Circuit Court for Baltimore County
Case Nos. 03-K-18-001959 & 03-K-18-001960

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED

Nos. 89 & 124
September Term, 2020

NYGHEE NICHOLAS JOHNSON
v.
STATE OF MARYLAND

NORWOOD THOMAS JOHNSON, JR.
v.
STATE OF MARYLAND

Nazarian,
Arthur,
Leahy,

JJ.

Opinion by Arthur, J.

Filed: July 13, 2021

Norwood Johnson and Nyghee Johnson were tried jointly in the Circuit Court for Baltimore County for causing the deaths of Stanley Brunson and Shameek Joyner. The State alleged that the defendants arranged through a middleman, Jeane Juste, to sell 21 pounds of marijuana to Brunson and Joyner, for $25,000. When the parties met at Juste's apartment for the planned sale, Brunson and Joyner were shot several times. Afterwards, Juste stabbed Brunson repeatedly. Brunson and Joyner died from their injuries.

A jury convicted Norwood Johnson and Nyghee Johnson of four counts each: conspiracy to distribute marijuana, possession of marijuana with intent to distribute, second-degree felony murder of Brunson, and second-degree felony murder of Joyner. The court sentenced both defendants to two, consecutive 20-year prison terms.

In this appeal, Norwood and Nyghee Johnson contend that the trial court erred by: failing to instruct the jury on the issues of self-defense and defense of others, denying their motions for judgment of acquittal on the felony murder charges, limiting cross-examination of one of the State's witnesses, admitting evidence that the police recovered a box containing 21 pounds of marijuana, and refusing to order separate trials.

For the reasons explained in this opinion, we reject their contentions. The judgments will be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Because this appeal includes challenges to the sufficiency of evidence, we recount the facts established at trial in the light most favorable to the State. *See, e.g.*, *Davis v. State*, 207 Md. App. 298, 303 (2012) (citing *Moye v. State*, 369 Md. 2, 12 (2002)).

A. Arrangements for the Sale of Marijuana

As of early 2018, Jeane Juste was staying at an apartment in Towson, Maryland. Juste had been paying monthly rent to the leaseholder, Jeremy Johnson,[1] so that he could sleep on a couch in the living room. Juste made money by selling marijuana.

In April 2018, Juste communicated with Stanley Brunson, an acquaintance he had known for several years. Brunson wanted to purchase 21 pounds of marijuana from Juste.

To obtain the marijuana, Juste reached out to a man he knew by the nickname "Baltimore Yo." Juste had previously met Baltimore Yo and his "friend," "Lil' Bro Yo," at a bar in Fells Point. Juste had saved their phone numbers as contacts in his phone under the names "Knuckles....LA" and "Lil Bro….LA."

The State alleges that these two sellers were Norwood Johnson and Nyghee Johnson. At trial, all parties stipulated that Norwood Johnson's nickname is Knuckles. Nyghee Johnson is Norwood Johnson's younger brother.

On April 6, 7, and 8, 2018, Juste exchanged phone calls and text messages with the two sellers, as well as with Brunson. According to Juste, they agreed on a price of $25,000 for the 21 pounds of marijuana. They arranged to meet at the apartment where Juste was staying on the morning of April 8, 2018.

Brunson arrived at the apartment building at around 11:00 a.m., along with his friend, Shameek Joyner. Juste went down to the lobby and brought them up to the

[1] Jeremy Johnson is unrelated to the appellants in this case.

apartment. Shortly after they arrived, Juste's landlord, Jeremy Johnson, left the apartment with his girlfriend. Juste's friend, Tracey Carrington, remained inside a separate room of the apartment.

Cell tower location analysis indicates that, on the morning of April 8, 2018, phones belonging to the two sellers travelled together in the direction of Juste's apartment. At 11:05 a.m., "Knuckles" sent Juste a text message with the word "Traffic." The message included a picture taken from a car interior, showing slow-moving traffic on Interstate 695.

Surveillance video shows that a black BMW with two men (a driver and passenger) entered the parking garage of the apartment building at approximately 11:21 a.m. The license plate for the BMW is registered to Norwood Johnson.

When the sellers arrived at the apartment building, Juste went to the ground floor to open the door to the parking garage. Juste joined them in the car and guided them to a parking spot on the fifth floor near his apartment. The sellers removed a duffle bag from the trunk. Inside the bag, Juste could see "plastic" and a green substance that he recognized as marijuana.

B. Shootings of Joyner and Brunson and Stabbing of Brunson

Juste testified that the sellers brought the duffle bag into the apartment where the buyers, Brunson and Joyner, were waiting. They placed the duffle bag on an ottoman in the living room and allowed Brunson to examine the contents. Juste heard Brunson say, "[S]o it is good."

According to Juste, at that point, Joyner came from behind Juste and put a gun to

Juste's head. Juste reacted by pushing Joyner back against a wall and pressing his forearm against Joyner's neck. Juste called out to Brunson, "[W]hat is your boy doing?"

Then, Juste heard gunshots. Juste felt Joyner's body go limp and let the body hit the floor. Juste looked over to the living room and saw Brunson's body make a jerking motion as a result of being shot. Juste closed his eyes until he heard the apartment door shut. When he opened his eyes, the two sellers and the duffle bag were no longer in the apartment.

A resident of a lower floor of the apartment building testified that she heard three bursts of gunshots on the morning of April 8, 2018. When she heard the shots, she looked at her clock, which showed a time of 11:23 a.m.

Surveillance video shows that Norwood Johnson's BMW left the parking garage of the apartment building at approximately 11:30 a.m.

After the sellers left, Juste ran to get his friend Carrington from a bedroom. They left the building using the emergency stairs. Juste saw someone he knew driving on the street and got into the person's car. Juste soon realized that he had left his wallet inside the apartment. Surveillance video shows that Juste reentered the apartment building at 11:43 a.m.

When Juste returned to the apartment, Brunson was still alive despite having been shot several times. Juste walked past Brunson to retrieve his wallet. Juste testified that, at that point, Brunson "start[ed] threatening [him], saying I'm coming for you, coming for your name." Juste picked up a knife from the kitchen and walked back towards Brunson. According to Juste, Brunson "lunge[d] toward" him and they "start[ed]

tussling." Juste stabbed Brunson repeatedly until Brunson had been subdued.

