Circuit Court for Wicomico County
Case No.: C-22-CR-21-000163

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1758

September Term, 2022

DREQUAN DEONTE SAVAGE

v.

STATE OF MARYLAND

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

JJ.

Opinion by Albright, J.

Filed: April 26, 2024

*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).

Appellant, Drequan Deonte Savage, was indicted in the Circuit Court for Wicomico County and charged with first-degree murder, robbery with a dangerous weapon, use of a firearm in the commission of a crime of violence, and related charges. After the court granted his motion for judgment of acquittal on the charge of robbery with a dangerous weapon, a jury convicted him of second-degree murder, first-degree assault, and use of a firearm in a crime of violence. Appellant was sentenced to 40 years' incarceration for second-degree murder and a consecutive 20 years for use of a firearm, five years of which is without possibility of parole. Appellant then timely appealed. He presents the following questions for our review:

1. Did the trial court err in admitting testimony concerning Mr. Savage's post-arrest silence?

2. Did the trial court err in allowing a police officer to interpret language in text messages and calls between Mr. Savage and the victim?

For the following reasons, we shall affirm.

BACKGROUND

This case involves the fatal shooting of Gerald Nash on April 7, 2021, inside Leslie Teo's residence in Salisbury, Maryland. There was evidence that Teo, Nash, and Nash's girlfriend, Tamara Bellfield, all were acquainted to one degree or another with Appellant.

The series of events that led up to the shooting began on March 30, 2021, when, according to Bellfield, Appellant called Nash and asked him to pick him up after an

argument with his girlfriend, Dejia Savage.[1] Bellfield and Nash brought Appellant to Bellfield's residence, and Appellant came inside with a "black box with a handle and a lock," measuring approximately 18 inches by 12 inches. Bellfield further testified that Appellant called for his mother to come get him and left the box with Nash because he did not want to take it to his mother's house.

After Appellant left, Bellfield went shopping. When she returned, she saw that Nash managed to open the locked box and that he had possession of a black gun with an extended clip. In the ensuing days between March 30, 2021, and April 2, 2021, there were a total of 45 calls between Appellant and Nash concerning the gun. There also was testimony from Bellfield that she received messages from Appellant and Ms. Savage asking where his "safe" was.[2] For the next week, according to Bellfield, she and Nash avoided Appellant and "were in hiding." Bellfield further testified, without objection, that she knew Appellant was "wanted" by police about a different matter. She also testified that she "did not feel safe at all."

On March 30, 2021, at 10:38 a.m., after Appellant dropped off the locked safe, Nash made several searches on his cellphone concerning a Sentrysafe small fire-resistant

[1] We note that Ms. Savage and Appellant share the same surname. Ms. Savage briefly explained the nature of their relationship by testifying that she began dating him in 2019, they did not have any children together, and he did not live with her. In addition, Dejia Savage confirmed she owned a 2007 Mercedes Benz. There was evidence that police suspected Appellant used that vehicle.

[2] Dejia Savage confirmed at trial that she contacted Bellfield, asking for Appellant's belongings, and told her "it won't be pretty." There was also evidence that Appellant instructed Dejia Savage to go to a pawn shop and buy him a new gun.

chest. And, later that same day, Nash searched how to resell a SCCY CPX-1 9mm handgun.[3]

During the time at issue, there were messages between the victim, Nash, and Appellant concerning Appellant's belief that Nash was avoiding him. Appellant also told Nash that the gun Nash appropriated was not his "only jiffy," which Corporal Braightmeyer opined was slang for a firearm. Appellant also told Nash that there was "smoke behind this shit," which the corporal opined meant "a fight or resistance or trouble, problem."[4]

At around this same time, Appellant contacted Leslie Teo, his former social and sexual partner.[5] Teo also knew the victim, Nash. Teo testified at trial that Appellant asked her to inform him the next time Nash came over to her apartment. Appellant told her that "he needed to talk to him" and that Nash "took something from him." As will be discussed in more detail in our review of the second question presented, there was also evidence that Appellant messaged a number of individuals, informing them that the

[3] Corporal Kyle Braightmeyer, of the Maryland State Police, reviewed the extraction of information from the victim's cellphone that was seized after he was arrested. The extraction covered Facebook messages, text messages, and searched terms. According to Corporal Braightmeyer, Appellant's phone included a picture of him posing with a CPX 9-millimeter handgun. We have been unable to find that picture in the record.

[4] Appellant was given a continuing objection to Corporal Braightmeyer's opinion testimony concerning the interpretation of slang in the cellphone records. Unlike with Detective Robert Smallwood, discussed *infra*, no issue is raised in this appeal as to Corporal Braightmeyer's opinion testimony.

[5] Teo testified pursuant to a proffer agreement with the State on a charge of armed robbery.

victim, Nash, did not return his safe and that he was "gone catch one behind it," "I want his head," and that Appellant "ain't gonna get my hands dirty."

Thereafter, on the morning of April 7, 2021, the day of the shooting, Teo contacted Nash and asked him to buy her some marijuana. Bellfield confirmed that she drove Nash to Teo's apartment that day at around 9:30 a.m. When Nash arrived at Teo's residence, Teo had already found some marijuana, so she asked Nash to go and buy some "blunts" to smoke it. *See Smith v. State*, 415 Md. 174, 177 n. 2 (2010) (noting that a "blunt" is a popular term for a standard cigar that has had its tobacco removed and replaced with marijuana).

