Circuit Court for Baltimore City
Case No. 119148030

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1419

September Term, 2022

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DOUGLAS CANTRELL

v.

STATE OF MARYLAND

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Beachley,
Zic,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zic, J.

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Filed: May 3, 2024

A jury in the Circuit Court for Baltimore City convicted appellant, Douglas Cantrell, of first-degree murder, openly carrying a deadly weapon with the intent to injure, and two counts of second-degree assault. The court sentenced Mr. Cantrell to life imprisonment for first-degree murder, plus a consecutive term totaling 23 years for the remaining counts. This appeal followed.

## QUESTIONS PRESENTED

Mr. Cantrell presents three questions for our review, which we have rephrased slightly as follows:[1]

1. Did the trial court commit reversible error by denying Mr. Cantrell's motion to sever the second-degree assault charges from the first-degree murder count?

2. Did the trial court abuse its discretion by granting the State's motion to redact portions of Mr. Cantrell's recorded statement to the police?

3. Did the trial court commit reversible error by declining to instruct the jury on first- and second-degree assault as lesser included offenses of first-degree murder?

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

[1] In his brief, Mr. Cantrell articulated the questions presented as follows:

1. Did the trial court err by denying Appellant's motion to sever the two charges of assault in the second degree for a separate trial?
2. Did the trial court abuse discretion by ruling that portions of Appellant's recorded statement should be redacted?
3. Did the trial court err by failing to instruct the jury on two forms of assault as lesser included offenses of first degree murder?

## BACKGROUND

On the morning of May 1, 2019, Mr. Cantrell followed Sandra Grahe and her friend, Deanna McCombs, as they walked to Ms. Grahe's house (the "House") from a nearby corner store in Brooklyn, Maryland. Before they reached their destination, Mr. Cantrell repeatedly struck Ms. Grahe, slapped Ms. McCombs, and fled the scene. Upon arriving at the House, Ms. Grahe reported the incident to her brother, Vernon Jacobs. Mr. Jacobs and his friend, Delbert Henry, left the House in search of Mr. Cantrell. During an ensuing physical altercation, Mr. Cantrell repeatedly stabbed Mr. Jacobs, killing him.

At trial, Ms. Grahe testified that at approximately 7:00 a.m. on May 1, 2019, Ms. McCombs and she walked to a corner store at the intersection of 5th Street and Patapsco Avenue.[2] When Ms. Grahe and Ms. McCombs arrived at the store, Mr. Cantrell followed them inside. As Ms. Grahe headed to the counter, Mr. Cantrell approached her and requested that she return his phone, which she had been charging for him. According to Ms. Grahe, Mr. Cantrell then "pulled [her] on the side[,] . . . stated that his truck had been stolen" from a gas station, and blamed Mr. Jacobs and her for the theft. Before leaving the store, Mr. Cantrell revealed a knife to Ms. Grahe that had been concealed in his jacket, removed the weapon from its sheath, and asked her a question to the effect of: "'What if something should happen to your mother,' . . . [your] brother[,] or [your]self[?]"

[2] Unless otherwise indicated, the events described by the witnesses occurred at or around 7:00 a.m. on May 1, 2019.

After exiting the store, Mr. Cantrell followed Ms. Grahe and Ms. McCombs as they walked back to the House. When they were about half a block away from their destination, Mr. Cantrell pushed Ms. Grahe "to make [her] move faster," causing her to lose her balance and fall to the ground. When Ms. Grahe attempted to stand, Mr. Cantrell repeatedly struck her in the face. Ultimately, Ms. Grahe managed to escape and ran to the House while calling out for Mr. Jacobs. When Ms. Grahe entered the kitchen through the rear door of the House, Mr. Jacobs saw that she was bleeding. After Ms. Grahe informed him that Mr. Cantrell had hit her and "was up on 5th Street by Freeman [Street]," Mr. Jacobs "ran out the back door to look for him." Rather than follow Mr. Jacobs, Ms. Grahe ran to a firehouse across the street, from which an ambulance transported her to the hospital. When Ms. Grahe next saw her brother, he was lying on the ground near the intersection of Annabel Avenue and Helmstetter Street with a woman kneeling next to him.

Ms. McCombs corroborated much of Ms. Grahe's account. Ms. McCombs testified that Ms. Grahe and she "went to the store[,]" where they encountered Mr. Cantrell, who began "venting" about his truck having been stolen. Mr. Cantrell followed them as they "walked back to [Ms. Grahe's] house." As they walked, Ms. McCombs averred, Mr. Cantrell "busted [Ms. Grahe]'s face open and slapped [Ms. McCombs] once." While striking Ms. Grahe, Mr. Cantrell "was . . . saying a whole bunch of stuff about his truck being missing and . . . people stealing from him." After the altercation, Ms. McCombs and Ms. Grahe "took off down the street," while Mr. Cantrell departed in

a different direction. When Ms. McCombs arrived at Ms. Grahe's yard approximately one and one-half minutes later, Ms. Grahe was already inside the House and Mr. Jacobs and Mr. Henry were leaving in search of Mr. Cantrell.

Alma Babilonia, a resident of a house at the intersection of 4th and Helmstetter Streets at the time of the incident, testified that she heard an argument while preparing breakfast for her children. When she looked out her kitchen window, Ms. Babilonia saw three individuals, one of whom was being attacked by another and "was no longer able to defend himself." The third individual ran toward the assailant "with a branch in his hand[,] trying to hit him" so that he would "let go of" the apparent victim.[3] Ms. Babilonia went outside "to see what was happening" and heard the victim's friend proclaim: "He killed him. He killed him." Ms. Babilonia called 911, after which an ambulance and police officers responded to the scene. When subsequently presented with a photo array, Ms. Babilonia identified Mr. Cantrell as the assailant.[4]

Baltimore City Police Officer Zachary Franks responded to the 3500 block of Helmstetter at around 7:00 a.m. Upon arriving at the scene, he observed "a gentleman on the ground . . . suffering from what looked like stab wounds." Officer Franks accompanied the on-scene paramedics as they took Mr. Jacobs to the Shock Trauma Unit

[3] At trial, Ms. Babilonia testified that the assailant and victim were "white skinned," while the individual attempting to defend the apparent victim had "black skin[.]" The record reflects that Mr. Jacobs was Caucasian, as is Mr. Cantrell, while Mr. Henry is African American.

[4] When asked at trial whether she saw "that same person in the courtroom here today," Ms. Babilonia answered: "No. I can't see him."

at the University of Maryland Medical Center (the "Medical Center"), where he was pronounced dead at 8:00 a.m.

At approximately 12:55 p.m. that same day, Kendall Allred, a forensic investigator with the Office of the Chief Medical Examiner ("OCME"), transported Mr. Jacobs' body from the Medical Center's morgue to the OCME. There, Assistant Medical Examiner Russell Alexander, M.D., performed an autopsy, which revealed 11 stab wounds, five cutting wounds, two fractured ribs, and abrasions to the head and right knee. Dr. Alexander, whom the court accepted as an expert in the field of forensic pathology, identified the cause of death as "multiple injuries" and the manner of death as homicide.

Officer Jose Boscana testified that he was also among the officers dispatched to the 3500 block of Helmstetter Street on the morning of May 1, 2019. Upon his arrival, Officer Boscana observed "a white male[] laying [sic] on the ground with blood" and confirmed the identity of the stabbing suspect with a fellow officer. Later that same day, Officer Boscana observed Mr. Cantrell riding a bicycle in the 3700 block of Hanover Street. Officer Boscana immediately recognized Mr. Cantrell, whom he had encountered the day before when responding to a call for a traffic accident in which Mr. Cantrell had been involved. When Officer Boscana exited his vehicle and ordered him to stop, Mr. Cantrell "tried to turn his bicycle around and take off." Mr. Cantrell's attempt to flee was thwarted, however, as Officer Boscana managed to "remove him from the bicycle[.]" Officer Boscana then arrested Mr. Cantrell and recovered a "Buck knife" from a plastic bag that had been hanging from the bicycle's handlebars.

The knife and its sheath were subsequently submitted to Taylor Hall, a scientist with the Baltimore City Police Department's Forensic Biology Unit, for analysis. After the court accepted her as an expert in the field of serology, Ms. Hall testified that she tested swabs of the knife and sheath for suspected blood.[5] Although swabs of the knife tested negative for the presence of blood, swabs of the interior liner of the sheath tested positive. Subsequent DNA analysis matched Mr. Cantrell's and Mr. Jacobs' inferred genotypes to the swabs from the sheath's liner.

Following his arrest, Mr. Cantrell was transported to the Homicide Unit for questioning. At approximately 1:40 p.m. on May 1, 2019, Detective Raymond Yost gave Mr. Cantrell his *Miranda* warnings.[6] After confirming that he understood his rights, Mr. Cantrell executed a written waiver of those rights. During the ensuing interview, a redacted recording of which was played at trial, Mr. Cantrell recounted the events that led to the fatal stabbing of Mr. Jacobs. Mr. Cantrell informed Detective Yost that in either the late evening of April 30th or the early morning of May 1st, two individuals, whom he identified as "Austin" and "Ashley," stole his truck from outside a Royal Farms gas station on Potee Street. After reporting the theft to the police, Mr. Cantrell ran to the House and told Mr. Jacobs what had happened.

