No. 0001 – Circuit Court for
Montgomery County
Case No. C-15-CR-22-000611

No. 0131 – Circuit Court for
Montgomery County
Case No. C-15-CR-22-000610

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 0001, 0131

September Term, 2024

M.H.

v.

STATE OF MARYLAND

M.H.

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Hotten, Michele D.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 4, 2025

* This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Taon "Tay" Cline was shot and killed on a sidewalk in a Germantown Apartment complex on the evening of April 22, 2022. Two brothers, M.C.H. and M.K.H.[1] (collectively, "Appellants"), were each charged with first-degree murder, use of a firearm in the commission of the murder, and conspiracy to commit murder. Following a lengthy trial in the Circuit Court for Montgomery County, Maryland, they were acquitted of the first two charges but convicted of conspiracy to murder Cline. Appellants timely noted their appeals to this Court and jointly present the following five contentions of error, which we have partially rephrased:[2]

1. Did the trial court err in permitting the State to broaden the scope of the alleged conspiracy beyond what was charged in the Indictment?

2. Did the trial court err or abuse its discretion in admitting certain bad acts evidence, including rap lyrics, photographs of firearms, and text and social media messages?

[1] We refer to the brothers by the initials "M.K.H." and "M.C.H" because they were minors at the time of the shooting. *See* Md. Rule 8-121.

[2] Appellants' questions were, as originally presented:

> I. Did the trial court erroneously permit the State, on the eve of trial, to significantly broaden the scope of the alleged conspiracy beyond what was charged in the Indictment?
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> II. Did the trial court erroneously admit irrelevant and unduly prejudicial propensity and bad acts evidence unconnected to the expressly charged conspiracy?
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> III. Did the trial court erroneously exclude relevant and exculpatory evidence directly connected to the expressly charged conspiracy?
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> IV. Did the trial court erroneously permit the State to conduct a joint trial of Appellants?
>
> V. Did the trial court erroneously prohibit Appellants' family members from being present in the courtroom during jury selection?

3. Did the trial court err in excluding certain rap lyrics and a National Integrated Ballistics Information Network ("NIBIN") report offered by the defense as exculpatory evidence?

4. Did the trial court violate Appellants' right to a public trial by preventing their family members from being present in the courtroom during a portion of jury selection?

5. Did the trial court abuse its discretion in denying Appellants' motions to sever?

We answer questions one, two, four, and five in the negative and hold that the trial court did not err or abuse its discretion. On the third question, we hold that the trial court erred in excluding the NIBIN report but that the error was harmless beyond a reasonable doubt. Therefore, we shall affirm the convictions.

BACKGROUND

Night of April 22, 2022

On the night of April 22, 2022, Taon Cline was hanging out with Derek Fox, Markel Chambers, and Shannon Cole near the Fox Chapel neighborhood. The four met around 9:00 p.m. at a Mexican restaurant, ate food there, and then went to 7-Eleven to get snacks and drinks. After they left the 7-Eleven, they continued walking along the sidewalk through the Fox Chapel neighborhood. As they walked, they talked and smoked some marijuana. Cole was walking well ahead of the group, followed by Fox, Cline, and Chambers. Suddenly, an unknown person came up behind them. Fox turned around and saw a person wearing a ski mask, black gloves, a navy-blue sweater, khaki pants, and brown Timberland boots. Fox asked out loud, "Who's that?" Chambers turned and saw two people: a short person and a tall person, both wearing hoodies, jackets, and ski masks.

Fox saw the person start shooting, and Cline was struck multiple times. Fox heard "at least 13" gunshots. Fox, Chambers, and Cole all scattered. Fox ran into an alleyway and saw "five, six people" standing there wearing bubble coats and ski masks. He saw the shooter run down a nearby hill towards a "bluish black car." The other people in the bubble coats all jogged down to the car and jumped in. The shooter reached the car, but Fox was running off and did not see him get inside.

Multiple neighbors heard the shooting and called 911, with the first call coming in at about 10:50 p.m. Officer Alex John was dispatched to the scene and arrived at 10:57 p.m. He found Cline lying on the sidewalk, still alive but gasping for air. Ofc. John called for more units because the shooter had not been apprehended. He then examined Cline's body for wounds and began performing CPR. Backup officers came to relieve Ofc. John, and he began to secure the scene and create a perimeter with crime scene tape. Paramedics arrived at 11:07 p.m. and took over lifesaving care from the officers. Despite their efforts, Cline was pronounced deceased at 11:27 p.m.