After Nash left, Teo contacted Appellant and advised him that Nash had been at her residence, was coming back shortly, and would be staying with her for a while. Teo told Appellant she would leave the back door unlocked and that she and Nash would be in the bedroom. He also told her to erase the messages of their conversation. Teo further testified that Appellant told her to "have him naked." This confused her, and she testified that Nash did not disrobe. Teo did not tell Nash that Appellant was coming.

Moments after they went to the bedroom, presumably to smoke the marijuana, an unidentified man wearing a ski mask entered Teo's residence and "banged" on the bedroom door. Teo opened the door. A man she did not know and who was not Appellant pointed a gun at Nash and demanded "where's the bag at?" The man then "immediately" started shooting, and Teo fled and eventually called the police.

Nash was shot in his right upper thigh and in his buttocks. The parties stipulated that he died from two gunshot wounds and the manner of death was homicide. Although two bullets and casings were recovered, the gun used in the murder was never found.

At the time of the incident, Appellant was wearing an ankle bracelet and his movements were being monitored via global positioning satellite ("GPS") administered through the Wicomico County Detention Center. On April 7, 2021, the day of the shooting and at various times, Appellant was in the vicinity of the residence belonging to Bellfield, Nash's girlfriend, as well as Teo's apartment.

According to Corporal Braightmeyer, at around 10:28 a.m. on the day of the shooting, video surveillance from a nearby restaurant parking lot showed Appellant driving a Mercedes in the area. Appellant exited the driver's seat, then switched places with an unidentified passenger. At that point, Appellant walked away from the vehicle, towards his own residence, while his companion drove the Mercedes towards the scene of

the shooting.[6] The victim, Nash, was shot about three minutes later at approximately 10:31 a.m., while he was writing a text message that was never sent.[7]

We shall include additional detail in the following discussion.

DISCUSSION

I.

Appellant first contends the trial court erred in admitting evidence from Corporal Braightmeyer that Appellant did not give a statement after he was arrested. Appellant argues that this admission of post-arrest silence was not only irrelevant but also violated the Fifth Amendment to the U.S. Constitution, as applied to the states via the Fourteenth Amendment, as well as Article 22 of the Maryland Declaration of Rights. [Id.] The State

[6] Corporal Braightmeyer testified, without objection, as follows:

> Q. And at 10:28 a.m. where is this Defendant?
>
> A. At 10:28 a.m. he was at 502 West Main Street, that is the Brew River Restaurant address. With the surveillance you witnessed earlier from Perdue Farms and Brew River, it shows Savage exit the driver's seat in the white hooded, the Mercedes, and an unknown male exits the rear right passenger seat and they switch. The rear right passenger gets in the driver's seat, Mr. Savage continues walking in the direction of Hill Street and he is seen going out of frame on the Perdue camera in the direction of Newton Street, which is his residence.
>
> Q. And 10:31 is the shooting.
>
> A. Yes.

[7] Corporal Braightmeyer testified: "Yes. 10:31 is our time of the shooting. We know that through the victim's cell phone, he was actually sending a message at the time that never went through. Like as if you were typing, set your phone down, like I'll get back to it, and it was still there not sent yet."

responds that this argument is not preserved and that admission of Appellant's having not made a statement was not prejudicial to Appellant. We concur.[8]

The testimony at issue occurred during the direct examination of Corporal Kyle Braightmeyer, of the Maryland State Police. Corporal Braightmeyer testified that Appellant was arrested on April 8, 2021, just after midnight. He continued:

> Q. Thank you.
>
> Did you meet with the Defendant after he was taken into custody?
>
> A. Yes.
>
> Q. Did he give a statement?
>
> A. No. [9]

(footnoted added).

Except for certain jurisdictional defects, we will not review an issue "unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131 (a). The purpose of the

[8] Observing that Appellant did not ask for plain error review, the State also argues the admission of the testimony at issue did not amount to plain error. As it was not raised, we decline to consider that issue any further. *See Anne Arundel County v. Harwood Civic Ass'n, Inc*., 442 Md. 595, 614 (2015) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999))).

[9] The State's Answer to Defendant's Request for Discovery indicates that there is a *Miranda* Waiver form associated with Appellant. Although we suspect, based on the corporal's testimony, the form indicates that Appellant did not waive his rights, we have not found that form in the record, nor did we find any other information about the surrounding circumstances concerning Appellant's decision not to waive his rights.

preservation rule "is to 'prevent[] unfairness and requir[e] that all issues be raised in and decided by the trial court." *Peterson v. State*, 444 Md. 105, 126 (2015) (quoting *Grandison v. State*, 425 Md. 34, 69 (2012)); *see also Robson v. State*, 257 Md. App. 421, 460-61 ("The preservation rule's prime and generative purpose is to avoid error in the first place and thereby to preclude the very necessity for appellate review"), *cert. denied*, 483 Md. 520 (2023).

Similarly, Maryland Rule 4-323(a) provides, in part, that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent." As the Court in *Peterson* said, "[a]n appeal is not an opportunity for parties to argue the issues they forgot to raise in a timely manner at trial. Nor should counsel 'rely on this Court, or any reviewing court, to do their thinking for them after the fact.'" *Peterson*, 444 Md. at 126 (quoting *Grandison*, 425 Md. at 70). Appellant did not raise any objection to Corporal Braightmeyer's testimony, therefore, this issue is unpreserved.