On the following day, maintenance workers found Brunson and Joyner dead inside the apartment. Ballistics analysis later revealed that the two men had been shot with two firearms, one using .40 caliber ammunition and the other using .45 caliber ammunition. The police also found live rounds of nine-millimeter ammunition in the foyer of the apartment. The police did not find handguns in the apartment, nor did they find the knife that Juste had used to stab Brunson.

Joyner's autopsy showed that he died from three gunshot wounds to his back and side. Brunson's autopsy showed that he suffered seven gunshot wounds and 36 "sharp force injuries," i.e., wounds from being stabbed or cut with a sharp implement. The medical examiner concluded that one of Brunson's gunshot wounds and one of his stab wounds, both of which passed through his chest, were "rapidly fatal," meaning an injury that would cause the person to die within five to 30 minutes. The medical examiner determined that those two wounds caused Brunson's death.[2]

C. Recovery of 21 Pounds of Marijuana

On April 12, 2018, four days after the killings, a detective located the black BMW registered to Norwood Johnson, parked on Elton Avenue in eastern Baltimore County. The detective saw Norwood Johnson enter the car, look around inside it, and then walk into a house on the other side of the street. Moments later, the detective saw Norwood

[2] Testifying for the defense, a forensic pathologist opined that two of Brunson's stab wounds were the "immediate cause" of Brunson's death. The defense expert agreed, however, that without medical attention Brunson's gunshot wounds would have caused him to die "within a short period of time that was a matter of minutes."

Johnson driving away in a different vehicle, with Nyghee Johnson in the passenger seat.

On the same day, the police obtained a warrant to search the Elton Avenue house. In the basement, the police found a cardboard box that contained a large plastic bag. The bag, in turn, contained 21 vacuum-sealed packages of marijuana weighing approximately one pound each. Fingerprints on the large plastic bag and on five of the one-pound packages matched those of Nyghee Johnson. None of the fingerprints found on the bag or packages matched those of Norwood Johnson.

At the time of the search, Brooke Sanders lived at the Elton Avenue house with her boyfriend, Dwight Jones. According to Sanders, Norwood Johnson, whom she knew as "Knuckles," had been Jones's best friend for many years. Sanders recalled that Norwood Johnson and his brother Nyghee visited the Elton Avenue house frequently in the days before the search. On the night before the search, Sanders saw Norwood and Nyghee Johnson speaking with Jones in the basement. At one point, Sanders went to the basement to do laundry, and the three men stopped talking. Sanders testified that she first noticed the large box in the basement "a few days" before the search on April 12, 2018, but she could not remember exactly how many days.

D. Convictions and Sentences

During the trial, the State withdrew counts for: attempt to distribute marijuana; use of a firearm in the commission of a crime of violence; possession of a regulated firearm after a disqualifying conviction; wearing, carrying, or transporting a handgun on or about the person; and wearing, carrying, or transporting a handgun in a vehicle. The trial court denied the defendants' motions for judgment of acquittal.

The jury found both defendants guilty of conspiracy to distribute marijuana, possession of marijuana with intent to distribute, second-degree felony murder of Brunson, and second-degree felony murder of Joyner. The jury found both defendants not guilty of the remaining charges: possession of a firearm during and in relation to a drug trafficking crime; using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime; and use of a firearm in the commission of a felony.

The court sentenced both defendants to 20 years of imprisonment for the murder of Brunson and a consecutive term of 20 years for the murder of Joyner. The court sentenced both defendants to five years of imprisonment, concurrent with the first 20-year sentence, for conspiracy to distribute marijuana. The court merged the counts of possession of marijuana with intent to distribute into the felony murder counts for sentencing purposes.

Norwood Johnson and Nyghee Johnson each noted a timely appeal. Granting the State's unopposed motion, this Court consolidated the two appeals for the purpose of argument.

QUESTIONS PRESENTED

In this appeal, Norwood and Nyghee Johnson raise several overlapping issues. They ask the following three identical questions:

> A. Whether the trial court erred in refusing to instruct the jury on the issues of self-defense and defense of others, where the State alleged that Mr. Johnson shot people who were robbing him and others?
>
> B. Whether the trial court erred in denying Mr. Johnson's motions for judgment of acquittal, where no rational juror could have found Mr. Johnson guilty?

C. Whether the trial court erred in impermissibly restricting cross-examination of the chief prosecution witness?

In addition, they contend that evidence that the police recovered 21 pounds of marijuana from the Elton Avenue house was inadmissible against them. Nyghee Johnson asks:

Whether the trial court erred in admitting evidence of 21 pounds of marijuana, where the State failed to prove the highly prejudicial evidence was relevant to the shooting in apartment #527?

Relatedly, Norwood Johnson asks:

Whether the Circuit Court erred in denying Norwood Johnson's motion to sever, where the evidence was not mutually admissible?

Finally, Norwood and Nyghee Johnson each ask: "Did the cumulative effect of the errors deprive Mr. Johnson of due process and a fair trial?"

We conclude that the first issue, regarding the omission of jury instructions, is unpreserved. As to the remaining issues, we perceive no error or abuse of discretion in the trial court's rulings. Accordingly, the judgments will be affirmed.

DISCUSSION

I. Jury Instructions on Self-Defense and Defense of Others

Norwood and Nyghee Johnson contend that the circuit court erred in failing to instruct the jury on the issues of self-defense and defense of others as a defense to the charges of felony murder. We conclude that this contention is unpreserved because neither defendant raised a timely objection to the court's failure to give those instructions. We further conclude that plain-error review is not warranted.

After the State concluded its case-in-chief, counsel for Nyghee Johnson moved "to be able to argue self-defense in this case." Counsel acknowledged that, under Maryland law, self-defense "doesn't apply" as a defense to the charge of felony murder. He nevertheless argued that, "regardless of whether you're involved in a felony or not, you should have a right to defend yourself." Counsel for Norwood Johnson joined that request. The trial court ruled: "Most respectfully, the motion or request for self-defense argument is denied at this juncture."

When the trial court delivered instructions to the jury, the court gave no instructions on the issues of either self-defense or defense of others. The court asked all parties whether they had "[a]ny objection to any instructions as given" and whether they sought "[a]ny additional instructions." Both of the defense attorneys answered in the negative.

During closing arguments, the prosecutor stated that the jurors had not heard "anything about self-defense or defense of others" during the instructions "because self-defense and defense of others [are] not applicable to felony murder." During rebuttal closing argument, the prosecutor again mentioned that self-defense and defense of others "do not apply" to the charges of felony murder.