[5] "Serology" is "a medical science dealing with blood serum especially in regard to its immunological reactions and properties." *Serology*, MERRIAM-WEBSTER, https://www.merriamwebster.com/dictionary/serology (last visited May 1, 2024).

[6] *Miranda v. Arizona*, 384 U.S. 436 (1966).

According to Mr. Cantrell, Mr. Jacobs "smirk[ed]" and "chuckle[d]" in response to being told of the theft. Shortly thereafter, Mr. Cantrell accused Mr. Jacobs of stealing cash that had purportedly been sitting on the kitchen table at the House. Mr. Cantrell's accusation led to a "shov[ing] match" between the two men. Following that skirmish, Mr. Cantrell "caught up to" Ms. Grahe and "told her what [had] happened[.]" Ms. Grahe replied: "Oh[,] you know that's Jake. It's your problem."[7] Mr. Cantrell responded by slapping Ms. Grahe. He recounted:

> I slapped the shit out of [Ms. Grahe]. I kept slapping her to the ground. I did punch her once pretty hard and kicked the shit out of her[.]
>
> * * *
>
> She get back up, knock her back down, slap her down, you know. [Ms. McCombs], too, slap her around, you know.

After the assault, Ms. Grahe walked off, her "mouth all bloody." Mr. Cantrell also departed, navigating alleys en route to a Royal Farms. As he did so, Mr. Cantrell observed Mr. Jacobs and Mr. Henry running toward him, the former armed with a board and the latter with a branch. As Mr. Jacobs approached, Mr. Cantrell warned him: "You['re] getting too close . . . . You know how sharp this [knife] is." Mr. Cantrell described the ensuing fray as follows:

> I poked him a few times, you know. But it got worse, and worse, and worse, you know. I started really stabbing him. You know, I hit him in the chest[] and the neck.

[7] At trial, Ms. Grahe and Mr. Cantrell referred to Mr. Jacobs by the moniker "Jake."

* * *

> And [Mr. Henry]'s . . . approaching, you know. He's -- you know, picks up a branch, a big branch, you know. And by the time he catches up, I probably stabbed [Mr. Jacobs] ten, 20 times.

* * *

> I just don't think whatever, trying to hit a kidney, you know what I mean? I really want[ed] to kill him, but I think he's just lost too much blood.

* * *

> I was stabbing him. And I grabbed him . . . by all his necklace junk. I tore that off. I pretty much -- I -- he was delirious. And I pretty much gave him a face slam; you know what I mean, a twist slam over my shoulder into his face. And he was pretty much pedaling, pedaling when I stabbed him.

Once Mr. Jacobs was lying on the ground, Mr. Henry "chased [Mr. Cantrell] around the corner" while wielding a large branch. Mr. Cantrell fled, removed his jacket (which had blood on it), and discarded it in a bush approximately one block from Potee and Talbot Streets, where it was ultimately recovered.

After the close of the State's case, Mr. Cantrell elected to testify in his own defense and provided the following account. At approximately 4:00 a.m. on the morning of May 1, 2019, he parked his 1995 Dodge Dakota at a Royal Farms gas station. Leaving his keys in the ignition, Mr. Cantrell exited the vehicle and approached the store to pay for gas. As he opened the door to the Royal Farms, Mr. Cantrell heard the distinctive sound of his truck's engine revving. He turned and saw Austin, whom he identified as

Mr. Jacobs' "comrade," and Ashley in the truck.[8] After chasing the vehicle for approximately a half mile, Mr. Cantrell relented. Rather than continue to pursue his truck, Mr. Cantrell walked to the intersection of Hanover Street and Patapsco Avenue, where he recalled having seen a police officer. After reporting the theft to the officer, Mr. Cantrell began walking to the House.

When Mr. Cantrell arrived at about 6:05 a.m., Mr. Jacobs opened the back door and permitted him to enter. Ms. Grahe met Mr. Cantrell in the downstairs kitchen and spoke with him. During that discussion, Mr. Cantrell attempted to elicit Ashley's full name, having seen her at the House the day prior, but did not mention the theft of his vehicle. Thereafter, Ms. Grahe got a glass of water and returned upstairs. Mr. Cantrell searched his pockets for cash, which he then counted and placed on the kitchen table at which he was sitting. After advising Mr. Jacobs that his truck had been stolen, Mr. Cantrell noticed that his cash had "disappeared." When Mr. Cantrell confronted him about the missing funds, Mr. Jacobs denied having taken them. Angered by Mr. Jacobs' denial, Mr. Cantrell rose from the table and left the house through the back door. Mr. Jacobs followed him outside, where he "jacked [Mr. Cantrell] up[.]" Following that confrontation, Mr. Cantrell "went around to the front window" and called out to Ms. Grahe, requesting that she return his phone. Mr. Henry informed him, however, that she had gone to the store.

[8] According to Mr. Cantrell, Mr. Jacobs and Austin had "burglarized" his vehicle the afternoon prior.

Mr. Cantrell "hurried to catch up" to Ms. Grahe and followed her into the store. Inside, he "told her . . . what [had] happened with [his] truck."[9] As he accompanied Ms. Grahe back toward the House, Mr. Cantrell "grabbed her by the arm[,]" "stopped her," and said: "I need you to get my phone." When Ms. Grahe replied "[n]ot my problem," Mr. Cantrell slapped her. Ms. Grahe "lost her footing" and "fell onto the grass." Mr. Cantrell proceeded to "punch her once" and "kicked her in her leg." Ms. McCombs, who had been walking with them, responded "Doug?" as if to ask "'[w]hat's wrong with you?'" Mr. Cantrell told Ms. McCombs to "[m]ind [her] own business," slapped her, and departed down an alley.

Mr. Cantrell "didn't get but a hundred yards" from the scene of the assaults before he "heard scurrying." When he turned around, Mr. Cantrell saw an individual, whom he later identified as Mr. Henry, rapidly approaching him. While Mr. Cantrell was watching Mr. Henry, Mr. Jacobs "rounded the corner" and struck him. During the ensuing two-against-one brawl, Mr. Jacobs and Mr. Henry wielded makeshift clubs, with which they struck Mr. Cantrell in the head, arm, and knee. After sustaining several blows, Mr. Cantrell drew his knife, the blade of which was seven inches long. After momentarily retreating, Mr. Jacobs "lunged and grabbed [the] knife," but let go after Mr. Cantrell "kind of jabbed" him. During the fight, Mr. Cantrell "was poking, prod[ding], [and] gouging" Mr. Jacobs. After "chas[ing] off" Mr. Henry, Mr. Cantrell "punched [Mr.

[9] At trial, Mr. Cantrell denied that he had either shown Ms. Grahe his knife or accused Mr. Jacobs or her of having been complicit in the theft of his truck.

Jacobs] in the face" and "slammed him right on his head, pile driving him." Brandishing another stick, Mr. Henry returned to the fray and "chased [Mr. Cantrell] off[.]" Following the altercation, Mr. Cantrell went to work for approximately "three or four hours" and cleaned the blood from his hair and knife. Prior to his arrest, Mr. Cantrell also purchased a new shirt and "threw [his] jacket away . . . in the trash."

We will include additional facts as necessary to our resolution of the issues presented.

## DISCUSSION

### I. THE CIRCUIT COURT DID NOT ERR IN DENYING MR. CANTRELL'S MOTION TO SEVER.

Mr. Cantrell contends that the trial court committed reversible error by denying his pretrial motion to sever the first-degree murder count from the assault charges. He argues that "[a]dmitting evidence that [he] had a physical altercation with [Ms.] Grahe and [Ms.] McCombs implicated the . . . risks . . . that the jury may have [both] cumulated the evidence . . . and inferred a criminal disposition when considering the multiple counts in a single trial."

The State rejoins that Mr. Cantrell's interaction with Ms. Grahe at the corner store initiated "the entire series of events" and "was important to explain [Mr.] Cantrell's intent (to harm Ms. Grahe and Mr. Jacobs) and motive (retribution from the theft of his truck)." The State also asserts that "[b]ecause this incident happened within minutes of the murder of Mr. Jacobs, it further framed [Mr.] Cantrell's state of mind immediately before the attack."

### A. The Motion to Sever

By a single indictment filed in the circuit court on May 28, 2019, the State charged Mr. Cantrell with the four counts of which he was ultimately convicted.[10] On August 24, 2021, Mr. Cantrell, through counsel, filed a "Motion to Dismiss and Sever," requesting, *inter alia*, "[t]hat all offenses pending against [him] . . . be tried separately." On the morning of the first day of trial, the court heard argument on that motion. In support of severance, defense counsel claimed that evidence of the alleged assaults was not "strictly relevant to the actual facts of the fatal stabbing," as it would neither aid the jury "in determining issues such as who was the initial aggressor[,]" nor show "how . . . the fatal stabbing occurr[ed]." Because evidence of the alleged assaults would be inadmissible at a separate trial solely on the murder charge, defense counsel concluded that severance was warranted.[11]

The State responded, as it does on appeal, that the interaction between Mr. Cantrell and Ms. Grahe at the store (i) set in motion the series of events culminating in

[10] The indictment charged Mr. Cantrell with five counts, including two for openly carrying a deadly weapon with the intent to injure. The jury acquitted Mr. Cantrell of one of those two charges.