Moreover, even if preserved, we conclude there was no reversible error. "Subject to supervening constitutional mandates and the established rules of evidence, evidentiary rulings on the scope of witness testimony at trial are largely within the dominion of the trial judge." *Crosby v. State*, 366 Md. 518, 526 (2001). Generally, we "will not interfere with such rulings unless there has been an abuse of discretion." *Id*. However, "even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards." *Schisler v. State*, 394 Md. 519, 535 (2006) (quoting *LeJeune v. Coin Acceptors, Inc*., 381 Md. 288, 301 (2004)). If the evidentiary ruling

"involves an interpretation and application of Maryland constitutional, statutory, or case law, our Court must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Schisler*, 394 Md. at 535 (quoting *Garfink v. Cloisters at Charles, Inc*., 392 Md. 374, 383 (2006)).

The Fifth Amendment to the U.S. Constitution, made applicable to the States through the Fourteenth Amendment, provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . . ." *Lupfer v. State*, 420 Md. 111, 122 (2011). Article 22 of the Maryland Declaration of Rights similarly guarantees "[t]hat no man ought to be compelled to give evidence against himself in a criminal case." Both provisions "guarantee the innocent and guilty alike the right to remain silent," which includes "remain[ing] free from adverse presumptions surrounding the exercise of such right." *Newman v. State*, 384 Md. 285, 314-15 (2004). Thus, any reference to a criminal defendant's silence after he or she has been arrested and given warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), violates the Due Process Clause of the Fourteenth Amendment. *See Brecht v. Abrahamson*, 507 U.S. 619, 628-29 (1993) (discussing limited use of silence for impeachment purposes); *Newman*, 384 Md. at 315 (citing *Wainwright v. Greenfield*, 474 U.S. 284, 292 (1986) & *Doyle v. Ohio*, 426 U.S. 610, 619 (1976)).

Even before the Supreme Court held that post-*Miranda* silence was inadmissible, "it long had been settled as a matter of Maryland evidentiary law that evidence of post-arrest silence was inadmissible." *Kosh v. State*, 382 Md. 218, 228 (2004); *see also id*. at 228-34 (discussing the history of Maryland's adoption of this rule). "[S]ilence is evidence

of dubious value that is usually inadmissible," *Kosh*, 382 Md. at 227, "because '[i]n most circumstances silence is so ambiguous that it is of little probative force,'" *Grier v. State*, 351 Md. 241, 252 (1998) (quoting *United States v. Hale*, 422 U.S. 171, 176 (1975)). Moreover, "[t]he prejudice to a defendant resulting from reference to his silence is often substantial," including because "most laymen view an assertion of the Fifth Amendment privilege as a badge of guilt." *Grier*, 351 Md. at 263 (quoting *Walker v. United States*, 404 F.2d 900, 903 (5th Cir. 1968)); *see also Hale*, 422 U.S. at 176 ("permitting the defendant to explain the reasons for his silence is unlikely to overcome the strong negative inference that the jury is likely to draw from the fact that the defendant remained silent . . . .").

Although we tend to agree that, had it been preserved, the court erred in permitting evidence that Appellant did not give a statement, we are not persuaded that Corporal Braightmeyer's single, isolated answer informing the jury that Appellant did not give a statement caused such unfair prejudice that reversal is required. We review the erroneous admission of evidence regarding a defendant's post-arrest silence for harmless error. *Lupfer*, 420 Md. at 140. "In order for the error to be harmless, we must be convinced, beyond a reasonable doubt, that the error in no way influenced the verdict." *Weitzel v. State*, 384 Md. 451, 461 (2004) (citing, among others, *Dorsey v. State*, 276 Md. 638, 659 (1976)). The burden is on the State to prove harmlessness. *Simpson v. State*, 442 Md. 446, 462 (2015). To do so, "the record must affirmatively show that the error was not prejudicial." *Dionas v. State*, 436 Md. 97, 109 (2013). If we are not convinced, beyond a reasonable doubt, that the error exerted no influence on the jury's verdict, then the defendant's convictions must be vacated and a new trial ordered. *Weitzel*, 384 Md. at

462; *Dupree v. State*, 352 Md. 314, 333 (1998). As the Maryland Supreme Court explained:

> What is of importance, from an examination of the cases which discuss harmless error, is the realization that if the error goes to a substantial constitutional right (e. g. right to counsel-sixth amendment, right not to self-incriminate-fifth amendment) then unless the State can prove beyond a reasonable doubt, . . . that a tainted confession in no way influenced the verdict such that the defendant would undoubtedly have been found guilty even if that evidence had not been received, its employment will always be error. Conversely, if the State can show beyond a reasonable doubt that the violation was technical in nature, as well as that the erroneously admitted evidence was merely cumulative, and that there was other overwhelming and largely uncontroverted evidence properly before the trier of fact, then the error would be harmless.

Younie v. State, 272 Md. 233, 246-47 (1974) (internal citation omitted); *see also Ware v. State*, 170 Md. App. 1, 28-31 (2006) (holding that, despite error in admitting evidence of the defendant's silence, that error was harmless beyond a reasonable doubt).

Here, as the State observes, we have been unable to find, in the record or in the trial itself, any reference to the circumstances about the *Miranda* warnings or any other details about when or if Appellant was interrogated by the police after he was taken into custody. Further, the prosecutor never returned to the subject of the Appellant's decision not to give a statement and it was not raised in closing argument.[10]

Furthermore, the case against Appellant was particularly strong. The jury could make a rational inference from the evidence properly admitted that Appellant gave Nash

[10] And, although we recognize that failure to give a statement to police is different than failing to testify at trial, nevertheless, we do note that the jury was instructed not to consider Appellant's decision not to testify. *See State v. Stringfellow*, 425 Md. 461, 475 (2012) ("We assume that jurors follow a judge's instructions.").

a locked box containing a handgun and that Nash opened the box, found the gun, kept it, and then tried to sell it. Appellant sent messages to Nash demanding the handgun's return. When this failed, Appellant messaged other acquaintances and expressed his displeasure with Nash. He conspired with Teo to arrange to have Nash in her apartment, arguably vulnerable by being naked, and then to tell him when Nash arrived. There was also surveillance and GPS evidence before the jury suggesting that Appellant was in the vicinity immediately before the fatal shooting. Accordingly, we conclude that, even if preserved, any error in admitting evidence that Appellant did not give a statement after he was arrested was harmless beyond a reasonable doubt.

