Standard of Review

It is well settled that "'appellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal.'" *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *Lotharp v. State*, 231 Md. 239, 240 (1963)). Maryland Rule 4-324 sets forth the procedure for a motion for judgment of acquittal:

> (a) **Generally. —** A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is

> divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment of acquittal shall be necessary. A defendant does not waive the right to make the motion by introducing evidence during the presentation of the State's case.
>
> *   *   *
>
> (c) **Effect of denial. —** A defendant who moves for judgment of acquittal at the close of evidence offered by the State may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the defendant withdraws the motion.

Rule 4-324(a) makes clear that a defendant who moves for judgment of acquittal is required to "state with particularity all reasons why the motion should be granted[,]" and is not entitled to appellate review of reasons stated for the first time on appeal. *Starr*, 405 Md. at 302. Unless requested by the court, a renewed motion for judgment of acquittal need not restate the reasons identified in a prior motion that is incorporated by reference, because '"the reasons supporting the motion are [already] before the trial judge."' *Hobby v. State*, 436 Md. 526, 540 (2014) (quoting *Warfield v. State*, 315 Md. 474, 488 (1989)).

Appellate review of a trial court's decision to deny a defendant's motion for judgment of acquittal is limited. *State v. Payton*, 461 Md. 540, 557 (2018) (citing *Morgan v. State*, 134 Md. App. 113, 126 (2000)). The reviewing court "'merely ascertains whether there is any relevant evidence, properly before the jury, legally sufficient to sustain a conviction.'" *Id.* (quoting *Morgan*, 134 Md. App. at 126). When reviewing the relevant evidence to determine its legal sufficiency, we must view '"the evidence in the light most favorable to the prosecution"' and ask if '"*any* rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt.'" *Hobby*, 436 Md. at 537-38 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In applying that standard, Maryland's Supreme Court has stated:

> The purpose is not to undertake a review of the record that would amount to, in essence, a retrial of the case. Rather, because the finder of fact has the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. We recognize that the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation, and we therefore defer to any possible reasonable inferences the trier of fact could have drawn from the admitted evidence and need not decide whether the trier of fact could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.

Titus v. State, 423 Md. 548, 557-58 (2011) (cleaned up); *see also Moye v. State*, 369 Md. 2, 12 (2002) ("We give due regard to the [fact finder's] finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." (quotation marks and citations omitted)).

We recognize that "Maryland has long held that there is no difference between direct and circumstantial evidence." *Hebron v. State*, 331 Md. 219, 226 (1993); *see also Jensen v. State*, 127 Md. App. 103, 117 (1999) (stating same). "Circumstantial evidence alone is sufficient to support a conviction, provided the circumstances supports rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Handy v. State*, 175 Md. App. 538, 562 (2007) (cleaned up). Such inferences "must rest upon more than mere speculation or conjecture." *Smith v. State*, 415 Md. 174, 185 (2010).

B. Analysis

At the close of the State's case, defense counsel moved for judgment of acquittal on all counts. Specifically, he argued that there was no evidence that Terrence Silver was a victim of the shooting. He also argued that there was no mention of any plan or idea with respect to the conspiracy counts. Counsel argued that there was no evidence that appellant "participated in any of these acts other than he was in a vehicle" and that there "hasn't been much evidence provided of what occurred on the scene."

In response to those arguments, the prosecutor played a 911 call in which an individual alleged to be Silver stated that he had been hit. With regard to the conspiracy counts, the prosecutor argued that appellant was in the suspect vehicle where three firearms were recovered, one of which was against the front passenger where the prosecutor suggested appellant was seated at the time of the collision. The prosecutor noted that all of the individuals who fled from the Dodge Charger were wearing black clothing, ski masks, and gloves. The prosecutor argued that a conspiratorial agreement could be inferred from that evidence. Defense counsel countered that, although there was some "argument" that appellant was in the Dodge Charger when it crashed, there was no evidence to suggest he was in the vehicle when the shooting occurred. The trial judge denied the motion for judgment of acquittal stating that that, "[i]n the light most favorable to the State there is evidence minimally, circumstantially to show the Defendant's involvement[.]"