[11] During oral argument on his motion to sever, Mr. Cantrell, through counsel, also asked the court to "sever the carrying a knife openly with intent to injure count [from the murder charge,] as it occurred on or near the store where the encounter between [Mr. Cantrell] and [Ms. Grahe and Ms. McCombs] occurred." Shortly thereafter, however, defense counsel seemingly abandoned that request, stating: "I just don't want the jury to hear about the assaults." Assuming, without deciding, that Mr. Cantrell did not waive his initial challenge to joinder of the murder and weapons charge below, he nevertheless abandoned the issue on appeal by failing to raise it in his appellate brief. *See Diallo v. State*, 413 Md. 678, 692-93 (2010).

Mr. Jacobs' death and (ii) was probative of Mr. Cantrell's motive and "level of intent by the time that the incident on Helmstetter happened." The State elaborated:

> [T]he facts that happened in the store, the things that [Mr. Cantrell] said to Ms. Grahe all precipitated the events[.] [It] also should be noted that what he was angry with Ms. Grahe about, he was actually angry with . . . [Mr.] Jacobs about. It was the same item, the fact that his truck had been stolen[,] and he was accusing both Ms. Grahe and Mr. Jacobs of that fact.
>
> And so[,] that reveals to the jury [that] they can weigh the level of intent. If you take that out, they won't even understand why Mr. Jacobs went to Helmstetter in the first place.

Because the events at the store and on 5th Avenue occurred "within 15 minute[s] of the attack," the State continued, they were particularly pertinent to Mr. Cantrell's subsequent "level of culpability and his frame of mind." Finally, the State claimed that the facts that Mr. Cantrell "was already armed and had threatened Ms. Grahe and her family with the knife" were relevant to "who [wa]s the initial aggressor and who became the aggressor and at what point."

After hearing from the parties, the court denied Mr. Cantrell's severance motion from the bench, ruling:

> Having consider[ed] the motion, the [c]ourt finds that the events alleged by the State are part of the same transaction and closely linked in time and circumstances.
>
> The [c]ourt further finds that Mr. Cantrell will not be prejudiced by the joinder of these offenses. And to the extent that there . . . may be any prejudice, it is outweighed by the probative value of evidence of the first encounter.

> Furthermore, the [c]ourt finds that the evidence of the first encounter and the . . . alleged offenses related thereto would be admissible in a trial related to the later encounter and the alleged offenses resulting in the murder charge.
>
> The [c]ourt further finds that the facts and circumstances related to the first encounter and those charges provide evidence of motive and intent. So[,] for those reasons, the [c]ourt's going [to] deny the motion to sever.

**B. Offense Joinder and Severance**

Maryland Rule 4-203 permits the State to charge a criminal defendant with multiple counts in a single charging document when "the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan." Md. Rule 4-203(a). The traditional justification for permitting joinder of offenses is "that 'a single trial effects an economy, by saving time and money, to the prosecution, the defendant, and the criminal justice system.'" *Conyers v. State*, 345 Md. 525, 548 (1997) (quoting *McKnight v. State*, 280 Md. 604, 608-09 (1977)). A defendant may, however, seek to sever jointly charged offenses by filing a motion pursuant to Rule 4-253, which provides, in pertinent part: "If it appears that any party will be *prejudiced* by the joinder for trial of counts[ or] charging documents, . . . the court may, on its own initiative or on motion of any party, order separate trials of counts[ or] charging documents . . . or grant any other relief as justice requires." Md. Rule 4-253(c) (emphasis added). "Within the meaning of Rule 4-253, prejudice 'is a term of art, and refers only to prejudice *resulting* to the defendant *from* the reception of evidence that would have been

inadmissible against that defendant had there been no joinder.'" *Molina v. State*, 244 Md. App. 67, 140 (2019) (emphasis in original) (quoting *State v. Hines*, 450 Md. 352, 369 (2016)).

In *Conyers*, the Supreme Court of Maryland articulated a two-part test for determining whether courts should grant motions to sever multiple charges against a single defendant:

> [T]he analysis of . . . trial joinder issues may be reduced to a test that encompasses two questions: (1) is evidence concerning the offenses or defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. In order to resolve question number one, a court must apply the first step of the "other crimes" analysis announced in [*State v.*] *Faulkner*[, 314 Md. 630 (1989)].

345 Md. at 553.

**i. Step 1: Mutual Admissibility**

In ruling on a motion to sever jointly charged offenses, a court must first determine whether evidence of each offense is mutually admissible, *i.e.*, "whether the evidence from the 'other crimes' would be admissible if the trials occurred separately." *Garcia-Perlera v. State*, 197 Md. App. 534, 548 (2011). Whether such "other crimes" evidence is mutually admissible at trial is a legal determination, which we review *de novo*. *See, e.g., Conyers*, 345 Md. at 553; *Bussie v. State*, 115 Md. App. 324, 332 (1997); *Solomon v. State*, 101 Md. App. 331, 338 (1994).

"Generally, 'evidence of a defendant's prior criminal acts may not be introduced to prove that he [or she] is guilty of the offense for which he is on trial.'" *State v.*

*Faulkner*, 314 Md. 630, 633 (1989) (quoting *Straughn v. State,* 297 Md. 329, 333 (1983)). *See also* Md. Rule 5-404(b) ("Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith."). "Other crimes" evidence is admissible, however, "if it is *substantially relevant* to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *Faulkner*, 314 Md. at 634 (emphasis added).

"'[S]ubstantially relevant' includes evidence relevant 'to prove motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.'" *Wallace v. State*, 475 Md. 639, 671 (2021) (quoting *Gutierrez v. State*, 423 Md. 476, 489 (2011)). *See also* Md. Rule 5-404(b) ("Evidence of other crimes . . . may be admissible for . . . purposes[] such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, [or] absence of mistake or accident."); *Harper v. State*, 162 Md. App. 55, 89 (2005). These well-recognized exceptions to the "other crimes" rule are, however, merely illustrative rather than exhaustive. *See, e.g., Wynn v. State*, 351 Md. 307, 311 (1998). Indeed, "[a]s long as the evidence bearing directly on one charge also has *some relevance* in proving the other charge, the evidence is, by definition, mutually admissible." *Wieland v. State*, 101 Md. App. 1, 15 (1994) (emphasis added).

In addition to the traditional list of exceptions to the rule against "other crimes" evidence, in *Tichnell v. State*, 287 Md. 695 (1980), the Supreme Court held that such

evidence may be admissible "when the several offenses are so connected or blended in point of time or circumstances that they form one transaction, and cannot be fully shown or explained without proving the others." *Id.* at 712. The defendant in that case and his accomplice, Oscar Recek, broke into a military surplus store and stole ten firearms. *Id.* at 698. Police officers were immediately dispatched to the scene. *Id.* at 699. When one of those officers "accosted" him minutes after he left the store, Tichnell shot and killed him, commandeered his police cruiser, and used it to flee the scene. *Id.*

On the day of his arrest, Tichnell made two statements to the police, both of which were admitted at trial. *Id.* at 703. In those statements, Tichnell confessed that Recek and he had "broke[n] the lock on the front door of the store, entered and broke into a handgun showcase at the rear of the store, removing some handguns." *Id.* Tichnell estimated that three to five minutes after entering the store, they returned to his vehicle, whereupon Recek realized that he had lost a loaded gun he had been carrying. Recek reentered the store in search of the misplaced firearm, while Tichnell "drove about the . . . area." *Id.*

As he approached the rear of the store to pick up Recek, Tichnell "saw a police cruiser . . . blocking his lane" and "observed that an officer, gun in hand, had apprehended Recek[.]" *Id.* at 704. Tichnell stopped his vehicle a short distance from the parked police cruiser, and the officer ordered him to "lie down on the road." *Id.* While lying on the ground, Tichnell heard the officer instruct his K-9 companion to monitor him. When the dog subsequently "bit him on the side of his eye[,]" Tichnell ran to his car to retrieve a first-aid kit. *Id.* According to Tichnell, the officer followed him and

"placed a gun in his face." *Id.* After Tichnell "moved the . . . weapon from his face," the officer discharged his firearm, striking him in the shoulder. *Id.* Believing that the officer "was going to shoot him again," Tichnell retrieved his own gun and "fired four or five shots" at the officer, killing him. *Id.* When their attempt to flee the scene in Tichell's vehicle proved futile, Tichnell and Recek drove away in the officer's cruiser. *Id*. at 705.

The State charged Tichnell under three separate criminal indictments with, *inter alia*, felonious storehouse breaking, first-degree murder, and theft of the police cruiser. *Id.* at 699. It subsequently moved to join those indictments for trial, arguing that "the crimes charged were related, occurred within ten or fifteen minutes of each other, and constituted one continuous and uninterrupted criminal transaction." *Id.* at 710. The court granted that motion, and a jury convicted Tichnell of premeditated first-degree murder, as well as "storehouse breaking, grand larceny of the guns, and unauthorized use of the [officer]'s vehicle." *Id.* at 699-700.