II.

Appellant next asserts the court erred by admitting testimony from Detective Robert Smallwood about his interpretation of slang phrases contained in Appellant's extracted text and Facebook messages on the grounds that the detective based his opinion on specialized knowledge, skill, experience, training or education, which are considered the hallmarks of expert opinion testimony, without having been identified and qualified as an expert. The State responds that Appellant's argument on appeal is different than the argument raised at trial and should not be considered. The State also argues the message(s) at issue did not require an expert's interpretation or opinion and that they were within the realm of proper lay opinion based on the detective's knowledge and experience. We concur with the State on the merits.

Detective Robert Smallwood testified that he had been employed with the Salisbury Police Department for seven and a half years, the last four and a half of which

were with the Criminal Investigation Division. As part of the investigation of this homicide, Detective Smallwood was tasked with reviewing the extraction of information from Appellant's cellphone, which was seized from 231 Newton Street, Apartment A, on the morning of April 8, 2021. Detective Smallwood received an extraction summary report, extracted by the Maryland State Police using technology from a digital analytics company, Cellebrite.[11]

Pertinent to the issue presented, Detective Smallwood testified concerning an April 1, 2021 conversation between Appellant and one Deandre Palmer about "Gees," sometimes spelled "Geez," who was identified without objection as the victim, Gerald Nash. The jury heard the following testimony:

> Q. And what does the Defendant say about Gees?
>
> A. I'm going to just preface this by saying these are not my words, not words that I would generally use, but I am going to read this verbatim to you so please don't mind, or please, I'm sorry for the vulgarities, I guess.
>
> The Defendant says, dat nigga Geez a bitch, dope fein ass nigga.
>
> Q. How does Deandre Palmer respond?
>
> A. He says, Why, why yu say that bro, then he says I agree with you tho.

[11] Cellebrite is a company that provides a number of products used in digital intelligence and investigations, including, but not limited to, selective extraction from a wide range of digital devices and sources. *About*, **Cellebrite**, https://cellebrite.com/en/about/ (last visited Apr. 2, 2024). The parties stipulated that the information on Appellant's cellphone was extracted by a certified law enforcement officer and that the contents of his phone were admissible without testimony as to the chain of custody. There is no issue raised concerning the logistics of the extraction process itself. Instead, Appellant's second question presented concerns the detective's interpretation of slang contained in the content of those messages. The detective's testimony on that is derived from a PowerPoint summary of some of these messages.

Q. And how does this Defendant respond?

A. He says, he a fraud, I got this nigga hold my safe for me couple days ago cause me and my bitch was arguing. I ain't want her call cops so make a long story short this dope fein ass nigga ain't give my safe back yet and he gone catch one behind it. Broke ass fuck nigga.

Q. You've testified you've been in law-enforcement a number of years.

A. Yes.

Q. And in the course of that have you had the occasion to speak with suspects and witnesses on a number of occasions?

A. Very much so.

Q. How many occasions?

A. Too many to count probably. It's a daily part of my job.

Q. Are you familiar with popular slang terms and phrases that are used in the community?

A. Yes.

[DEFENSE COUNSEL]: Objection.

The parties approached the bench and Appellant's counsel offered the following objection:

[DEFENSE COUNSEL]: The witness is a police officer who has knowledge and testified as to the way that the cell phone is downloaded, extraction, and put together this paperwork. He is now, maybe not with this question –

THE COURT: Understood.

[DEFENSE COUNSEL]: -- but with followup questions will be opining or relaying what he believes whatever the most recent term may

mean at some point. But as we all know, and I'll date myself, what meant gay in 1950 meant something else in 1970 and means something else in 2020. And my concern is I think ebonics has fallen away, but I remember ebonics, it changes and there is an urban dictionary. And what I'm concerned about is he's going to put in whatever, not saying Madam State is misleading him, but the question is going to come up what does this mean. And eventually he's going to say ultimately it means that my guy wants to do something bad or may want to do something bad. And I don't think he has that background to say that.

[PROSECUTOR]: Your Honor, his testimony that I've had admitted over and over again in trials of this nature, I'm happy to find some case law. Though he isn't being offered as an expert, his opinion is helpful to the understanding of the jury.

THE COURT: But is he offering it as an expert or is he offering it as someone who has training, knowledge and experience as a police officer?

After noting that the contents of the messages were offensive, but that that was not the nature of counsel's objection, argument continued as follows:

[DEFENSE COUNSEL]: I just don't think he's—I think his training—

THE COURT: You're worried about the interpretation of—

[DEFENSE COUNSEL]: Yes.

THE COURT: —he's going to catch one, things of that nature.

[DEFENSE COUNSEL]: Or cap. Even cap may have been used in 1970, because the mobsters would say cap in 1970, hell if I know, excuse my language, I apologize, what do I know.

[PROSECUTOR]: You have to limit the timeframe. I think he testified seven or eight years.