M.K.H. and M.C.H. (collectively, "Appellants") were in the Fox Chapel neighborhood prior to the shooting, along with Justin Acosta and three other friends. They drove there in a large black car and parked it near the apartment where Acosta lived with his sister and grandmother. Acosta could see that M.K.H. had a black firearm in his coat and M.C.H. had a bandana in his pocket that was wrapped around something. The group started walking towards the back of Acosta's building, and Appellants then hopped the fence behind the building. Shortly afterward, Acosta heard gunshots, and he and the others

started running. Acosta ran by himself into a stranger's apartment in another building and then went into his apartment building through the front. Acosta met his sister and another friend in his apartment. Later, Appellants arrived acting "scared" and "excited" and stashed two firearms under Acosta's bed.

As the police worked to secure the scene of the shooting and document evidence, a crowd gathered nearby. One of the first to arrive was Appellants' mother, who told police she had received a text from M.K.H. saying he got shot. M.K.H. eventually called his mother back, and she told Appellants to meet her near the scene. Appellants walked over with Acosta and another friend. When the boys arrived at the scene, they were separated and questioned by police. They were wearing ski masks, hoodies, and jackets, but none wore black gloves, khaki pants, or brown Timberland boots. Appellants were "laughing and shaking hands" and were generally "uncooperative." At 12:13 a.m., the boys were allowed to leave.[3]

Police Investigation

Detective Peter Marable was assigned to lead the police investigation into Cline's death. Marable interviewed a variety of witnesses, including Fox, Chambers, and Cline's sister, Imani Wilson. Wilson told Det. Marable that she suspected the shooting might have been a setup by Shannon Cole, because Cole had previously stabbed Cline. Cline was a

[3] At trial, an officer testified that the boys were released at "13:46," but a timestamp on relevant body camera footage confirms that the time was 12:13:41 a.m.

validated member of the L3 gang, sometimes known as "Hittsquad" or "RUGA Boys."[4] Cole was a validated member of One Way Hustle, a rival gang. Fox stated that Cole was on his phone much of the time on the night of April 22, but he and Cline appeared to be "chilling" and having a friendly conversation.

Wilson also showed Det. Marable a direct message from Cline's Instagram account telling Cline that he was "barred from tha [Fox emoji]," and "any my men see u ur getting upped[.]" Det. Marable interpreted this message to mean, "if you come to Fox Chapel and any of my men see you, you're going to get killed." The message also stated, "i [already] know u rockin out wit them village [N-words.]" The message was followed by several laughing crying emojis, and Cline reacted with a sideways laughing crying emoji. Det. Marable discovered that this message was sent by M.K.H., and he subsequently considered M.K.H., M.C.H., and Justin Acosta as suspects. Police began to monitor their social media accounts and gathered evidence based on their posts, messages, and stories. Police gang experts determined that Appellants were validated members of the "Ridge" gang, which is a rival gang to Cline's Hittsquad.

Statement of Charges and Pretrial Proceedings

Det. Marable filed an application for statement of charges against M.K.H. on May 2, 2022, and filed a substantially identical application against M.C.H. on May 5. The application contained several facts from the night of April 22, including that a 911 caller

[4] As the State's gang expert explained at trial, Hittsquad, RUGA, and L3 "originated at different dates," but "the memberships over time have intertwined so much that it's kind of just become . . . one gang[.]"

noted a black vehicle backing up the street and someone running from the vehicle. Det. Marable stated that Acosta, M.K.H., M.C.H., and another friend were all "stopped by police after trying to enter the crime scene[.]" He noted that "these subjects were wearing hoodies/jackets and all had black ski masks on." Det. Marable averred that "the above subjects are known to be associated with 'Ridge', a[ ] criminal street gang in Montgomery County . . . based out of Germantown." He stated that Cline was a known associate of "L3," based out of Gaithersburg, and "there is an on-going feud between Gaithersburg gangs and Germantown gangs." Det. Marable noted multiple concerning messages and social media posts made by Appellants, including the message to Cline that "u barred from tha [fox emoji]" and an Instagram story posted by M.C.H. on April 25, 2022, stating, "got hit with that shit & his ass started glitching."