On appeal, the Court was not persuaded by Tichnell's contention that "he was prejudiced by the joinder of the three indictments[.]" *Id.* at 710. Instead, the Court held that "joinder was proper . . . because all the offenses charged were related and were based on the same act or transaction or on two or more acts or transactions connected together." *Id.* at 711 (cleaned up). The Court thus concluded that "the trial judge did not abuse his discretion in consolidating the three indictments for trial[.]" *Id.* at 713.

In so holding, the Court distinguished *State v. Jones*, 284 Md. 232 (1979). In that case, the Supreme Court rejected the proposition that evidence of robberies committed at

three Baltimore City businesses within a two and one-half hour period was "so related that they [we]re inseparable and would [have been] mutually admissible at separate trials." *Id.* at 244. The *Tichnell* Court reasoned:

> [T]he State failed to prove a single inseparable plan encompassing the offenses and did not establish "that the various acts constituting the offenses naturally relate to one another by time, location, circumstances and parties so as to give rise to the conclusion that they are several stages of a continuing transaction."

*Tichnell*, 287 Md. at 712 (cleaned up) (quoting *Jones*, 284 Md. at 243). In contrast to the crimes committed in that case, the offenses at issue in *Tichnell* "were closely related to each other and occurred within a fifteen-minute period within a tightly confined area near [the] store." *Id.* at 713. "Among other reasons," the *Tichnell* Court explained, "the proximity of time and space within which the offenses were committed distinguishes this case from *Jones*." *Id.* Based in part on their geographical and temporal proximity, the Court concluded that the offenses with which Tichnell was charged "were so intertwined that one could not be proved without producing evidence of the other."[12] *Id.* at 711.

In the wake of the *Tichnell* decision, this Court cautioned against "plac[ing] excessive emphasis on the time and place of the criminal activity." *Bussie*, 115 Md. App. at 337. *See also Wieland*, 101 Md. App. at 21 (noting that *Tichnell*'s "reference to the close proximities of time and place [we]re merely offered 'among other reasons' to

[12] The *Tichnell* Court did note, however, that the "'common scheme' exception[] to the other crimes rule" was inapplicable "because the crimes charged . . . did not encompass a 'single inseparable plan.'" *Id*. at 713 n.5 (quoting *Jones*, 284 Md. at 241-42).

distinguish its circumstances . . . from those in . . . *Jones*."). *Tichell* did not establish a bright-line rule that geographically and temporally proximate offenses are *ipso facto* mutually admissible. *See Bussie*, 115 Md. App. at 335 ("[M]ere physical closeness and chronological syncopation of criminal activity are not alone sufficient to render evidence of other crimes mutually admissible[.]"). *See also Jones*, 284 Md. at 243 ("[M]ere proximity in time and location within which several offenses may be committed does not necessarily make one offense intertwine with the others. Immediateness and site are not determinative."). Such contiguity is, however, a potentially important factor in determining whether separate offenses "formed one closely connected and closely related totality so that one of the parts could not be fully shown or explained without proving the others." *Solomon*, 101 Md. App. at 375 (quotation marks and citation omitted). *See also Ayala v. State*, 174 Md. App. 647, 658 (2007) ("'To be admissible as evidence of motive, the prior conduct must be committed within such time, or show such relationship to the main charge, as to make connection obvious.'") (quoting *Snyder v. State*, 361 Md. 580, 604 (2000) (cleaned up)); *Bussie*, 115 Md. App. at 335 ("[T]he timing and location of those acts amounting to the commission of the crimes, i.e., the actus reus, are important, but certainly not dispositive, factors.").

**ii. Step 1.5: Jury vs. Bench Trials**

When the answer to the first *Conyers* question (*i.e.*, whether evidence of the offenses is mutually admissible) is "no," a court need not necessarily reach the second (*i.e.*, whether the interest in judicial economy outweighs countervailing considerations).

Rather, the necessity of doing so depends upon the intermediate issue of whether the defendant is tried at a bench or jury trial.

Although "Rule 4-253 applies to both jury trials and bench trials," *Reidnauer v. State*, 133 Md. App. 311, 318 (2000), the Supreme Court has recognized "a distinction between a trial with a jury and a trial without a jury with respect to the court's discretion[.]" *Graves v. State*, 298 Md. 542, 544 (1984). In a bench trial, the presiding judge retains "the discretion to permit joinder of offenses . . . even if there is no mutual admissibility of offenses because it may be presumed that a judge will not transfer evidence of guilt as to one offense to another offense." *Conyers*, 345 Md. at 552-53. *See also Wieland*, 101 Md. App. at 13. In *Wieland*, we explained the rationale for affording courts such discretionary latitude: "[T]he legally trained judge can weigh the factors of efficiency and economy against the possible prejudice to his own impartiality and can give reasonable assurance that his [or her] fact finding will be (or has been) meticulously segmented into watertight compartments, hermetically sealed off from any spill-over influences." *Id*. Thus, when a court—and not a jury—sits as the finder of fact, and evidence of the offenses with which a defendant is charged is not mutually admissible, the presiding judge should nevertheless engage in a discretionary weighing of the interest in judicial economy against factors favoring severance. The converse, however, is not the case.

In the context of offense joinder in a jury trial, "non-mutually admissible evidence is *inherently* prejudicial because evidence pertains to only one defendant and is

accompanied by the risk of improper propensity reasoning on the part of the jury."[13] *State v. Hines*, 450 Md. 352, 374-75 (2016) (emphasis in original; footnote omitted). Thus, "in a jury trial, 'a defendant charged with similar but unrelated offenses is *entitled* to a severance where he [or she] establishes that the evidence as to each individual offense would not be mutually admissible at separate trials.'" *Winston v. State*, 235 Md. App. 540, 558 (2018) (emphasis added) (quoting *McKnight v. State*, 280 Md. 604, 612 (1977)). In other words, when evidence of a defendant's individual offenses would not be mutually admissible at separate jury trials, a trial court lacks discretion to deny a motion to sever and the analysis ends. *See Kearney v. State*, 86 Md. App. 247, 253 (1991) ("[W]here the evidence at a joint jury trial is not mutually admissible because of 'other crimes' evidence, there is prejudice as a matter of law[.]"); *Graves*, 298 Md. at 545 (explaining that when a court joins similar offenses at a jury trial and the evidence as to those offenses is not mutually admissible, "there [i]s prejudice as a matter of law which compel[s] separate trials"); *Wieland*, 101 Md. App. at 13 (noting that when evidence is not mutually admissible in a jury trial, "no discretion exists and . . . trial severance is absolutely mandated . . . as a matter of law.").

#### iii. Step 2: Weighing Judicial Economy Against the Danger of Unfair Prejudice

[13] Such prejudice includes "difficulty in presenting separate defenses, cumulation of evidence by the jury bolstering a weaker case, and the danger that a jury may infer a criminal disposition on the defendant's part from which he [or she] may be found guilty of other crimes charged." *McGrier v. State*, 125 Md. App. 759, 764 (1999).

When "other crimes" evidence is mutually admissible in either a jury or a bench trial, a court may nevertheless order severance if "the admission of such evidence will cause unfair prejudice to the defendant who is requesting a severance." *Hines*, 450 Md. at 369. In making that determination, a court should "weigh[] the likely prejudice against the accused in trying the charges together against considerations of judicial economy and efficiency, including the time and resources of both the court and the witnesses," as well as "reduced delay on disposition of criminal charges[.]" *Cortez v. State*, 220 Md. App. 688, 694, 697 (2014). *See also Galloway v. State*, 371 Md. 379, 395 (2002) ("In its consideration of joinder (and thus of severance), a trial court weighs the conflicting considerations of the public's interest in preserving judicial economy and efficiency against unduly prejudicing the defendant."). We review the trial court's balancing of these competing interests for abuse of discretion. *Conyers*, 345 Md. at 556. A court abuses its discretion when its decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).

**C. Analysis**

Against this legal backdrop, we return to the instant case. In opposing his motion to sever, the State proffered that Mr. Cantrell had been angry with both Ms. Grahe and Mr. Jacobs for purportedly participating in the theft of his truck. According to the State, in addition to "accusing both Ms. Grahe and Mr. Jacobs of that fact," Mr. Cantrell "threatened Ms. Grahe and her family with a knife" "within fifteen minute[s] of the

attack." As the State asserts and Mr. Cantrell tacitly concedes, that proffered evidence was mutually admissible to establish his motive for having both struck Ms. Grahe and stabbed Mr. Jacobs, to wit, revenge.[14] *Cf. Wilder v. State*, 191 Md. App. 319, 344 (2010) (holding that testimony that the defendant "had earlier threatened to come to the [victims'] house with a weapon" was relevant to his "motive for revenge" in firing four gunshots at their home).