[DEFENSE COUNSEL]: I don't think it matters how long he has been, I'm sorry to interrupt, in case I interrupted you, I apologize. I'm not sure it matters how long he's been doing it. The question was he's offering it actually for the matter asserted as to whether or not because the allegation of the State is that my person engaged in sole communication, and this

would be part of it.

Now, she's not alleging that Deandre Palmer is one of the co-conspirators as it were.

THE COURT: I'm going to allow it. I think he can, you know, again with his training, knowledge and experience, testify as to what he thinks the messages mean. I think you have the opportunity to cross-examine him about it. I'm going to overrule it. [12]

(footnote added).

After the parties returned to the trial tables, the State continued its direct examination of Detective Smallwood:

Q. Do you have an opinion as to what catch one behind it means?

A. To me that would mean like he's coming after him or he's out to find him.

Defense counsel again objected, and the following ensued:

[DEFENSE COUNSEL]: His testimony now is to me it means. This is not—for example, he may be in the narcotic task force unit, if you have one here, or he's a gang squad person like they have in bigger metropolitan areas.

THE COURT: We have them here. We have both.

[DEFENSE COUNSEL]: Wonderful. I'm saying to me it means is to him, not to the police people, to him. So now he's not testifying what it means to the police based upon information, knowledge and training, but rather he's inputting his own spin on what it means.

THE COURT: I think we are parsing words. Let me just say this, I think we're parsing words where I think that's his interpretation but I'm going to sustain the objection. You can clarify.

[12] Appellant was given a continuing objection to the detective's "comments as it relates to the nature of the texts."

After Appellant's objection was sustained, the State rephrased the question, as follows:

> Q. Detective Smallwood, do the words catch one behind you have any accepted meaning in the community of those who commit violence or law enforcement officers' experience, if you know?
>
> A. I'm not 100 percent sure.
>
> Q. Okay, that's fair.
>
> Moving on to the next slide.

Detective Smallwood's testimony continued:

> Q. This message from page 1091 of the extraction report. Will you read this message to the jury?
>
> A. Try see where da nigga Geez at dat go with Tammy. I want his head. He a fraud ass suck ass fein ass nigga.
>
> Q. Do you know who this Defendant is exchanging messages with at this time?
>
> A. I believe these messages were with west side said person [*sic*] via Facebook.
>
> Q. Do you have an opinion as to what I want his head means?
>
> A. He's out to cause harm to this person. [13]

[13] As the State observes in its appellate brief, Detective Smallwood then went on to interpret various acronyms, or "monikers," as he called them, contained in the messages between Appellant and others. Although Appellant was granted a continuing objection at trial, he does not challenge these interpretations in this Court, limiting his argument to the interpretation of "catch one behind it" and "I want his head." Accordingly, we do not address the detective's interpretation of the acronyms for various phrases in the messages. *See generally,* Md. Rule 8-504 (a) (5) (a brief shall include "[a]rgument in support of the party's position"); *Anne Arundel Cty. v. Harwood Civic Ass'n, Inc*., *supra*, 442 Md. at 614 (2015) (declining to consider arguments inadequately presented); *Albertson v. State*, 212 Md. App. 531, 570-71 (observing that "appellant (continued)

(footnote added).

The State contends that the question presented is not preserved because the grounds on appeal are different than the grounds raised at trial. As previously indicated, Maryland's appellate courts ordinarily will not consider "any issue 'unless it plainly appears by the record to have been raised in or decided by the trial court.'" *King v. State*, 434 Md. 472, 479 (2013) (quoting Md. Rule 8-131 (a)). Generally, "[i]t is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *see also Gutierrez v. State*, 423 Md. 476, 488 (2011) (reiterating that "when 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") (citation omitted). And, "[a] party must bring his argument to the attention of the trial court with enough particularity that the court is aware first, that there is an issue before it, and secondly, what the parameters of the issue are." *Harmony v. State*, 88 Md. App. 306, 317 (1991). Furthermore, "[t]he trial court needs sufficient information to allow it to make a thoughtful judgment." *Id*.

Nevertheless, "the Court of Appeals has said that 'an appellant/petitioner is entitled to present the appellate court with a more detailed version of the argument

makes no argument on appeal maintaining this theory of the case. The failure to properly argue the question precludes appellate review"), *cert. denied*, 435 Md. 267 (2013).

advanced' below." *State v. Greco*, 199 Md. App. 646, 658 (2011) (citing *Starr v. State*, 405 Md. 293, 304 (2008)) (concluding that an issue was not waived where the State generally made the argument at trial, and where the trial court clearly decided the issue on the grounds raised on appeal), *aff'd*, 427 Md. 477 (2012). And, "where the lower court was fully aware of the reasons advocated by counsel for and against the admissibility of the evidence offered and ruled in favor of one contender against the other, we think both propositions of law should be considered briefly." *Wilt v. Wilt*, 242 Md. 129, 134 (1966); *see also Henry v. State*, 204 Md. App. 509, 537-40 (2012) (concluding that defendant was not required to cite state law cases in order to preserve issue of burden of proof). "Thus, as long as the party, whether in a civil or criminal case, clearly makes the judge aware of the course of action he or she desires the court to take and the reasons for such course of action, the party shall have adequately preserved that issue for appellate review." *In re Ryan S.*, 369 Md. 26, 35 (2002); *see also Bradley v. Bradley*, 208 Md. App. 249, 257-58 (2012) (concluding an issue was preserved where it was "decided by" the trial court (citing Md. Rule 8-131 (a))).