On the following day, before sending the jury to deliberate, the court asked counsel for all parties whether they sought "[a]ny additional instructions" or "[a]ny amendments or corrections" to the written instructions or verdict sheets. For the first time, counsel for Norwood Johnson requested "the self-defense instruction" and "the [d]efense of others instruction." Counsel for Nyghee Johnson joined both requests. The

court denied their requests.

On appeal, Norwood and Nyghee Johnson contend that the trial court erred in refusing to instruct the jury on the issues of self-defense or defense of others. They assert that these issues were generated by the evidence because Juste had testified that one of the victims held a gun to his head. The State disputes whether this testimony alone was enough to generate either issue. Primarily, however, the State contends that any claim of error in failing to instruct the jury on those issues is unpreserved.

Maryland Rule 4-325(a) provides that, in criminal cases, "[t]he court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate." The Rule further provides: "No party may assign as error the giving or the failure to give an instruction unless the party objects on the record *promptly after the court instructs the jury*, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 4-325(e) (emphasis added).[3]

Ordinarily, therefore, an argument that the trial court erred by omitting a jury instruction is not preserved unless a party raised an objection promptly after the instructions were delivered to the jury. *See, e.g.*, *Correll v. State*, 215 Md. App. 483, 516 (2013). "The requirement that an objection to an instruction be made *after* the court has completed its instructions is important, for an objection at that point gives the trial court

[3] Citations in this opinion refer to the versions of the Maryland Rules in effect at the time of trial. Effective July 1, 2021, the pertinent language now appears in Rule 4-325(f).

'an opportunity to correct the instruction in light of a well-founded objection.'" *Montague v. State*, 244 Md. App. 24, 59 (2019) (emphasis in original) (quoting *Stabb v. State*, 423 Md. 454, 464-65 (2011)).

Norwood and Nyghee Johnson acknowledge that they made no prompt objections after the court gave the instructions. They nevertheless argue that, under the circumstances, they substantially complied with the requirements of Rule 4-325(e).

The Court of Appeals has held that, "under certain well-defined circumstances, when the objection is clearly made before instructions are given, and restating the objection after the instructions would obviously be a futile or useless act," an appellate court "will excuse the absence of literal compliance with the requirements" of Rule 4-325(e). *Sims v. State*, 319 Md. 540, 549 (1990). The Court has "ma[d]e clear, however, that these occasions represent rare exceptions, and that the requirements of the Rule should be followed closely." *Id.* To establish substantial compliance, "[t]here must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record[;] and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless." *Bowman v. State*, 337 Md. 65, 69 (1994) (quoting *Gore v. State*, 303 Md. 203, 209 (1987)).

The narrow conditions necessary for substantial compliance are not present here. Neither defense attorney made a clear request for instructions on the issues of self-defense or defense of others before the court instructed the jury. Days before the

instructions, they merely asked "to be allowed to *argue* to the jury the right of self-defense." (Emphasis added.) The court certainly was not required to construe this request as a request for jury instructions on the law regarding self-defense or defense of others, especially where counsel acknowledged that self-defense was inapplicable under Maryland law. When the court denied "the motion or request for self-defense argument," the court did nothing to suggest that it would have been futile or useless to request any desired jury instructions at the appropriate time. *See Bowman v. State*, 337 Md. at 69.

Both of the defense attorneys eventually asked for additional jury instructions on self-defense and defense of others, but they did so one day after the court had already delivered its instructions. By that time, the parties had already finished their closing arguments, which, in accordance with the court's instructions, did not address the elements of self-defense or defense of others. Their request was not made "promptly after the court instruct[ed] the jury," nor did it include a distinct statement of "the grounds of the objection." Md. Rule 4-325(e). To the extent that the request could be considered a request for a supplemental instruction, defense counsel articulated no reasons why supplementation was necessary. We agree with the State that, under these circumstances, it would have been "unfair" and "confusing to the jury to suddenly add new instructions on two new defenses." This late request for new instructions after closing arguments was inadequate to comply with the Rule, substantially or otherwise.

Anticipating that the belated requests made at trial might not be adequate to preserve the issue, Norwood and Nyghee Johnson ask this Court to conduct plain-error review. Maryland Rule 4-325(e) provides: "An appellate court, on its own initiative or

on the suggestion of a party, may . . . take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object." This provision applies only "where the circumstances are 'compelling, extraordinary, exceptional, or fundamental to assure the defendant a fair trial.'" *Braboy v. State*, 130 Md. App. 220, 228 (2000) (quoting *Conyers v. State*, 354 Md. 132, 171 (1999)).

It is difficult to perceive how the failure to instruct the jury on the issues of self-defense and defense of others as defenses to felony murder might be characterized as an error of any kind. "'It has been established . . . that self-defense is not a defense to felony murder'" under Maryland law. *Nicholson v. State*, 239 Md. App. 228, 245 (2018) (quoting *Sutton v. State*, 139 Md. App. 412, 454 (2001)), *cert. denied*, 462 Md. 579 (2019). This Court has stated this rule "categorically[,]" "broadly[,] and without qualification." *Nicholson v. State*, 239 Md. App. at 246. This Court has rejected the view that, in "cases where the defendant was not in any sense the aggressor, . . . the general rule would not apply, and self-defense would be a permissible defense to the felony murder charge." *Id.* at 245-46. This holding is consistent with the principle that "felony murder is defined by the dangerousness of the underlying conduct, rather than the intent to kill[.]" *Id.* at 247.

Norwood and Nyghee Johnson nevertheless argue that *Nicholson* "should be overruled." Relying on authorities from other jurisdictions, they encourage this Court to "permit justification defenses such as self-defense and defense of others where the facts demonstrate that the defendant was not the aggressor" and where the underlying felony is not enumerated in the statute defining first-degree felony murder.

By admitting that their position is in conflict with controlling precedent, Norwood and Nyghee Johnson implicitly acknowledge that any asserted error here is in no sense "plain." For an appellant to demonstrate plain error, the error "'must be clear or obvious, rather than subject to reasonable dispute[.]'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)). At best, Norwood and Nyghee Johnson have shown that courts from other jurisdictions might disagree with the holding of *Nicholson*. They have failed to establish that *Nicholson* is clearly or obviously incorrect under Maryland law. Accordingly, this case is not one of the rare occasions on which plain-error review of an unpreserved issue might be appropriate.