M.K.H. was arrested on May 3, and M.C.H. was arrested on May 5. On June 2, 2022, Appellants were indicted by grand jury in the Circuit Court for Montgomery County on three counts: murder, conspiracy to commit murder, and use of a handgun in a crime of violence. Acosta was also charged in connection with Cline's death, but he pled "involved" to conspiracy in a juvenile case and was placed on house arrest in exchange for signing a written statement on his recollection of the events of April 22. The State filed a motion to consolidate Appellants' trials, and a joint ten-day trial was set to begin on September 18, 2023.

On January 6, 2023, M.C.H. filed a motion to sever, and M.K.H. filed a separate motion to sever incorporating his brother's motion. Appellants argued that there was "an

abundance of non-mutually admissible evidence," including various text messages and social media messages, that would result in unfair prejudice to the other party. The circuit court heard argument on these motions on August 10, 2023. The court denied Appellants' motions to sever, stating, "[t]here is a conspiracy charge, and the State is entitled to present relevant, admissible evidence regarding that charge, just as the other two. And so I can't find that it appears that any party will be prejudiced by a joint trial[.]"

On July 27, 2023, Appellants filed an "Omnibus Motion in Limine" seeking to exclude seven categories of evidence: (1) "Evidence concerning Defendants' alleged gang membership, including gang expert testimony"; (2) "[e]vidence concerning Defendants' unrelated prior criminal charges, convictions, and bad acts not resulting in charges or convictions"; (3) "[e]vidence concerning Defendants' possession of unidentified firearms, including photographs of Defendants posing with unidentified firearms"; (4) "[e]vidence concerning Defendants' unrelated music videos and rap lyrics"; (5) "[e]vidence concerning Defendants' respective hearsay statements"; (6) "[e]vidence concerning [M.C.H.]'s refusals to answer law enforcement questions or follow law enforcement commands at the scene of the shooting"; and (7) "[e]vidence concerning law enforcement's prior knowledge of [M.K.H.]." Appellants argued that evidence in the first four categories violated Maryland Rules 5-402, 5-403, and 5-404 because they were irrelevant, unfairly prejudicial, and constituted inadmissible propensity evidence. They urged that the hearsay statements in category five were irrelevant and unfairly prejudicial, and also that any hearsay

statement by one of them was inadmissible against the other pursuant to Maryland Rule 5-802.

On August 30, 2023, Appellants filed a "Supplemental Motion in Limine" seeking to specifically exclude certain exhibits disclosed by the State. Appellants argued that three photos were inadmissible because they either depicted only a magazine with cartridges or they depicted firearms that were not consistent with the firearm used to kill Cline. Appellants also requested that the court exclude two messages related to M.C.H. attempting to purchase firearms that were not consistent with the firearms used to kill Cline. They further requested exclusion of two music videos and two audio files of rap songs because "[n]one of the recordings at issue mention Mr. Cline or the L3 or Hittsquad/Ruga Boys gangs[,]" and three of the songs pre-dated the shooting "and therefore cannot have anything to do with the shooting."

On September 1, 2023, during a pretrial conference, the court considered Appellants' motions *in limine* to exclude this evidence. The parties indicated that they had reached agreement on category seven (prior knowledge of law enforcement), and a tentative agreement on category two (prior bad acts). Regarding category one, defense counsel argued that Appellants would be unfairly prejudiced by evidence of gang membership because there was a risk the jury would think they were "part of these notorious international, well-structured gangs that are notoriously violent." The State responded by "draw[ing] the Court's attention to the Statement of Charges[,]" which it contended "talks about the victim being a validated gang member, and the fact that the

defendants were on scene at the time of the murder and had previously threatened the victim within days of being in their quote/unquote territory." The State also pointed out that "it talks about the ongoing dispute between gangs in Germantown and Gaithersburg gangs."

The parties next turned to category 3, evidence concerning Appellants' possession of unidentified firearms. Defense counsel argued that "the State has identified various evidence purporting to link our clients to guns, firearms that are actually, demonstrably unrelated to this case." The State responded that the evidence was relevant because it went back to the motive of a gang dispute:

> And I think it goes back to motive. It's not just that Ridge wanted to kill Taon Cline. They wanted to kill all Opps -- any opportunity that they could find people of the opposition because in numerous of these conversations, they are basically in arguments with other people, more like, oh, you guys aren't real. You guys don't really do stuff. And they're like, oh, we do. We've had guns, but they've jammed.
>
> And there's all these conversations dealing with it. But there is a very unique message that begins in February that talks about how this summer they are going to kill the Opps. And then it goes on to talk about L3, and there's chatter between purchasing guns and getting rid of guns, and this gun is unique and not unique.
>
> And so, I would disagree with counsel when we talk about, as the Court knows, relevancy. Relevancy is whether or not it tends to disprove or prove an issue in contention with respect to the trial.
>
> And whether or not these young men have access to firearms is absolutely relevant in determining whether or not they had access to firearms on the night in question, when Taon Cline was murdered by gun violence.