We are persuaded that Appellant raised an issue as to the admissibility of the detective's opinion testimony concerning the meaning of the slang terms in the messages. The court gave Appellant a continuing objection "as it relates to the nature of the texts," and decided that his opinion was admissible to the extent it was based on his training, knowledge, and experience. Although no one mentioned the pertinent rules or case law, discussed *infra*, we hold that the issue presented was adequately preserved for our review.

We turn next to the phrases themselves. Appellant argues that the court erred in admitting testimony from the detective as to the meanings of "catch one behind it," and "I want his head." As for "catch one behind it," as Appellant recognizes, immediately after the detective stated that meant "like he's coming after him or he's out to find him," Appellant's objection was sustained. And then, the detective testified that he was "not 100 percent sure" there was an accepted meaning of the phrase in the law enforcement community.

We conclude that, because Appellant's objection was sustained, the detective's answer was not before the jury and is not properly presented on this appeal. Notably, the trial court instructed the jury that testimony that had been struck was not evidence. *Jones v. State*, 217 Md. App. 676, 697-98 ("'Maryland courts long have subscribed to the presumption that juries are able to follow the instructions given to them by the trial judge, particularly where the record reveals no overt act on the jury's part to the contrary'" (quoting *Spain v. State*, 386 Md. 145, 160 (2005))), *cert. denied*, 440 Md. 227 (2014); *see also* Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions* 3:00 (2d ed. 2022) ("MPJI-Cr") (What Constitutes Evidence).

This only leaves the detective's opinion as to the meaning of the phrase, "I want his head." "An appellate court typically reviews a trial court's ruling on the admission of evidence for abuse of discretion." *State v. Galicia*, 479 Md. 341, 389 (2022) (citation omitted), *reconsideration denied* (Aug. 10, 2022), *cert. denied*, 143 S. Ct. 491 (2022). "An abuse of discretion occurs where 'a trial judge exercises discretion in an arbitrary or capricious manner or . . . acts beyond the letter or reason of the law.'" *Id*. (quoting *Cooley*

v. State, 385 Md. 165, 175 (2005)). "In some circumstances, the admissibility of particular evidence is a legal question, in which case an appellate court accords no special deference to a trial court." *State v. Galicia*, 479 Md. at 389 (citation omitted).

"We review a court's decision to admit evidence, including lay opinion testimony, under an abuse of discretion standard." *Freeman v. State*, 259 Md. App. 212, 229 (2023) (citation omitted), *cert. granted*, 486 Md. 228 (*to be argued* April 9, 2024). "We also consider a court's decision to admit expert opinion testimony, including whether a witness is qualified as an expert, under the abuse of discretion standard." *Id*. (citing *Abruquah v. State*, 483 Md. 637, 652 (2023)) (citing, among others, *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020)).

Maryland Rule 5-701 provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

Maryland Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

"The rules of evidence distinguish between the types of opinions and inferences that can be expressed by a lay witness and those for which the witness must be qualified as an expert." *State v. Galicia*, 479 Md. at 389. These rules "prohibit the admission as

'lay opinion' of testimony based upon specialized knowledge, skill, experience, training or education." *Ragland v. State*, 385 Md. 706, 725 (2005). As the Supreme Court of Maryland explained, "'when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average lay[person],' it may be introduced only through the testimony of an expert witness properly qualified under Maryland Rule 5-702." *State v. Galicia*, 479 Md. at 389 (quoting *Johnson v. State*, 457 Md. 513, 530 (2018)). "If a court admits evidence through a lay witness in circumstances where the foundation for such evidence must satisfy the requirements for expert testimony under Maryland Rule 5-702, the court commits legal error and abuses its discretion." *Id*.; *accord Freeman*, 259 Md. App. at 230.

After the briefs were filed in this Court, we decided *Freeman, supra*, a case involving the interpretation of coded language and/or slang contained within text messages. There, this Court recognized that testimony that the terms "lick" and "sweet licks" meant a "robbery" required the assistance of a qualified expert. *See Freeman*, 259 Md. App. at 235. We explained:

> We recognize that words and phrases often have multiple meanings, and "the meanings of even common words may be context-dependent[.]" *Armstead v. State*, 342 Md. 38, 56, 673 A.2d 221 (1996) (discussing principles of statutory interpretation). That is especially true with respect to code words used by drug dealers, which has led courts to recognize the value of expert testimony in interpreting such "drug jargon[.]" *United States v. Vera*, 770 F.3d 1232, 1241 (9th Cir. 2014) ("Drug jargon is well established as an appropriate subject for expert testimony and investigating officers may testify as drug jargon experts who interpret the meaning of code words used in recorded calls."); *see also, e.g.*, *United States v. Garrett*, 757 F.3d 560, 569 (7th Cir. 2014) (stating that "where the government was attempting to prove that [recorded conversations] concerned the coordination of a drug deal, deciphering code words commonly used in the drug trade would

> undoubtedly 'help the trier of fact to understand the evidence or to determine a fact in issue.' " (quoting Fed. R. Evid. 702)); *Vandegrift v. State*, 82 Md. App. 617, 634, 573 A.2d 56 (upholding trial court's admission of expert testimony that explained "intercepted communications [that] were vague, fragmented, and interspersed with street slang"), *cert. denied*, 320 Md. 801, 580 A.2d 219 (1990); Fern L. Kletter, *Necessity and Admissibility of "Slang," "Lingo," "Jargon," or "Code" Expert Testimony in State Cases*, 35 A.L.R.7th Art. 6 (2018) (collecting cases).