II. Sufficiency of the Evidence on Charges of Felony Murder

Norwood and Nyghee Johnson contend that the evidence admitted at trial was insufficient to establish the elements of second-degree felony murder. They contend that the circuit court erred in failing to enter a judgment of acquittal on those charges.

"Felony murder is defined under Maryland common law as 'a criminal homicide committed in the perpetration of or in the attempted perpetration of a dangerous to life felony.'" *Yates v. State*, 429 Md. 112, 125 (2012). By statute, a "murder is in the first degree if it is . . . committed in the perpetration of or an attempt to perpetrate" one of several enumerated felonies. Md. Code (2002, 2012 Repl. Vol., 2018 Supp.), § 2-201(a)(4) of the Criminal Law Article ("CL"). Any "murder that is not in the first degree . . . is in the second degree." CL § 2-204(a). Second-degree felony murder, therefore, is "an unlawful killing in the course of the commission of a felony that is inherently dangerous to human life but is not included among the felonies enumerated in § 2-201."

State v. Jones, 451 Md. 680, 708 (2017).

The felony-murder rule "is intended to deter dangerous conduct by punishing as murder a homicide resulting from dangerous conduct in the perpetration of a felony, even if the defendant did not intend to kill." *Fisher v. State*, 367 Md. 218, 262 (2001). The rationale is as follows: "If the felonious conduct, under all of the circumstances, made death a foreseeable consequence, it is reasonable for the law to infer from the commission of the felony under those circumstances the malice that qualifies the homicide as murder." *Id.* "[T]he danger to life of a residual felony is determined by the nature of the crime *or* by the manner in which it was perpetrated in a given set of circumstances." *Id.* at 263 (emphasis in original).

To convict each defendant of second-degree felony murder here, the State was required to prove: (1) that the defendant committed or attempted to commit a felony; (2) that "the way in which" the felony "was committed or attempted, under all of the circumstances, created a reasonably foreseeable risk of death or serious physical injury likely to result in death[;]" (3) that a victim was killed "as a result of the way in which" the felony was committed or attempted; and (4) that the act resulting in the victim's death occurred during the commission, attempted commission, or escape from the immediate scene of the felony. *See* Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 4:17.7.2B (2d ed. 2013). Here, the underlying felony was possession of a controlled dangerous substance (marijuana) in sufficient quantity to indicate an intent to distribute the controlled dangerous substance. *See* CL § 5-602(2); 5-607(a).

At the close of the evidence offered by the State, both defendants moved for a

judgment of acquittal on the felony murder counts. Counsel for Norwood Johnson argued the State had failed to offer any evidence that "the way [the defendants] attempted to conduct th[e] drug deal" made it "reasonably foreseeable to them that someone would die." Counsel for Nyghee Johnson adopted that argument. The prosecutor argued that the evidence showing that the defendants brought "two loaded handguns" to "a large-scale drug transaction" made the deaths reasonably foreseeable. The court denied the motions for judgment of acquittal. Both defendants renewed their motions at the close of all evidence, incorporating their earlier arguments. The court denied the renewed motions.

On appeal, Norwood and Nyghee Johnson contend that the evidence was insufficient to prove second-degree felony murder. Their appellate challenge to the sufficiency of the evidence is significantly more expansive than the arguments that they made at trial. Asserting that Juste's testimony lacked credibility and corroboration, they appear to argue that no rational juror could conclude that they possessed marijuana or that they were inside the apartment at the time of the shootings.

When moving for a judgment of acquittal, a defendant must "state with particularity all reasons why the motion should be granted." Md. Rule 4-324(a). At trial, both defense attorneys argued that the evidence failed to show that the manner in which the underlying felony was committed created a reasonably foreseeable risk of death. Any other grounds for granting the motion are unpreserved because those grounds were not stated with particularity in the trial court. *See, e.g.*, *Hobby v. State*, 436 Md. 526, 540 (2014) (stating that "'[a] defendant may not argue in the trial court that the evidence was

insufficient for one reason, then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal'") (quoting *Tetso v. State*, 205 Md. App. 334, 384 (2012)).

In any event, these unpreserved challenges to the sufficiency of the evidence lack merit. On review of sufficiency of the evidence, appellate courts "do not second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). Evidence is legally sufficient to support a conviction if, "'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* at 184 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Here, the State presented a combination of direct and circumstantial evidence that supported the reasonable conclusions that Norwood and Nyghee Johnson were the two sellers who communicated with Juste, that they arrived at the apartment building in Norwood Johnson's BMW, that they brought marijuana into the apartment, and that Brunson and Joyner suffered fatal gunshot wounds in the immediate aftermath of the attempted sale.

As they did at trial, the Johnsons dispute whether their conduct could be considered inherently dangerous. They observe that, absent additional circumstances, merely possessing marijuana with intent to distribute it is not inherently dangerous. They argue that the "alleged value of the marijuana, $25,000," is not enough to create a danger to human life. In their view, a $25,000 drug sale is no more dangerous than the sale of a car at that price.

The State asserts that the evidence established that the Johnsons were involved in

"a high-stakes drug deal arranged by Juste . . . to sell 21 pounds of marijuana to Joyner and Brunson for $25,000." The State argues that the risk of danger "was heightened by the circumstances that they did not know Juste well, they did not know the buyers at all, they were conducting business in an unknown place, and a great deal of marijuana and money was at stake."

The State is correct to evaluate the danger of the felonious conduct "under all of the circumstances," collectively, rather than individually. *Fisher v. State*, 367 Md. at 262. In our assessment, it is rational to conclude that the type of deal that the defendants arranged was significantly more dangerous than, for instance, the sale of a $25,000 car. For good reason, the participants ensured that the sale would take place outside of public view. A person who intends to sell 21 pounds of marijuana is acutely more at risk than a person in possession of other property of similar value. If a buyer takes the marijuana without paying or if a seller takes cash without delivering the marijuana, the aggrieved participant cannot simply call the police or sue the other party. To retain their valuable possessions, buyers and sellers can only rely on force or the threat of force (and they could reasonably expect the other side to do the same). In light of this dynamic, it is reasonably foreseeable that someone might be killed or grievously injured because of an attempt to sell illegal drugs to strangers for $25,000 in cash at a middleman's apartment.