Considered in the context of the preceding events, we further conclude that evidence of the assaults themselves would have been admissible at a separate trial on the murder charge. During the pretrial hearing on Mr. Cantrell's motion, the State proffered that Mr. Cantrell had acted as the initial aggressor in assaulting Ms. McCombs and Ms. Grahe. The State also represented that the forthcoming evidence would establish that Mr. Cantrell had hit Ms. Grahe out of retaliatory animus for her supposed complicity in the theft of his truck, thereby carrying out his threat of violence against her. According to the State, Mr. Cantrell's rancor and threat extended to Mr. Jacobs, whom he also blamed for the theft. Evidence that Mr. Cantrell acted out of revenge and in fulfillment of his threat by attacking Ms. Grahe was therefore probative to show that he did the same by stabbing Mr. Jacobs—thereby refuting his claim of self-defense.

The temporal and geographical proximity of the initial assaults to the fatal stabbing also weighs heavily in favor of admitting evidence of the former in a separate

[14] In *Ayala*, 174 Md. App. at 658, this Court defined "motive" as "the catalyst that provides the reason for a person to engage in criminal activity." (quotation marks and citation omitted).

trial on the latter. Mr. Cantrell attacked Ms. Grahe within mere minutes and a few city blocks of the fatal stabbing of her brother. Thus, the former offense was not only clearly related to the latter, but was necessary to give it context.[15] Thus, we conclude that evidence of the initial assaults would have been admissible at a separate trial for the murder of Mr. Jacobs.[16]

We turn now to the second prong of the *Conyers* severance test, *i.e.*, whether the circuit court abused its discretion in determining that judicial economy outweighed whatever incidental prejudice Mr. Cantrell may have suffered as a result of the joinder. As a preliminary matter, we note that Mr. Cantrell does not address this second step of the analysis. His failure to do so is understandable for two reasons. First, because he was

[15] Without such evidence, for example, the jury could only speculate as to why Mr. Cantrell was walking down Helmstetter Street at approximately 7:00 in the morning rather than retrieving his phone from Ms. Grahe's residence. The jury would likewise have been left to wonder what prompted the otherwise ostensibly unprovoked confrontation between Mr. Jacobs and Mr. Henry and Mr. Cantrell.

[16] This decision should not be construed as holding that evidence of the charged offenses was, in fact, *mutually* admissible at trial. In *Wieland*, we explained that "one-directional inadmissibility is enough to preclude the necessary *mutuality* of admissibility[.]" 101 Md. App. at 19 (emphasis in original). Although evidence of Mr. Cantrell's assaults of Ms. Grahe and Ms. McCombs would have been admissible in a separate trial for first-degree murder, there is some force to the argument that the inverse is not true. Assuming, without deciding, that evidence of the murder would have been inadmissible at a separate trial on the assault charges, the appropriate remedy would be to reverse Mr. Cantrell's assault convictions, to remand for a new trial on those counts, and to affirm his remaining convictions. *See Wieland*, 101 Md. App. at 19 ("A one-directional inadmissibility only calls for a one-directional reversal and remand."); *Kearney*, 86 Md. App. at 255. We need not address the merits of this issue, however, as the appellant did not raise it in his appellate brief. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) ("'[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)).

tried by a jury, Mr. Cantrell would have been entitled to severance as a matter of law if the assault evidence had been inadmissible at a separate murder trial, rendering any further analysis moot. Secondly, Mr. Cantrell would have been hard-pressed to prevail on this second step, both in light of the deferential standard of appellate review and because "judicial economy is a heavy counterweight on the joinder/severance scales." *Solomon v. State*, 101 Md. App. 331, 346 (1994). *Cf. Conyers*, 345 Md. at 556 ("[O]nce a determination of mutual admissibility has been made, any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder.").

Although Mr. Cantrell waived any challenge to the court's application of the second prong of the *Conyers* test by failing to address it in his appellate brief, *see Diallo v. State*, 413 Md. 678, 692-93 (2010), we will, for the sake of completeness, briefly address the matter. The jury trial in this case spanned four days. During that time, the State called and elicited testimony from 13 witnesses and introduced into evidence 23 exhibits, seven of which consisted of multiple sub-parts. Given the duration of the jury trial, the number of witnesses called, and the amount of demonstrable evidence introduced, we hold that the court did not abuse its discretion in determining that "considerations of judicial economy and efficiency" outweighed the danger of unfair prejudice posed by admitting evidence of Mr. Cantrell's physical altercation with Ms. Grahe and Ms. McCombs in a trial on the murder charge. *See Cortez*, 220 Md. App. at 694. *Cf. Molina v. State*, 244 Md. App. 67, 141 (2019) ("Given the volume, mutual

admissibility, and complexity of the evidence, we discern no abuse of discretion by the trial court in denying [a defendant]'s motion to sever her trial from" that of her codefendant.).

## II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION BY GRANTING THE STATE'S MOTION *IN LIMINE* TO REDACT PORTIONS OF MR. CANTRELL'S RECORDED POLICE STATEMENT.

Next, Mr. Cantrell contends that the court abused its discretion by permitting the State to redact those portions of his recorded police statement pertaining to Mr. Jacobs' alleged gang affiliation and history of domestic violence, arguing that such evidence "was probative of his state of mind where self-defense was the key disputed issue before the jury[.]" Mr. Cantrell also denies that any of the dangers or other countervailing concerns set forth in Maryland Rule 5-403 "were implicated in his case."[17] Finally, because the court's ruling "hampered his ability to present evidence relevant to his self-defense claim," Mr. Cantrell claims that "the ruling cannot be deemed harmless error[.]"

Invoking Maryland Rule 4-323(a), the State counters that Mr. Cantrell "failed to preserve the issue by not objecting at the time the statement was offered into evidence." Alternatively, it argues that the redacted references to Mr. Jacobs' purported gang affiliation and "alleged family abuse" were irrelevant, as they neither "show[ed] that [Mr.] Cantrell had reason to fear Mr. Jacobs' violent character" nor "corroborate[d] that

[17] Maryland Rule 5-403 provides: "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."

Mr. Jacobs was the aggressor." Whatever "minimal relevance" the redacted portions may have had, the State maintains, "was substantially outweighed by the danger of unfair prejudice and cumulative of other evidence reflecting the victim's violent nature." Finally, the State asserts that any error in excluding the redacted excerpts of Mr. Cantrell's recorded police statement was harmless beyond a reasonable doubt "due to the overwhelming evidence against [Mr.] Cantrell and the cumulative evidence supporting Mr. Jacobs' violent history."

**A. Pertinent Procedural History**

At the outset of the third day of trial, the State moved *in limine* to redact certain audio excerpts from the audiovisual recording of Mr. Cantrell's post-arrest statement to Detective Yost, specifically those pertaining to Mr. Jacobs' alleged affiliation with a criminal gang known as Dead Man Incorporated ("DMI") and occasions on which Mr. Jacobs had purportedly physically abused his family members. In support of that motion, the State argued:

> DMI . . . [is] not connected to this case. There's no gang activity in this case. And it would be unnecessarily inflammatory. Especially given the whole of the statement, it doesn't contribute -- the way . . . he talks about it doesn't contribute to his fear.
>
> He even says he's not afraid of the [victim] at all.
>
> * * *
>
> So[,] with regards to . . . the redactions on the abuse towards the family, first of all, that was a question that was brought out to Ms. Sandra [Grahe], and she emphatically said no.

The State also argued that such victim character evidence is only admissible to prove the defendant's state of mind and that he or she harbored a "reasonable belief of danger." According to the State, however, Mr. Cantrell did not establish that Mr. Jacobs' alleged gang affiliation or family abuse had made him fearful of Mr. Jacobs. Finally, the State maintained that Mr. Cantrell was not present for and therefore lacked personal knowledge of two of the events that he had recounted to Detective Yost.

After conceding that two of the State's challenged excerpts warranted redaction, Mr. Cantrell, through counsel, responded:

> [W]e think that everything else shows a history of violence that is relevant to . . . the question . . . the jury must resolve as to who might have been the first aggressor in the fatal altercation.
>
> It's interesting that the State brings up . . . the DMI references, because on the day that he died, [Mr. Jacobs] was wearing red clothes. He had DMI tattoos, and he was wearing a red T-shirt and red high tops, gang colors for DMI.
>
> So[,] we think that the DMI references are relevant, and we think that even the family abuse is relevant just to indicate his general violent nature.

The State rejoined that neither party was prepared to offer expert testimony that DMI members are routinely clad in red-colored clothing or that the gang had "a history of violence." "[T]he name DMI," the State continued, "is familiar in Baltimore City" and would therefore "be highly prejudicial." The State further maintained that the challenged portions of Mr. Cantrell's interview had scant probative value, as the redacted version of Mr. Cantrell's police statement contained "plenty" of other remarks with which defense

counsel could paint a picture of Mr. Jacobs' violent history. Accordingly, the State concluded that "with regard[] to the family members and . . . the gang, it's unnecessarily inflammatory and . . . doesn't . . . connect to what [Mr. Cantrell] sa[id] in his own statement about his level of fear."

Relying on the Supreme Court of Maryland's holding in *State v. Thomas*, 301 Md. 294 (1984), the circuit court granted the State's motion, ruling:

> The [c]ourt agrees with the State that the references to DMI[ and] family abuse do not fall within the proper use in addressing . . . the character of the victim[.] So[,] the [c]ourt will order that the redactions as requested by the State, as well as those that the State and defense agree on, should be employed today when playing this . . . for the jury, and those portions should be muted.