Freeman, 259 Md. App. at 234.[14]

In contrast to *Freeman*, the phrase at issue in this case, Appellant's message exclaiming that "I want his head[,]"does not require expert testimony to interpret it. As the State observes, this is "not an obscure phrase requiring expert decoding." "Wanting a person's head" is prevalent in popular culture and usage, and has existed for thousands of years, from Perseus's beheading of Medusa to Salome's request to King Herod for the head of John the Baptist, and even to the Queen of Hearts famous phrase, "Off with their heads!" in Lewis Carroll's, *Alice in Wonderland*.[15] We are not persuaded that the phrase,

[14] On November 29, 2023, the Supreme Court of Maryland granted Mr. Freeman's petition for certiorari and the State's conditional cross-petition. Among the issues to be considered is whether a police detective, not disclosed or offered as an expert, was properly permitted to opine on the meaning of various phrases in text messages. *See* 486 Md. 228 (2023) (granting certiorari).

[15] *See generally, Perseus: Overcoming Medusa*, Wikipedia, https://en.wikipedia.org/wiki/Perseus#Overcoming_Medusa (last visited Apr. 2, 2024); *Beheading of John the Baptist: John the Baptist's Head*, Wikipedia, https://en.wikipedia.org/wiki/Beheading_of_John_the_Baptist#John_the_Baptist's_head (last visited Apr. 2, 2024); *Queen of Hearts (*Alice's Adventures in Wonderland*)*, Wikipedia, https://en.wikipedia.org/wiki/Queen_of_Hearts_(Alice%27s_Adventures_in_Wonderland) (last visited Apr. 2, 2024); *see also* Regina Janes, *Losing Our Heads: Beheadings in Literature and Culture* (2005) ("Beheading is among the most ancient, widespread, and enduring of human cultural practices. Examples occur in every place, time, and level of

(continued)

"I want his head" is either "so particularly related to some science or profession that is beyond the ken of the average layman," *State v. Galicia*, 479 Md. at 389, *or* that "specialized knowledge, skill, experience, training or education," *Freeman*, 259 Md. App. at 230 (quoting *Ragland*, 385 Md. at 725), from a duly disclosed and qualified expert was required.

Nevertheless, having concluded that the meaning of the phrase "I want his head" did not require an expert, we cannot conclude our inquiry. Generally, witnesses testify to facts, not opinions. *See generally* Van Arsdale et al., 81 Am. Jur. 2d Witnesses § 654 (2023) (Questions calling for conclusion or opinion) ("Ordinarily, witnesses must testify as to facts, not opinions; thus, except where the witness testifies as an expert or is qualified to state an opinion, a question calling for a witness's conclusion as to facts is improper") (footnotes omitted). Lay opinion, under Maryland Rule 5-701, is *only* admissible when it is "(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." *See generally Washington v. State*, 179 Md. App. 32, 55 (recognizing that the rule "precludes a lay witness from offering conclusions and inferences that the jury is capable of making on its own when analyzing the evidence[]"), *rev'd on other grounds*,

culture") (excerpt provided at https://www.jstor.org/stable/j.ctt9qfx4d); Jeffrey R. Wilson, *Mutilation in Shakespeare*, Harv.: Stigma in Shakespeare, https://wilson.fas.harvard.edu/stigma-in-shakespeare/mutilation-in-shakespeare (last visited Apr. 2, 2024) (with examples); *Demanding Their Head*, TV Tropes, https://tvtropes.org/pmwiki/pmwiki.php/Main/DemandingTheirHead (last visited Apr. 2, 2024) (with examples).

406 Md. 642 (2008); *Rosenberg v. State*, 129 Md. App. 221, 254 (1999) (stating that a lay witness is not qualified to express an opinion about matters "which are either within the scope of common knowledge and experience of the jury or which are peculiarly within the specialized knowledge of experts"), *cert. denied*, 358 Md. 382 (2000).

While expert opinion was not required, Detective Smallwood's interpretation was an inadmissible lay opinion under Maryland Rule 5-701 that parallels the inadmissible statements in *United States v. Peoples*, 250 F.3d 630 (8th Cir. 2001). In that case, a prosecution of two defendants for aiding and abetting the murder of a federal government witness, the prosecution sought to admit the testimony of an FBI special agent on the meaning of slang, captured in recorded conversations. *United States v. Peoples*, 250 F.3d at 639-40. The Eighth Circuit summarized the agent's testimony as follows:

> Drawing on her investigation, Agent Neal gave her opinion regarding the meaning of words and phrases used by the defendants during those conversations. Her testimony was not limited to coded, oblique language, but included plain English words and phrases. She did not personally observe the events and activities discussed in the recordings, nor did she hear or observe the conversations as they occurred. *Agent Neal's testimony included her opinions about what the defendants were thinking during the conversations, phrased as contentions supporting her conclusion, repeated throughout her testimony, that the defendants were responsible for Ross's murder*.
>
> At various points during her testimony, Agent Neal asserted that Peoples went to Ross's house to murder Ross, that he had paid "the killers to do the job," that Peoples's various comments about being in need of money revolved around his debt to hit men, and that both defendants had sought confirmation of Ross's death. She asserted that during the course of her investigation she had uncovered hidden meanings for apparently neutral words; for example, she testified that when one of the defendants referred to buying a plane ticket for Ross, he in fact meant killing Ross. *In short, as the recordings of the Peoples/Lightfoot conversations were played for the jury, Agent Neal was allowed to offer a narrative gloss that consisted almost entirely of her personal opinions of what the conversations meant*. During

> several hours of testimony alternating with recorded conversation, Agent Neal made the argument that the defendants had conspired to hire someone to kill Ross, had tendered substantial sums as a partial payment, and then had become anxious when Ross's death was not publicly reported. During direct examination, the prosecutor referred to Agent Neal's statements both as Agent Neal's contentions and as the contentions of the government.