Norwood and Nyghee Johnson argue that the State failed to show that the shootings occurred during the underlying felony of possession of marijuana with intent to distribute. They assert that any intent to distribute no longer existed once one of the buyers pulled out a handgun.

For a killing to qualify as felony murder, "there need not be a precise confluence in time of the killing and the predicate felony." *Yates v. State*, 429 Md. at 126. For felony murder purposes, the underlying felony "'is treated as continuing beyond the completion of the core event . . . to include the felon's escape to a point of safety.'" *Id.* at 126 (quoting *Sydnor v. State*, 365 Md. 205, 217-18 (2001)). "[T]he felony murder doctrine applies when the felony and the homicide are parts of one continuous transaction and are closely related in point of time, place[,] and causal connection." *Yates v. State*, 429 Md. at 127. Based on the evidence here, one could conclude that the shootings were "immediate, directly related to the [possession with intent to distribute] marijuana, and so closely connected to that felony that the shooting[s] became a part of it." *Id.* at 129.

In short, the evidence was sufficient to support the convictions for second-degree felony murder arising out of possession of marijuana with intent to distribute. The circuit court correctly denied the motions for judgment of acquittal.

III. Cross-Examination of State's Witness

Norwood and Nyghee Johnson contend that the trial court impermissibly restricted their cross-examination of the State's primary witness, Juste, on matters concerning his credibility. As the Johnsons recognize, this Court reviews a trial court's decision to limit cross-examination for abuse of discretion. *See, e.g.*, *Correll v. State*, 215 Md. App. 483, 502 (2013) (citing *Pantazes v. State*, 376 Md. 661, 681 (2003)). "An abuse of discretion occurs when the trial judge imposes limitations on cross-examination that 'inhibit [ ] the ability of the defendant to receive a fair trial.'" *Gupta v. State*, 227 Md. App. 718, 745 (2016) (quoting *Pantazes v. State*, 376 Md. at 681-82).

Trial judges "must allow a defendant a 'threshold level of inquiry' that 'expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.'" *Peterson v. State*, 444 Md. 105, 122 (2015) (quoting *Martinez v. State*, 416 Md. 418, 428 (2010)). This right to cross-examine witnesses "guarantees only 'an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *Matthews v. State*, 249 Md. App. 509, 535 (2021) (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per curiam)). "In controlling the course of examination of a witness, a trial court may make a variety of judgment calls . . . as to whether particular questions are repetitive, probative, harassing, confusing, or the like." *Peterson v. State*, 444 Md. at 124. "Judges have wide latitude to establish reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Pantazes v. State*, 376 Md. at 680.

The Johnsons argue that the trial court "erred in sustaining objections to the cross-examination of Juste in two separate areas: one asking him which of the various statements he gave was true, and the other asking if he would admit that he stabbed Mr. Brunson to death." As discussed below, we see no abuse of discretion in the trial court's rulings sustaining objections to the particular questions posed during the cross-examination of Juste.

A. Cross-Examination Concerning Juste's Prior Statements

At trial, counsel for both defendants questioned Juste about apparent

inconsistencies between his trial testimony and statements that he made to the police on April 15, 2018, one week after the killings. At that time, Juste had agreed to be interviewed by detectives under the condition that his answers would not be used to prosecute him.[4] During the interview, Juste disclosed that he had arranged the drug deal at his apartment and that he had been present during the shootings. Juste admitted that, shortly after the shootings, he returned to the apartment and stabbed Brunson with a kitchen knife. The police made a video and audio recording of the interview.

During cross-examination, counsel for Norwood Johnson questioned Juste about his account of how he got back into the building between the shooting and the stabbing. Juste had testified that he came upon a door that had been "propped open," but in his statement to the police he said that he was "able to just pull" the door open. In explaining that aspect of his statement, Juste said that he "was not a good mind state" during the interview because he felt "scared and confused" at that time. Juste said that he did not "remember how everything happened exactly." "[F]or the [previous] two years," Juste said, he had been "trying to forget about the incident and at the time of the incident [he] was going through a lot mentally."

In his testimony, Juste claimed that he stabbed Brunson after Brunson "lunged toward" him. On cross-examination, Norwood Johnson's counsel used direct quotations from the recorded statement to demonstrate that Juste never mentioned to the police that

[4] A prosecutor agreed to that condition under the belief that Juste had merely witnessed the killings, without knowing that Juste had stabbed Brunson. At trial, Juste testified under a court order compelling him to testify even if he invoked his privilege against self-incrimination.

Brunson "lunged" at him.[5] Juste insisted that Brunson had, in fact, "lunged" at him, even though Juste did not mention that detail in his recorded statement.

In his testimony, Juste stated that he had stabbed Brunson in the living room. On cross-examination, counsel for Nyghee Johnson questioned Juste about whether he recalled telling the police that, after stabbing Brunson, he left Brunson on the steps leading to a loft area. Juste testified that he did not remember making that statement. Counsel asked Juste whether his memory "would have been fresher one week after the incident" than it was at the time of trial. Juste answered: "No, sir. I was gone mentally. . . . I had a lot of emotions going through my head."

Counsel for Nyghee Johnson asked Juste to explain why, in his recorded interview one week after the killings, he failed to mention that Brunson lunged at him and that they fought in the living room. In response, Juste said that he had had "almost two years to think about it" before the trial. Juste said that he was "going through a lot" at the time of the interview because he had "just been through a traumatic experience the week before."

Counsel for Nyghee Johnson also asked Juste whether he remembered telling the police that he acted "out of distress or panicking" when he stabbed Brunson. Juste said

[5] The interview transcript reflects that Juste made the following statement:

> I go in to get my wallet and it is [Brunson], he is still alive. [Brunson] is still alive. He is saying to me like, like, I am going to get you for this. Like I am going to live through this and I am going to get you. I'm going to get you for this and you know, like, I'm coming for you. I'm coming for – and I stabbed him. I stabbed him. Like I stabbed – I didn't want my family to get hurt. Anybody around me off of. You know, my mistake. And my choice. And I wanted to make – I stabbed him and I left.

that he did not remember using those words.