**B. Preservation**

As a preliminary matter, the State's non-preservation argument is unpersuasive. Maryland Rule 4-323(a) provides, in part: "An 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. Otherwise, the objection is waived." As a corollary to that Rule, when the court denies a motion *in limine* to exclude evidence, the issue of its admissibility is ordinarily not preserved for appellate review unless the moving party makes a contemporaneous objection when that evidence is actually offered.[18] *See, e.g., Wright v. State*, 247 Md. App. 216, 227-28 (2020) ("The general rule in Maryland is that

[18] This general rule is subject to a narrow exception "when it is apparent that any further ruling would be unfavorable, *i.e.*, an objection would be futile." *Wright*, 247 Md. App. at 228.

even though a party files a motion *in limine* and the court denies that motion, a contemporaneous objection is nonetheless required to preserve that claim for appeal."). In *Prout v. State*, 311 Md. 348, 357 (1988), however, the Supreme Court held that Rule 4-323(a) "is inapplicable when a trial judge rules to exclude evidence." *Accord Church v. State*, 408 Md. 650, 662-63 (2009). The Court reasoned:

> [S]ubsection (c) of Rule 4-32[3] states that to preserve an objection to a "ruling or order" *other than one admitting evidence*, "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court." Thus, when a trial judge, in response to a motion *in limine*, makes a ruling to exclude evidence that is clearly intended to be the final word on the matter, and that will not be affected by the manner in which the evidence unfolds at trial, and the proponent of the evidence makes a contemporaneous objection, his objection ordinarily is preserved under Rule 4-32[3](c).

*Prout*, 311 Md. at 357 (emphasis in original; footnote omitted).

In this case, the State moved to redact portions of the recorded police interview and thereby *exclude* select statements that Mr. Cantrell made in the course of the interview. While Mr. Cantrell opposed several of the State's requested redactions, he did not challenge the admission of the recording, either in whole or in part. Thus, Rule 4-323(a)'s contemporaneous objection requirement is inapposite. Rather, to preserve his objection to the State's proposed redactions, Mr. Cantrell was solely required to "show both prejudice and that 'the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered.'" *Peterson v. State*, 444 Md. 105, 125 (2015) (quoting Md. Rule 5-103(a)(2)).

We do not hesitate to hold that Mr. Cantrell complied with both requirements and therefore preserved his evidentiary challenge for appellate review.[19]

### C. The Merits

We turn now to the merits of Mr. Cantrell's contention that the court abused its discretion by granting the State's motion to redact portions of his recorded police statement pertaining to Mr. Jacobs' purported gang affiliation and history of family violence. In *Thomas*, the Supreme Court set forth the principles governing the admissibility of evidence pertaining to a homicide victim's character:

> When the issue of self-defense has been properly raised in a homicide case, the character of the victim is admissible for two purposes. First, it may be introduced to prove the defendant's state of mind when the victim was killed. Specifically, the character evidence may be used to prove that defendant had reasonable grounds to believe that he was in danger. The accused may introduce evidence of the deceased's previous violent acts to prove that he had reason to perceive a deadly motive and purpose in the overt acts of the victim. To use character evidence in this way, the defendant first must prove: (1) his knowledge of the victim's prior acts of violence; and (2) an overt act demonstrating the victim's deadly intent toward the defendant. Second, the violent character of the victim may be introduced to corroborate evidence that the victim was the initial aggressor. It is not necessary to prove that the defendant had knowledge of the victim's reputation. To use character evidence for this second purpose, however, the proponent must first establish

[19] That defense counsel stated that he had "[n]o objection" when the State offered the recording into evidence does not alter our conclusion. *Cf. Huggins v. State*, 479 Md. 433, 447-51 (2022) (holding that the defendant did not waive appellate review of the denial of his pretrial motion to suppress when, at the time the evidence was offered, defense counsel responded "no objection," as the defendant complied with Maryland Rule 4-252's requirement that he file a pretrial motion to suppress evidence recovered from a search or seizure).

> an evidentiary foundation tending to prove that the defendant acted in self-defense.

301 Md. at 306-07 (internal citations omitted).

Mr. Cantrell does not claim that Mr. Jacobs' prior violent acts were admissible to corroborate evidence that he, and not Mr. Cantrell, was the initial aggressor. He does, however, "maintain[] that the evidence excluded by the court was relevant in that it was probative of his state of mind where self-defense was the key disputed issue before the jury relating to the crime involving Mr. Jacobs." In support of that contention, Mr. Cantrell directs us to Ms. Grahe's testimony, which "established that her brother, Vernon Jacobs, upon seeing blood on her face, ran out of the house to look for Mr. Cantrell." However, the mere act of Mr. Jacobs searching for Mr. Cantrell does not, without more, demonstrate the former's deadly intent toward the latter. Nor does Ms. Babilonia's testimony that she observed a man matching Mr. Henry's description attempting to protect an otherwise defenseless Mr. Jacobs from Mr. Cantrell.

Before objecting to the redactions in this case, the defense did not introduce evidence establishing either Mr. Cantrell's knowledge of the purported prior violent acts at issue or an overt act on the part of Mr. Jacobs demonstrating his deadly intent toward Mr. Cantrell at about 7:00 a.m. on May 1, 2019.[20] Moreover, although Mr. Cantrell was

[20] At trial, Ms. Grahe provided little testimony regarding Mr. Jacobs' history of violence. Specifically, she confirmed on cross-examination that her brother (1) "put a knife to Mr. Cantrell's neck" a week before the fatal stabbing and (2) "had been in the past violent with [her], [their] mother, and other people."

(continued)

free to offer the unredacted recording as evidence of his state of mind after his own testimony arguably established the necessary factual foundation, he did not do so. *See State v. Martin*, 329 Md. 351, 361 (1993) ("Ordinarily, the source of the evidence of the defendant's state of mind will be testimony by the defendant."); *Thomas*, 301 Md. at 307 ("[N]o evidence supporting [Mr. Thomas's] self-defense claim was introduced until he took the stand in his own defense. Thus, no foundation was laid for the introduction of character evidence during the cross-examination of the State's witnesses. Consequently, the trial court did not err in sustaining the State's objection to his line of questioning.").

On the record before us, we hold that the defense did not lay an adequate foundation for admitting into evidence the recorded references to Mr. Jacobs' alleged acts of family abuse or his purported gang affiliation to establish that Mr. Cantrell "had reason

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We need not concern ourselves with the former alleged incident, as the record does not reflect, nor does Mr. Cantrell claim, that any references to the prior incident were actually redacted. To the contrary, in an unredacted portion of the recording played at trial, Mr. Cantrell seemed to describe that very event, stating: "[H]e had a knife to my throat one time in the kitchen with his mother standing there. You know, I was sure he wasn't going to slice my jugular, you know."

With respect to Mr. Jacobs' purported history of family abuse, although Ms. Grahe testified that her brother had been violent toward her, their mother, and "other people[,]" she neither cited any specific acts of violence that he had purportedly performed nor indicated that Mr. Cantrell witnessed or otherwise had personal knowledge of any such acts. In fact, in his recorded police statement, Mr. Cantrell expressly stated that he had not been present during at least one of the violent episodes to which he referred. Thus, Ms. Grahe's testimony did not establish that Mr. Cantrell had "*knowledge* of *specific instances of violence* on the part of the deceased." *Williamson v. State*, 25 Md. App. 338, 344 (1975) (emphasis added; quotation marks and citation omitted). In any event, as Ms. Grahe did not testify that these instances of alleged abuse were directed at Mr. Cantrell, it is difficult to glean how they would have provided him with "reasonable grounds to believe *himself* in imminent danger." *Id.* (emphasis added) (quotation marks and citation omitted).

to perceive a deadly motive and purpose" on the part of Mr. Jacobs. *Thomas*, 301 Md. at 307. Thus, we discern no abuse of discretion in the court's decision to redact those references.[21]

## III. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION BY DECLINING TO INSTRUCT THE JURY ON FIRST- AND SECOND-DEGREE ASSAULT AS LESSER-INCLUDED OFFENSES OF FIRST-DEGREE MURDER.

Finally, Mr. Cantrell complains that the court committed reversible error by denying his request to instruct the jury on first- and second-degree assault as lesser-included offenses of first-degree murder. Relying, as he did at trial, on *Middleton v. State*, 238 Md. App. 295 (2018), he claims that "based on the circumstances in this case, in which self-defense was generated, first degree assault could qualify as [a] lesser included offense[] of first degree murder." If he was entitled to a jury instruction on first-degree assault, Mr. Cantrell continues, so too was he entitled to one on second-degree assault. In support of that assertion, he argues that because "imperfect self defense and hot-blooded response to legally adequate provocation are applicable to the crime of first degree assault," those defenses could mitigate first-degree assault to second-degree assault. Thus, Mr. Cantrell concludes "that because he was charged with both first and second degree murder and . . . his defense was self defense, the jury should have been

[21] We are not persuaded that Mr. Jacobs' gang affiliation, in and of itself, qualifies as a "prior act of violence." *See People v. Soto*, 157 Cal. App. 3d 694, 712-13 (1984) ("'Membership in an organization [including a gang] does not lead reasonably to any inference as to the conduct of a member on a given occasion.'") (quoting *People v. Perez*, 114 Cal. App. 3d 470, 477 (1981)). *Accord Spivey v. Rocha*, 194 F.3d 971, 978 (9th Cir. 1999).

given the option to consider the charges of assault in the first and second degrees as lesser included offenses."