Id. at 640 (emphasis added). Over objection, the district court admitted the agent's testimony "'*as snippets of early argument from the witness stand and not as evidence*.'" *Id.* at 640-41 (emphasis added).

On appeal, the Eighth Circuit held that because Agent Neal was not qualified as an expert, her testimony was inadmissible lay opinion. The court recognized that "[l]aw enforcement officers are often qualified as experts to interpret intercepted conversations using slang, street language, and the jargon of the illegal drug trade." *United States v. Peoples*, 250 F.3d at 641 (citing cases). Nevertheless, the court concluded that the agent's testimony was not proper lay opinion because it "lacked first-hand knowledge of the matters about which she testified" and was "based on her investigation after the fact, not on her perception of the facts." *Id*. Moreover, "[t]he court's instructions to the jury that Agent Neal's opinions constituted argument rather than evidence finds no warrant in the Federal Rules of Evidence and could not serve to render admissible that which was inadmissible testimony." *Id*. at 641-42.[16]

[16] In contrast to the present case, however, the court in *Peoples* held the error was not harmless, stating "the error in this case infected the totality of Agent Neal's testimony." 250 F.3d at 642. The Court explained:

> Nor can we describe Agent Neal's testimony as "grounded in other evidence," *id*., because it consisted largely of her assertions about the

(continued)

Likewise, in the present case, Detective Smallwood was not qualified as an expert, but he offered opinion testimony about statements of which he had no personal knowledge and that was not helpful to the jury. First, like Agent Neal, Detective Smallwood "did not personally observe the events and activities discussed in the recordings, nor did [he] hear or observe the conversations as they occurred." *Id.* at 640; *see* Md. Rule 5-701(1) (providing that a lay witness may only assert an opinion that is "rationally based on [their] perception"). Rather, he simply read the text messages on the stand and opined about what he thought the participants in the conversation meant. In contrast, in *Warren v. State*, 164 Md. App. 153, 169-70 (2005), the court ruled that a

> meaning of apparently clear statements, together with her addition of details and explanations absent from the recordings. *Under the guise of offering lay opinion, Agent Neal was allowed to emboss apparently neutral conversations between the defendants with the imprimatur of the government's case*. Rather than offering evidence of which she had personal knowledge, such as the details of her investigation, she was allowed repeatedly to assert that the defendants were discussing not everyday events, but a complicated murder plot.

Id. (emphasis added). The Court continued:

> Moreover, the jury may well have been inclined to give Agent Neal's conclusions undue weight because of her status as an FBI agent. Despite the fact that the court did not qualify her as an expert, Agent Neal was identified as a law enforcement officer, and we cannot rule out the possibility that the jurors may have been inclined to substitute her conclusions on the ultimate issue of the defendants' guilt for their own. *In a word, Agent Neal's testimony so invaded the province of the jury that we cannot with confidence say that there was no significant possibility that it had substantial impact on the jury.* Accordingly, we must set aside the convictions.

Id. (emphasis added). We discuss harmless error in the present case further *infra*.

police officer's lay opinion on whether the defendant was intoxicated was admissible because an opinion on whether someone is intoxicated relies on the police officer's senses at the scene. Here, Detective Smallwood did not have personal or firsthand knowledge of the conversation, and so his testimony was inadmissible as lay opinion.

Second, Detective Smallwood's lay opinion did not help the jury understand his testimony or determine a fact in issue. *See* Md. Rule 5-701(2) (requiring a lay witness's opinion testimony to assist the trier of fact in understanding the witness's testimony or in the determination of a fact in issue). Because "I want his head" is a fairly common, well-known idiom, and its meaning as desiring harm, death, perhaps even decapitation, is arguably common knowledge for the average person, the jury did not need Detective Smallwood's assistance in interpreting it. *United States v. Peoples*, 250 F.3d at 641 ("Lay opinion testimony is admissible only to help the jury or the court to understand the facts about which the witness is testifying and not to provide specialized explanations or interpretations that an untrained layman could not make if perceiving the same acts or events.").

Detective Smallwood's opinion testimony may not have strayed as far beyond the proper scope as Agent Neal's in *Peoples*, but it still does not meet the requirements of Rule 5-701. Regardless of whether Detective Smallwood's interpretation of the phrase at issue was reasonable, interpreting the phrase is a matter that should have been reserved to the jury. Thus, the trial court abused its discretion in admitting Detective Smallwood's opinion testimony concerning the meaning of "I want his head[.]"

However, we conclude that any error in admitting Detective Smallwood's opinion was harmless beyond a reasonable doubt. *See generally Dorsey, supra*, 276 Md. at 659. A rational inference may be drawn that, after Appellant left his handgun with the victim, the victim decided not to return it and, in fact, tried to sell it. Appellant persisted in his efforts to reclaim his property and that persistence was accompanied by increased aggravation and condemnation, as evident in the messages, which were before the jury, even absent the detective's interpretative testimony. And, as the State reminds us, "the GPS data and surveillance footage placed Savage in the area at the time the shooting took place, consistent with the State's theory that Savage directed the killing without himself pulling the trigger." Indeed, it did not matter whether Appellant actually fired the gun that killed the victim, as the jury was instructed they could convict him as an accomplice. *See* MPJI-Cr 6:00.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.