Moments later, the following exchange occurred, which is at issue here:

> [NYGHEE JOHNSON'S COUNSEL:] So, you know, what rendition that you've given either on April 15th or today should we believe because I keep hearing you say --
>
> [PROSECUTOR:] Objection, Your Honor.
>
> [NYGHEE JOHNSON'S COUNSEL:] -- I'm going through this emotional stuff.
>
> THE COURT: Sustained and stricken.
>
> [NYGHEE JOHNSON'S COUNSEL:] Very good. Let me ask you this. What you said then is different from what you said here in many regards. What are we to believe?
>
> [PROSECUTOR:] Objection.
>
> THE COURT: Sustained. It's for argument, not for cross examination.

At that point, the court "admonished" all parties against making "extraneous comments." Counsel for Nyghee Johnson asked no further questions of Juste.

On appeal, Norwood and Nyghee Johnson argue that the trial court erred in sustaining objections to "questions that went to Juste's credibility in asking him to explain his false and conflicting statements." They assert that, "[w]here the witness has made contradictory statements, it is entirely appropriate to ask on cross-examination which statement is true[.]" The jury, they assert, was "entitled to see the witness explain the discrepancies in [his] statements."

In our assessment, the two questions at issue were not directed at exposing any particular inconsistencies between Juste's trial testimony and his prior statements. Both

questions were objectionable because they were overly broad and overly argumentative.

"An argumentative question is one which incorporates by assumption a fact otherwise not in evidence." *Clermont v. State*, 348 Md. 419, 431 (1998) (citing *ACandS, Inc. v. Godwin*, 340 Md. 334, 415 (1995)). "'[A] question which *assumes a fact* that may be in controversy . . . may become improper on *cross-examination*, because it may by implication put into the mouth of an unwilling witness, a statement which he never intended to make, and thus incorrectly attribute to him testimony which is not his." *Clermont v. State*, 348 Md. at 431 (emphasis in original) (quoting Wigmore, *Evidence* § 780, at 171 (Chadbourn rev. ed. 1970)). "'Oftentimes, the question will be so separate from the assumption that if the witness answers the question without mentioning the assumption, it is impossible to ascertain whether the assumption was ignored or affirmed.'" *Clermont v. State*, 348 Md. at 432 (quoting *McCormick on Evidence* § 7, at 22-23 (4th ed. 1992)).

In the first question, counsel asked, "what rendition that you've given either on April 15th or today should we believe[?]" This question incorporated an unstated assumption that Juste's trial testimony and recorded statement were so contradictory that at least one "rendition" was entirely unworthy of belief. When the court sustained the objection, counsel made the assumption more explicit by commenting, "what you said then is different from what you said here in many regards[,]" before asking, "[w]hat are we to believe?" If the witness had answered these questions in the forms they were asked (by stating, for instance, that the jurors should believe his trial testimony), the jurors might have been left with a misleading impression that he agreed with defense counsel's

premise that his testimony was incompatible with his prior recorded statement.

The broad wording of these questions exacerbated their potential to mislead or confuse the jury. Juste's prior recorded statement was not a singular remark but the product of a lengthy interview.[6] Similarly, his trial testimony included scores of answers to questions asked over several hours. The questions posed by defense counsel here were not aimed at any particular factual assertion that Juste had made on both occasions, but towards the entirety of the interview and his trial testimony. These questions failed to specify what "differen[ces]" between the two sets of statements it concerned.

It was, of course, appropriate for defense counsel to attack Juste's credibility by asking questions directed at proving that he had made statements that were inconsistent with his trial testimony. *See* Md. Rule 5-616(a)(1). Both of the defense attorneys had already cross-examined Juste extensively regarding apparent discrepancies, such as Juste's failure to tell the police that Brunson "lunged" at him before he stabbed Brunson. The questions to which the State objected, however, strayed from a fair inquiry about those discrepancies into defense counsel's (first implicit and then explicit) commentary on those inconsistencies. The trial court acted within its discretion in deciding that the point that counsel sought to make was appropriate "for argument, not for cross-examination."

B. Cross-Examination Concerning Juste's Stabbing

Norwood and Nyghee Johnson also argue that the trial court abused its discretion

[6] According to the record, the interview transcript was 91 pages long.

by not permitting Nyghee Johnson's counsel to ask "whether Juste would admit that he stabbed Mr. Brunson to death." We perceive no such abuse of discretion.

On direct examination, Juste had testified that, when he returned to the apartment to retrieve his wallet, he noticed that Brunson was still alive. According to Juste, Brunson "start[ed] threatening" him, he "walk[ed] in the kitchen and grab[bed] a knife," and Brunson "lunge[d] towards" him. Juste recalled: "We fight. . . . I stab him." Juste claimed that he did not know how many times he had stabbed Brunson, but that he later learned that he had stabbed Brunson "all over." Juste recalled that when he "finished stabbing" Brunson, he left Brunson "[i]n the living room . . . [b]y the ottoman." Juste said that he did not remember what he did with the knife afterwards.

During cross-examination on behalf of Norwood Johnson, Juste testified that he could not remember how many times he stabbed Brunson or even whether he had stabbed Brunson more than once. Juste said that he later learned from the prosecutors that he had stabbed Brunson 36 times. Counsel showed Juste a series of 10 photographs depicting knife wounds suffered by Brunson. For each photograph, Juste admitted that the photograph showed "what [he] did" to Brunson. Juste admitted that he intended to kill Brunson, but he claimed that he was trying to defend himself and "to get [Brunson] off of" him.

The cross-examination by Norwood Johnson's counsel included the following exchange:

> [NORWOOD JOHNSON'S COUNSEL:] . . . You walk in the kitchen, got a knife and stabbed him to death, correct?

[JUSTE:] That is not how it happened.

[PROSECUTOR:] Objection.

THE COURT: Sustained.

[NORWOOD JOHNSON'S COUNSEL:] You went in the kitchen, got a knife and stabbed him, correct?

[JUSTE:] It ended up being the end result.

On further cross-examination, Nyghee Johnson's counsel asked Juste whether Brunson was still "moving" after Juste stabbed him. Juste answered: "I just remember him getting weak and me being able to get from under him and I leave out." Juste testified that, at the time he was leaving, Brunson did not "grab" him or "say anything" or put up any further "resistance" to him leaving. A few moments later, this exchange occurred:

[NYGHEE JOHNSON'S COUNSEL:] And yet there's little doubt that you stabbed Mr. Brunson to death; isn't that correct?

[PROSECUTOR:] Objection.

THE COURT: Counsel approach.

(Bench discussion ensued at 10:02:13)

THE COURT: Basis.