The State counters that the sole element differentiating murder from assault is "the death of the victim." Accordingly, the State asserts that "in order for a jury to rationally convict [Mr.] Cantrell of assault but not murder, [it] must be able to conclude that [he] assaulted—but did not kill—the victim." As the State observes, however, Mr. "Cantrell does not dispute that he fatally stabbed [Mr. Jacobs]." "Because a rational jury could not have found [Mr.] Cantrell guilty of assault and not guilty of murder," the State concludes, "any instruction that told the jurors that they could was an incorrect statement of the law and did not apply to the circumstances of this case." Finally, with respect to Mr. Cantrell's claim that "'because his defense was self-defense, the jury should have been given the option to consider the charges of assault in the first and second degrees as lesser included offenses,'" the State rejoins: "Neither perfect nor imperfect self defense reduced [Mr.] Cantrell's action to assault."

**A. The Instructions at Issue**

At the close of the State's case and outside the presence of the jury, defense counsel asked the court to instruct the jurors on first- and second-degree assault as lesser-included offenses of first-degree murder. In support of that request, counsel argued that because premediated first-degree murder has "all the elements of first degree assault," the latter crime is "a lesser included offense of" the former. The court reserved ruling on the requested instruction.

After the defense rested its case, the court afforded Mr. Cantrell's attorney a second opportunity to present argument with respect to his requested instructions. Relying on *Middleton*, *supra*, defense counsel argued:

> [F]irst degree assault is lesser included of . . . second degree murder.
>
> That leads inevitably to the conclusion that for most species of first degree murder, excluding felony murder, first degree assault's a lesser included . . . .
>
> But[,] of course[,] second degree is on the verdict sheet, so[,] . . . through the Middleton case[,] we have a holding of the appellate courts that says that first degree assault should be on the verdict sheet.
>
> If first degree assault is on the verdict sheet, second degree assault has to be on the verdict sheet because of the *Christian [v.] State*[, 405 Md. 306 (2008),] case[,] which indicates that imperfect self defense mitigates first degree to second degree.

Unpersuaded by defense counsel's argument, the court denied his request, ruling:

> [T]he [c]ourt does find that to instruct the jury on first and second degree assault as it pertains to [Mr.] Jacobs would be a misstatement of the law and inconsistent with the testimony and evidence in this case.
>
> The [c]ourt finds that based on the evidence before this jury, this jury could not find [Mr. Cantrell] guilty of first or second degree assault[,] but not also for the murder. So[,] for those reasons, the [c]ourt rejects the defense request to include first and second degree assault as it pertains to Mr. . . . Jacobs.

Prior to deliberations, the court instructed the jury (without objection), in relevant part, as follows:

[Mr. Cantrell] is charged with the crime of murder. This charge includes first degree murder, second degree murder, and voluntarily manslaughter.

First degree murder is the intentional killing of another person with willfulness, deliberation, and premeditation.

In order to convict [Mr. Cantrell] of first degree murder[,] the State must prove[:] one, that [Mr. Cantrell] caused the death of [Mr.] Jacobs; two, that the killing willful, deliberate, and premeditated; three, that the killing was not justified; and four, that there were no mitigating circumstances.

Willful means that [Mr. Cantrell] actually intended to kill [Mr.] Jacobs. Deliberate means that [Mr. Cantrell] was conscious of the intent to kill. Premeditated means that [Mr. Cantrell] thought about the killing, and that there was enough time before the killing, though it may have only been brief, for [Mr. Cantrell] to consider the decision whether or not to kill, and enough time to weigh the reasons for and against the choice. The premeditated intent to kill must be formed before the killing.

Second degree murder is the killing of another person with either the intent to kill or the intent to inflict such serious bodily harm that death would . . . be the likely result.

Second degree murder does not require premeditation or deliberation. In order to convict [Mr. Cantrell] of second degree murder, the State must prove[:] one, that [Mr. Cantrell] caused the death of [Mr.] Jacobs; two, that [Mr. Cantrell] engaged in the deadly conduct either with the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result; three, that the killing was not justified; and four, that there [were] no mitigating circumstances.

Voluntary manslaughter is an intentional killing which is not murder because the defendant acted in partial self defense.

> Partial self defense, sometimes called "imperfect self defense," does not result in a verdict of not guilty, but rather reduces the level of guilt from murder to manslaughter.

**B. The Standard of Review and Applicable Law**

"We review a trial court's decision to give or refuse a jury instruction under the abuse of discretion standard." *Nicholson v. State*, 239 Md. App. 228, 239 (2018). "'The main purpose of a jury instruction is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict.'" *Cruz v. State*, 407 Md. 202, 209 (2009) (quoting *Chambers v. State*, 337 Md. 44, 48 (1994)). Maryland Rule 4-325(c) governs the giving of such instructions in criminal cases, and provides:

> The court may, and *at the request of any party shall*, *instruct the jury as to the applicable law* and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. *The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.*

(Emphasis added).

The Supreme Court of Maryland and we have interpreted Rule 4-325(c) as requiring that trial courts issue a requested jury instruction when the following three conditions are satisfied: "The instruction must state correctly the law, the instruction must apply to the facts of the case (e.g., be generated by some evidence), and the content of the jury instruction must not be covered fairly in a given instruction." *Preston v. State*, 444 Md. 67, 81-82 (2015) (footnote and citations omitted). *See also Maxwell v. State*, 168 Md. App. 1, 16 (2006). When a party asks the trial court to give an instruction *on an*

*uncharged lesser-included offense*, however, "the test is not whether there is sufficient evidence to convict of the lesser included offense but whether the evidence is such 'that the jury could rationally convict *only* on the lesser included offense.'" *Burch v. State*, 346 Md. 253, 279 (1997) (quoting *Burrell v. State*, 340 Md. 426, 434 (1995)). Thus, "[a] lesser offense instruction should be given only when the elements differentiating the two crimes are in sufficient dispute that the jury can rationally find the defendant innocent of the greater but guilty of the lesser offense." *Dishman v. State*, 352 Md. 279, 293 (1998) (cleaned up). "This requirement is intended to prevent the jury from capriciously convicting on the lesser offense when the evidence requires either conviction on the greater offense or outright acquittal." *Id*. at 294 (quotation marks and citations omitted).

In *State v. Bowers*, 349 Md. 710, 721-22 (1998), the Supreme Court set forth the following two-prong test for determining whether a court is required to give a requested jury instruction on an uncharged lesser-included offense:

> The threshold determination is whether one offense qualifies as a lesser included offense of a greater offense. . . . Once the threshold determination is made, the court must turn to the facts of the particular case. In assessing whether a defendant is entitled to have the jury instructed on a lesser included offense, the court must assess whether there exists, in light of the evidence presented at trial, a rational basis upon which the jury could have concluded that the defendant was guilty of the lesser offense, but not guilty of the greater offense.

*Id*. (quotation marks and citations omitted).

**C. Analysis**

**i. The Required Evidence Test**

With respect to the first prong, Maryland courts apply the "required evidence test" to determine whether one crime is a lesser-included offense of another. In applying that test, "'courts look at the elements of the two offenses in the abstract.'" *Wright v. State*, 255 Md. App. 407, 416 (2022) (quoting *Hagans v. State*, 316 Md. 429, 449 (1989)). To satisfy the required evidence test, "[a]ll of the elements of the lesser-included offense must be included in the greater offense," such that it is "impossible to commit the greater without also having committed the lesser." *Id*. (quoting *Hagans*, 316 Md. at 449). In other words, "'Crime A is a lesser-included offense of Crime B where all of the elements of Crime A are included in Crime B, so that only Crime B contains a distinct element.'" *Williams v. State*, 478 Md. 99, 126-27 (2022) (quoting *State v. Wilson*, 471 Md. 136, 178 (2020)). Conversely, "neither Crime A nor Crime B is a lesser-included offense of the other where each crime contains an element that the other does not." *Wilson*, 471 Md. at 178-79 (quotation marks and citation omitted).

*Middleton* is instructive on the threshold issue of whether and to what extent first-degree assault qualifies as a lesser-included offense of second-degree murder. In that case, the State charged Middleton with, among other things, first-degree murder using the statutory short form. 238 Md. App. at 309-10. That charge arose from an altercation between Robert Ponsi and a group of five to eight juveniles of which Middleton was a member. *Id.* at 299. After the group demanded that he surrender his wallet, Ponsi attempted to retreat, fell, and "was immediately set upon by all the youths." *Id.* at 300. One of Ponsi's assailants stabbed him 11 times with a knife, resulting in his death.

Although Middleton had not inflicted the stabbing, he "admitted to having either 'kicked' or 'stomped' Ponsi as he lay on the ground." *Id.* at 301. Following a bench trial, the court acquitted Middleton of "first- and second-degree specific-intent murder," but convicted him of "first-degree assault based upon the intent to cause or attempt to cause serious physical injury to another"—a crime with which he was not expressly charged under the indictment. *Id.* at 302 (internal quotation marks omitted).