Appellant did not present any evidence in his defense. After resting his case, appellant renewed his motion for judgment of acquittal. Defense counsel again argued that

judgment of acquittal should be granted with respect to all counts in which Silver was identified as the victim. Defense counsel also argued:

> And also, specifically, Your Honor, the handgun charges, the loaded handgun. I'm not sure which gun it's referring to, but if it's referring to the one that was thrown over the fence, I would ask that Count also be looked at based on the fact that, again, as where we are now, there's not enough evidence to connect that to [appellant]. All we have is that it was – the key testimony is no one saw any kind of movements or anything being thrown. So at this time, those are my arguments. Thank you.

The court found that the State had not met its burden with respect to the counts identifying Silver as an intended target or victim and granted judgment of acquittal as to counts 2, 4, 6, 8, and 11.[8] As to defense counsel's argument pertaining to the handgun, the court found that:

> [Y]ou made a more specific argument as to the handgun counts at this stage indicating that there's been no evidence that [appellant] tossed or otherwise had been in possession of the handgun. However, again, the handgun, I think that there is sufficient circumstantial evidence also as to even the weapons that were left behind in the car, whether he did or did not directly possess them, I think that the law is clear that constructive possession could lead to a conviction for all of those as there is evidence sufficient to show that he was inside the car where the guns were.

Here, appellant challenges his criminal agency with respect to the handgun charges. He argues that there was no evidence that he threw a gun over the fence and no evidence otherwise connecting him to a gun. That argument is not persuasive. The trial court correctly noted that there was evidence of three weapons in the Dodge Charger, one of which was found leaning on the floorboard of the front passenger seat. There was also

[8] Later, the court also granted judgment of acquittal as to Count 9, the first-degree assault of Mark Reid.

circumstantial evidence that appellant was sitting in the front passenger seat at the time of the collision and subsequent bailout. From that evidence, it could be reasonably inferred that appellant possessed or was in constructive possession of the weapons found in the Dodge Charger. In addition, there was some evidence that the handgun recovered near where appellant was apprehended and the firearms in the vehicle fired bullets that were consistent with casings recovered at the scene of the shooting. Circumstantial evidence thus supported the handgun convictions.

Appellant also argues that the evidence was not sufficient to support the conspiracy charges. We disagree. "A criminal conspiracy is the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means." *Savage v. State*, 212 Md. App. 1, 12 (2013) (quotation marks and citation omitted). A conspiracy may be shown through circumstantial evidence, from which a common scheme may be inferred. *Mitchell v. State*, 363 Md. 130, 145-46 (2001).

Evidence at trial showed that a gray Dodge Charger was identified as having fled the scene of the shooting. When a car of that same color and model crashed at St. Barnabas and Stamp Roads, appellant and three others, all dressed in similar dark-colored clothing and wearing ski masks and gloves, exited the vehicle through the driver's side doors and fled the scene. Appellant was ultimately apprehended and a loaded firearm with a bullet in the chamber was found nearby. A search of the vehicle revealed three weapons, magazines, and ammunition. There was some evidence from Corporal Mattingly that the firearm recovered near the place where appellant was apprehended and the firearms recovered from

the vehicle fired bullets consistent with casings recovered from the scene of the shooting. From that evidence, a reasonable inference could be drawn that appellant engaged in a criminal conspiracy with the other individuals who fled from the Dodge Charger to shoot and kill Smith. That evidence was also sufficient to support a conclusion that appellant was an accomplice, a person who, "as a result of his or her status as a party to an offense, is criminally responsible for a crime committed by another." *Sheppard v. State*, 312 Md. 118, 122 (1988), *abrogated in part on other grounds by State v. Hawkins*, 326 Md. 270 (1992).

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.