[PROSECUTOR:] The phrasing to death. There will be experts testifying as to the cause of death. We have an expert who will say one of the gun shot wounds was found to be fatal which would cause his death[.] . . . As you know, our expert is going to say one of the gun shot wounds was fatal. So it's just the to death part. We've been avoiding that, I know that . . . he slipped. He can say he stabbed him, but not to death.

[NYGHEE JOHNSON'S COUNSEL:] Well, we have an expert that says just the opposite.

> THE COURT: So it's a jury question. So it's a jury question. The objection is sustained.
>
> [NYGHEE JOHNSON'S COUNSEL:] Okay. That's fine.
>
> (Bench discussion concluded at 10:02:53)
>
> THE COURT: The objection is most respectfully sustained. The comment is stricken. Stabbed to death. . . . [T]hose are facts that will ultimately be determined by the jury.

Norwood and Nyghee Johnson contend that the trial court should have permitted Juste to answer the question of whether it was "correct" that he "stabbed Mr. Brunson to death[.]" They assert that "[i]t was understood that Juste was not being asked for his medical opinion, but to admit that he repeatedly stabbed Mr. Brunson, killing him."

This proposed interpretation of the testimony is untenable. At the time of the State's objection, Juste had already admitted that he stabbed Brunson repeatedly. Juste had also testified that, after the stabbing, Brunson became weak and stopped struggling. Juste had no basis to testify about whether Brunson's death was caused by the knife wounds or the gunshot wounds or both. Later at trial, the State and the defense would offer expert witness testimony regarding the cause of Brunson's death.

The State made clear that its objection strictly concerned the "phrasing" of the question. Specifically, the State agreed that Juste could say that he stabbed Brunson, but could not say that he stabbed Brunson "to death." The court did not abuse its discretion in ruling that defense counsel could not ask Juste to say that he "[s]tabbed" Brunson "to death." Under the circumstances, sustaining the objection and striking the comment by Nyghee Johnson's counsel were entirely appropriate.

IV. Evidence of Recovery of 21 Pounds of Marijuana

Finally, Norwood and Nyghee Johnson contend that evidence that the police found 21 pounds of marijuana at the Elton Avenue house was inadmissible against them. We disagree.

Before trial, the State sought a preliminary ruling on the admissibility of evidence that the police recovered 21 pounds of marijuana at the Elton Avenue house four days after the killings. Counsel for Norwood Johnson, joined by counsel for Nyghee Johnson, argued that the marijuana recovered at the Elton Avenue house was irrelevant because it was insufficiently connected to the crimes charged. The court granted the State's motion, concluding that the evidence offered by the State was "relevant under the circumstances" and that it was "probative and not unduly prejudicial."

At the same hearing, counsel for Norwood Johnson moved to sever the trials of the two defendants. Counsel argued that the 21 bags of marijuana had "no direct connection" to Norwood Johnson because his fingerprints (unlike his brother's) were not found on any of the bags. The State argued that the evidence was mutually admissible against both defendants. The court denied Norwood Johnson's motion for severance.

During the State's case-in-chief, counsel for Norwood Johnson made a renewed request to exclude evidence of the marijuana recovered from the Elton Avenue house. Counsel argued that the State lacked any proof that the marijuana they allegedly brought into Juste's apartment was the same marijuana found at the Elton Avenue house. Counsel for Nyghee Johnson joined the motion. The court denied their motions, explaining that its pretrial ruling would stand. Counsel for Norwood Johnson then made

a renewed motion for severance, which the court denied.

On appeal, Norwood and Nyghee Johnson contend that evidence of the marijuana found at the Elton Avenue house was irrelevant because, in their view, the State "failed to link" this evidence to the charges against them. They argue that the State presented "no proof whatsoever [that] the box contained the exact same marijuana that was in [Juste's apartment], other than the mere fact of the amount." They argue, therefore, that the marijuana recovered from the Elton Avenue house was "in essence" evidence of crimes other than the crimes charged.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. The "relevance inquiry under Rule 5-401 sets out 'a very low bar' to the admissibility of evidence." *Montague v. State*, 471 Md. 657, 695 (2020) (quoting *Williams v. State*, 457 Md. 551, 654 (2018)). Accordingly, "'[p]hysical evidence need not be positively connected with the accused or the crime to be admissible; it is admissible where there is a reasonable probability of its connection with the accused or the crime[.]'" *Boston v. State*, 235 Md. App. 134, 156 (2017) (quoting *Aiken v. State*, 101 Md. App. 557, 573 (1994)) (further quotation marks omitted). If there is sufficient evidence to create a reasonable probability of such a connection, then it is "within the province of the jury to determine the weight to give to that evidence." *Boston v. State*, 235 Md. App. at 157. "'The lack of positive identification'" of the item "'affects only the weight of the evidence.'" *Grymes v. State*, 202 Md. App. 70, 104 (2011) (quoting *Aiken v. State*, 235 Md. App. at 573).

It is incorrect to suggest, as the Johnsons do, that the only connection between the marijuana recovered at the Elton Avenue house and the crimes charged was "the mere fact of the amount." In assessing whether this evidence was connected to the crimes that Norwood and Nyghee Johnson were charged with committing, the jurors were entitled to consider each of the following facts.

The sellers agreed to sell 21 pounds of marijuana for $25,000. The sellers brought marijuana to Juste's apartment in the trunk of Norwood Johnson's black BMW. The sellers brought a duffle bag that contained marijuana covered in plastic. One of the buyers, Brunson, examined the bag and said that it was "good." After the shooting of Brunson and Joyner, the sellers left the apartment with the duffle bag. The sellers left the apartment building at 11:30 a.m. in Norwood Johnson's black BMW. Three days later, Norwood and Nyghee Johnson were present in the basement of the Elton Avenue house. On the following day, Norwood Johnson's BMW was parked on Elton Avenue across from the house. Norwood Johnson entered the house and, shortly thereafter, drove away in a separate car with Nyghee Johnson. The police searched the house and found the box in the basement containing a large plastic bag with 21 one-pound packages of marijuana. The outer bag and some of the packages had Nyghee Johnson's fingerprints on them. According to Brooke Sanders, a resident of the house, the box had been in the basement for a few days before the search. On the night before the search, Sanders had gone to the basement to do laundry, and a conversation involving Nyghee Johnson, Norwood Johnson, and her boyfriend (Norwood Johnson's best friend) came to a stop.