On appeal, Middleton challenged the legality of his assault conviction and corresponding sentence, arguing that "assault in the first degree, under [Md. Code Ann., Crim. Law ("CR"), § 3-202(b)(1)], is not a lesser-included offense of murder (which was alleged in the indictment), under the required evidence test, because it was possible to commit murder without committing an assault." *Id.* at 303 (footnote omitted).[22] *See*

[22] CR § 3-202 defines first-degree assault and provides, in pertinent part:

> (b)(1) A person may not intentionally cause or attempt to cause serious physical injury to another.
>
> (2) A person may not commit an assault with a firearm, including:
>
> (i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short-barreled rifle, as those terms are defined in § 4-201 of this article;
>
> (ii) an assault pistol, as defined in § 4-301 of this article;
>
> (iii) a machine gun, as defined in § 4-401 of this article; and
>
> (iv) a regulated firearm, as defined in § 5-101 of the Public Safety Article.
>
> (3) A person may not commit an assault by intentionally strangling another.

*Hagans*, 316 Md. at 450 ("[A] defendant may only be convicted of an uncharged lesser included offense if it meets the [required] elements test."). We rejected that argument.

As a preliminary matter, we determined that "[b]ecause Middleton was charged under the language in the short-form indictment, he was charged, among other things, with murder in the second degree, based upon the specific intent to inflict grievous bodily harm." *Id.* at 310. Although the indictment ostensibly charged Middleton with only the premeditated first-degree murder species of criminal homicide, we observed: "That count used the language in the short-form indictment, as set forth in [CR § 3-202(b)(1)]." *Id.* at 309 (footnote omitted). We explained that although the "statutory formula" set forth in CR § 2-208 "'spells out murder in the first degree, the accused may be convicted of murder in the first degree, of murder in the second degree, or of manslaughter.'" [23] *Id.* at 310 (quoting *Hook v. State*, 315 Md. 25, 32 n.11 (1989)). *See also Dishman v. State*, 352 Md. 279, 303 (1998) (holding that the statutory short-form of an indictment for criminal homicide "charges each of the homicide offenses, even if it is couched in terms of first degree murder."); *Nicholson*, 239 Md. App. at 256 ("[T]he statutory short-form

[23] CR § 2-208 provides, in pertinent part:

> Contents
>
> (a) *An indictment for murder* or manslaughter *is sufficient if it substantially states*:
>
> "(name of defendant) on (date) in (county) feloniously (*willfully and with deliberately premeditated malice*) killed (and murdered) (name of victim) against the peace, government, and dignity of the State."

(Emphasis added).

indictment is sufficient to charge first-degree premeditated murder, second-degree murder, manslaughter, and felony murder."); *McMillan v. State*, 181 Md. App. 298 (2008) ("[A]ppellant's indictment, which conformed in every relevant way with the statutory form specified in [CR] § 2-208, invested the circuit court with jurisdiction to try him for *murder of any variety*[.]" (emphasis added)), *rev'd on other grounds*, 428 Md. 333 (2012).

Having determined that Middleton had been properly charged with grievous-bodily-harm second-degree murder, we did not hesitate to hold that "assault in the first degree, under [CR § 3-202(b)(1)], is, under the required evidence test, a lesser-included offense" thereof.[24] *Middleton*, 238 Md. App. at 310. *Cf.* CR § 3-201(d) (defining "serious physical injury" as a "physical injury that: creates a substantial risk of death; or causes permanent or protracted serious: disfigurement; loss of the function of any bodily member or organ; or impairment of the function of any bodily member or organ."). We elaborated that grievous-bodily-harm murder and serious-physical-injury assault share

[24] As a cautionary note, whether assault qualifies as a lesser-included offense of murder in a particular case turns upon the types of assault and murder at issue. *Compare Wright*, 255 Md. App. at 416 ("Whether first-degree assault merges into murder . . . depends on the modality of [the] assault underlying the conviction."), *with Middleton*, 238 Md. App. at 307 ("Middleton's first contention, that assault in the first degree, under [CR § 3-202(b)(1)], is not a lesser-included offense of murder, makes no sense unless one specifies which type of murder."). For example, while first-degree assault of the serious-physical-injury modality is a lesser-included offense of second-degree murder of the grievous-bodily-harm variety, "the firearm modality of first-degree assault is not a lesser-included offense of second-degree murder." *Wright*, 255 Md. App. at 417. This is so because "[f]irst-degree assault with the use of a firearm includes the element of possessing a firearm," while "murder in either degree . . . can be committed without a firearm." *Id.*

precisely "'the same elements with the one additional element for murder, the death of the victim.'"[25] *Middleton*, 238 Md. App. at 309 (quoting *Sifrit v. State*, 383 Md. 116, 138 (2004)).

In this case, as in *Middleton*, the State used the statutory short form indictment for criminal homicide, thereby charging Mr. Cantrell with, *inter alia*, grievous-bodily-harm second-degree murder. Because the elements of that variety of murder encompass those of serious-physical-injury assault, the latter crime clearly qualifies as a lesser-included offense of the former. Thus, we proceed to the second step of our analysis.

**ii. Assessing the Basis for Acquittal on the Greater Charge and Conviction on the Lesser**

To satisfy the second prong of the lesser-included-offense-instruction test, there must exist "'a bona fide factual dispute regarding one element that is necessary to the greater crime but not essential to the proof of the lesser[.]'" *Bass v. State*, 206 Md. App.

[25] In *Middleton*, we noted:

> Strictly speaking, assault in the first degree, under what is now C[R] § 3-202([b])(1), and murder in the second degree, based upon the intent to inflict grievous bodily harm, do not have precisely the same specific intent. The specific intent required to prove the latter is the intent to do serious bodily injury, that death would be the likely result, and is narrower than the specific intent required under C[R] § 3-202([b])(1). But *it is nonetheless true that the specific intent to prove second-degree murder of this variety necessarily establishes the specific intent to prove first-degree assault under C[R] § 3-202([b])(1)*.

238 Md. App. at 309 n.13 (quotation marks and internal citations omitted; emphasis added).

1, 9 (2012) (quoting *State v. Bowers*, 349 Md. 710, 723 (1998)). Underlying this requirement is the reasoning that "the jury should be given the option of convicting on the lesser crime only when it constitutes a valid alternative to the charged offense, thereby preserving the integrity of the jury's role as a fact-finding body." *Id.* (quoting *Bowers*, 349 Md. at 723) (cleaned up). Thus, in proceeding from the first to the second step, our analytical focus necessarily shifts from the elements which the greater-inclusive and lesser-included offenses *share* to those that *differentiate* the former from the latter.

As discussed above, the serious-physical-injury modality of first-degree assault and the grievous-bodily-harm variety of second-degree murder "'have the same elements *with the one additional element for murder, the death of the victim.*'" *Middleton*, 238 Md. App. at 309 (emphasis added) (quoting *Sifrit*, 383 Md. at 138). Mr. Cantrell neither disputes that he inflicted the wounds that killed Mr. Jacobs, nor does he deny that the remaining elements of the latter crime are shared by the former. He does not, moreover, otherwise attempt to explain how the jury could rationally have convicted him of first- or second-degree assault while acquitting him of murder. He argues instead that "because his defense was self defense, the jury should have been given the option to consider the charges of assault in the first and second degrees as lesser included offenses."

That Mr. Cantrell advanced a theory of self-defense at trial does not alter our analysis. "When facts are adduced establishing perfect self-defense to a charge of criminal *homicide or assault*, the defendant's actions are said to be justifiable or

excusable and the direct result is the acquittal of the defendant."[26] *Jones v. State*, 357 Md. 408, 421-22 (2000) (emphasis added). Imperfect self-defense, by contrast, may mitigate murder to voluntary manslaughter and first-degree assault to second-degree assault. *Compare State v. Smullen*, 380 Md. 233, 252 (2004) ("[I]mperfect self defense . . . negate[s] the element of malice required for a conviction of murder and thus reduces the offense to manslaughter."), *with Christian v. State*, 405 Md. 306, 310 (2008) ("[T]he common law doctrine of imperfect self-defense can apply to the crime of first degree assault."). Neither defense, however, has the effect of mitigating murder—of any degree or variety—to assault by negating an element of the former that is not required for a conviction of the latter.

Absent a bona fide dispute that Mr. Cantrell committed the fatal stabbing of Mr. Jacobs or any evidence calling into question that uncontroverted fact, the jury lacked a rational basis upon which it could have reasonably acquitted Mr. Cantrell of grievous-bodily-harm second-degree murder while acquitting him of the lesser-included offense of serious-physical-injury first-degree assault. Accordingly, we hold that the court did not err in declining to instruct the jury as Mr. Cantrell's requested.

For the foregoing reasons, we discern no reversible error and therefore affirm the judgments of the circuit court.

[26] This is not the case, however, with respect to felony murder. *See Nicholson*, 239 Md. App. at 245 ("'It has been established . . . that self-defense is not a defense to felony murder.'") (quoting *Sutton v. State*, 139 Md. App. 412, 454 (2001)).

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