With regard to category four, Appellants' music videos and rap lyrics, defense counsel argued that this evidence was inadmissible for three reasons:

> First, none of the video and audio recordings reference Mr. Cline or any alleged gangs that Mr. Cline is a part of. None of these audio recordings reference L3, RUGA Boys, Hittsquad or Mr. Cline whatsoever.
>
> Second, four of the five recordings were created before the shooting took place, so they necessarily cannot pertain to the shooting, describe, Mr. Cline's death or the events of that night in any way.
>
> And third, it is extremely unlikely that an ordinary juror, not well versed in rap music, will be able to accurately interpret and understand the meaning of the words in these recordings.

The State responded that "all the raps are about Ridge and killing Opps and getting access to killing Opps." The State also argued that various lyrics lined up with Cline's murder, including one in which "[t]hey described pulling in [] a vehicle and chasing the victim and shooting him."

Finally, the parties turned to categories five and six, "[e]vidence concerning Defendants' respective hearsay statements" and "[e]vidence concerning [M.C.H.]'s refusals to answer law enforcement questions or follow law enforcement commands at the scene of the shooting[,]" on September 5. The court engaged in an extended colloquy with all parties on each alleged hearsay statement. After these arguments were concluded, the court issued its ruling. The court started by finding that all the evidence was relevant to establish motive:

> Every one of these topics, whether it's a gang expert, statements that are pulled from Instagram from either defendant or groups that they're part of, or photographs, or any part of what we've been discussing, the Statement of Charges, which is the document that originated the charge of first-degree murder against both defendants, clearly establishes a motive, a theme if you will, but a motive for this murder to be carried out. In the probable cause that's established, as to this being a gang-related murder that was territorial in the nature of the disagreement or the beef or whatever we want to call it,

> that has a gang or gangs from the Gaithersburg area, deciding what areas gangs from Germantown can go to and vice versa, and somehow determining what those boundaries are, and it's laid out in the Statement of Charges as to both.
>
> And I read both of them to make sure they said the same thing, and they do. Is laying out the reason being a turf war, for lack of a better term for it, and that there is much animosity between these entities because of their districting of themselves and how they view their control over certain areas of Montgomery County, for whatever purpose that's for. And so the gang aspect of this case, as it relates to the State's theory of how it is Mr. Cline met his death, why it is he met his death, and who the State believes is responsible, is firmly established from the minute the Statement of Charges were written and presented and accepted by the commissioner as being gang-related.

The court also ruled that the gang expert testimony, Instagram posts, and text messages were "admissible as to motive, intent, common scheme, planning, the premeditation[,]" as well as facts related to the conspiracy charge, such as "planning, adopting, agreeing to either commit a crime or to refrain from an act that would result in a crime being committed[.]" The court noted that the hearsay statements were generally admissible as either "a statement of a party opponent[,]" an admission against interest, or a statement in furtherance of a conspiracy.

The court next turned to Rule 5-403 and balanced the probative value of the evidence against the potential for unfair prejudice. The court found that the evidence was probative because it demonstrated motive and was evidence of the conspiracy. However, the court noted that "just some random editorial about what we think about this gang or that gang is really not anything that is going to be permitted in this courtroom." The court

limited evidence of gang activity to evidence from February 2022, two months before the shooting, and later. The court stated that evidence was relevant after that date because

> February of 2022 is when there are discussions, either by one or both defendants, for their participation in group Instagram communications about we need to get more weapons. We need to get more weapons because they're gaining – I'm paraphrasing wildly here but – they're going to get up on us if we don't do something and make our presence known. And we're going get more guns so in the summer, we can carry out the vengeance on the ops.