This combination of facts was enough to create a reasonable probability that the

21 pounds of marijuana found at the Elton Avenue house was the same marijuana that the sellers brought to Juste's apartment. This evidence was, therefore, admissible on the ground that it was "intrinsic to the crimes charged." *Wagner v. State*, 213 Md. App. 419, 457-58 (2013) (citing *Silver v. State*, 420 Md. 415, 435-36 (2011)).

It is true, of course, that the connection could have been stronger than it was. As the Johnsons point out, Juste testified that the sellers carried the marijuana in a duffle bag, not a box. Juste lacked knowledge of whether the duffle bag in the apartment actually contained the agreed-upon amount of 21 pounds. Sanders could not say exactly how many days the box was in the basement before the search on April 12, 2018. In addition, at trial the State stipulated that the leaseholder, Jeremy Johnson, possessed some unknown quantity of marijuana on the day after the killings.[7] All of these facts "went to the weight of the evidence" but "did not make the [evidence] irrelevant to the case[.]" *Boston v. State*, 235 Md. App. at 157-58 (upholding admission of handgun found 36 hours after an armed burglary even though the victim provided an inconsistent description of the caliber and color of the handgun).

Norwood Johnson asserts that the trial court "fail[ed] to weigh the probative value" of the evidence "against the danger of unfair prejudice." He argues that the trial court "should have found that the evidence was unduly and extremely prejudicial."

[7] According to the stipulation, Jeremy Johnson brought "eight Ziploc bags of marijuana, two vacuum sealed bundles of marijuana, one black digital scale, and five vacuum sealed bundles of marijuana" to his cousin's house on April 9, 2018. The defense theorized that Jeremy Johnson, after speaking with Juste, had returned to the apartment on the night of the killings to conceal evidence.

Under Maryland Rule 5-403, a trial court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Norwood Johnson's assertion that the trial court failed to conduct the required analysis is unfounded, in light of the court's express statement that the evidence was "probative and not unduly prejudicial." "[T]here is no requirement that the [Rule 5-403] balancing test explicitly be performed on the record." *Walker v. State*, 373 Md. 360, 391 (2003).

The trial court did not abuse its discretion in ruling that the probative value of the marijuana recovered from the Elton Avenue house was not substantially outweighed by the potential of unfair prejudice. "'[T]he fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403.'" *Odum v. State*, 412 Md. 593, 615 (2010) (quoting Lynn McLain, *Maryland Evidence: State and Federal* § 403:1(b) (2d ed. 2001)). Evidence is considered unfairly prejudicial "'if it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged.'" *Odum v. State*, 412 Md. at 615. For the reasons already stated, the evidence recovered from the Elton Avenue house was highly probative of the Johnsons' involvement in the crimes for which they were charged. "Although the evidence surely prejudiced" the Johnsons, "we are not persuaded that it unfairly prejudiced [them], much less that the [unfair] prejudice 'substantially outweighed' the probative value of the evidence." *Id.*

Norwood Johnson also argues that the evidence of marijuana recovered from the Elton Avenue house was inadmissible against him even if it may have been admissible against Nyghee Johnson in a separate trial. Based on that premise, Norwood Johnson

contends that the circuit court erred when it denied his motions for severance.

Maryland Rule 4-253(a) authorizes the court to "order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Maryland Rule 4-253(c) provides, in pertinent part: "If it appears that any party will be prejudiced by the joinder for trial of . . . defendants, the court may, on its own initiative or on motion of any party, order separate trials of . . . defendants, or grant any other relief as justice requires."

To decide whether to order joint or separate trials of defendants, the trial court must first determine whether a joint trial will involve evidence that is not mutually admissible against both defendants and whether the admission of that evidence will unfairly prejudice the defendant seeking a severance. *Molina v. State*, 244 Md. App. 67, 138 (2019) (quoting *State v. Hines*, 450 Md. 352, 379 (2016)). "'Prejudice' within the meaning of Rule 4-253 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." *Galloway v. State*, 371 Md. 379, 394 n.11 (2002) (quoting *Ogonowski v. State*, 87 Md. App. 173, 186-87 (1991)) (further quotation marks omitted). "Thus, in the absence of non-mutually admissible evidence," the trial court is "not required to engage in the second part of the . . . analysis to 'determine whether the admission of such evidence will unfairly prejudice the defendant seeking a severance.'" *Molina v. State*, 244 Md. App. at 140 (quoting *State v. Hines*, 450 Md. at 379).

There is no merit to Norwood Johnson's argument that the evidence was

inadmissible against him simply because his fingerprints were not found on the plastic bag or the individual packages of marijuana. The evidence established a link between Norwood Johnson and Nyhgee Johnson. Based on the evidence, the jurors could conclude that the Johnsons had worked together to arrange the sale, to transport the marijuana in the trunk of Norwood Johnson's car, to bring the marijuana into the apartment, and to escape from the apartment with the marijuana. The presence of the fingerprints of Norwood Johnson's accomplice on the bag and packaging strengthens, rather than weakens, Norwood Johnson's connection to the marijuana found at the Elton Avenue house. We agree with the State that the marijuana found at the Elton Avenue house would have been admissible against Norwood Johnson if he had been tried separately from his younger brother.

In this case, we see no error in the court's determination that the marijuana found at the Elton Avenue house was mutually admissible against both Norwood and Nyghee Johnson. Norwood Johnson does not deny, nor can he deny, that the interests of judicial economy favored joinder of trial of both defendants. *See Conyers v. State*, 345 Md. 525, 556 (1997) (stating that, "once 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"). "Given the volume, mutual admissibility, and complexity of the evidence" in this case (*Molina v. State*, 244 Md. App. at 141), the trial court did not abuse its discretion when it denied Norwood Johnson's motion for severance.

CONCLUSION

In summary, Norwood Johnson and Nyghee Johnson have established no basis to disturb the judgments against them. Their contention that the trial court failed to instruct the jury on the issues of self-defense and defense of others is unpreserved, and any alleged error in this regard does not amount to plain error. The trial court did not err in denying their motions for judgment of acquittal on the felony murder charges. The trial court did not abuse its discretion in sustaining objections during cross-examination of one of the State's witnesses. The trial court did not err or abuse its discretion in admitting evidence that the police recovered a box containing 21 pounds of marijuana, nor did the court err or abuse its discretion in denying the motion for severance.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.