The court similarly ruled that evidence related to firearms possession after February 2022 was generally admissible because "from the time of February of 2022, when these Instagram posts or communications started talking about, with the defendants' participation, getting more guns, we need more guns in order to deal with the o[p]ps, certainly has relevance." The court found that this evidence "would [be] admissible as to motive, intent, perhaps premeditation, certainly common scheme, and also the conspiracy charges that both defendants face." The court turned to specific photographs and ruled that multiple photographs were inadmissible because they were not "particularly helpful" and were cumulative.

On the rap lyrics and audio, the court ruled that in context, four of the songs ["Reply," dated February 2022; another video, dated April 28, 2022; and two unnamed audio files dated April 17 and 18, 2022] were relevant to gang rivalry and a plan to kill the opposition:[5]

> [W]hat is clearly depicted in that video ["Reply"] are -- is language about Ridge, ops, the village, and all other kinds of same things like that. There are

[5] Another music video, entitled "Spin," was objected to by the Defense, and the State agreed not to introduce that video.

> references to, I believe it's [M.K.H.] having some beef with Mr. Cline. . . . When you put it in context of where this homicide occurred, in the middle [of] Fox Chapel in the Ridge neighborhood, which is the self-proclaimed name of this gang that is alleged to have the rival with the Montgomery Village gang in Gaithersburg, it puts it in a different light. When there are messages going back [and] forth in this time frame I'm speaking about of February 2022, we need more guns, we're going to take care of the ops, we're going to carry that out in the summer.
>
> With a plan going forward, not detailed, but certainly the framework or an outline for a plan. And as it gets closer to this date of this homicide, there's certainly ramping up what's being said. And certainly when it is said on the 17th, Ridge is going to be a household word, and guns and ops are mentioned, well, why is it going to be a household word? Why? What is with -- for what? Just because -- or because in that environment, that is part of the turf war.

Ultimately, the court ruled that "on balance[,]" the probative value of the rap songs was not outweighed by their potential for unfair prejudice.

Trial and Sentencing

Jury selection began on September 13, 2023, and lasted until September 15. At the beginning of jury selection, the court noted that "in order to seat the panel of 150 people, we need every chair here in the courtroom." The court stated that "as soon as that number dwindles down some and there are some chairs in the back, any family members in moderation would be certainly permitted to have a seat in the back of the courtroom." Appellants' family members were permitted to sit in the courtroom from the second day of jury selection onward, but the court stated that "if anybody comes, they're going to need to be in the courtroom before the jury comes in so I can make sure that they know there is

to be no discussion around anybody[.]".[6] Jury selection concluded in the afternoon of September 15, but the jury was not officially sworn until the morning of September 18.

On September 17, the day before the start of trial, Appellants jointly filed a "Motion to Limit Evidence to the Scope of the Charging Documents and Maryland Rule 5-803(A)(5)." In the motion, Appellants argued that, at the September 1 hearing, "the State for the first time embraced a radically different theory of conspiracy that materially alters its scope and timeline" from that of the indictments. Appellants urged that "[t]he Indictments in this case allege a conspiracy to 'kill and murder Taon Lamont Cline' 'on or about April 22, 2022[,]'" and that "the State's case rests almost entirely on a theory of conspiracy that differs materially in time and scope[.]" Appellants contended that this violated their due process rights because "it impermissibly broaden[ed] the timeline by altering the date the State alleged the conspiracy took place" and did not give proper notice to Appellants. Appellants further argued that "[u]nder the State's new theory, a series of rap videos created months before April 22, 2022 . . . [and] text and social media messages dating *months before the date of the alleged conspiracy* in the Indictments . . . have been deemed admissible."

The court took up this motion two days later, in the afternoon of the second day of trial. Following argument from all parties, the court denied Appellants' motion. The court noted that "thousands of pages of discovery [have] been provided" and "I've never heard that the defense has been denied discovery." The court ruled that evidence of the

[6] This issue is discussed in greater detail in Section V of the Discussion, *infra*.

conspiracy did not "have to be confined to the date of the crime" and that the indictments sufficiently put Appellants on notice of the crime they were defending against.

Trial began on September 18, 2023. Multiple witnesses testified, including Derek Fox, Markel Chambers, Cline's sister, Acosta's sister, the Appellants' mother, and several police officers. Justin Acosta testified to his recollection of the events of April 22, including driving to his building, hearing gunshots, going to his apartment, and then being questioned by police. At various times, Acosta stated that he did not know or did not recall facts attested to in his signed written statement, and those portions of his statement were read into the record as substantive evidence pursuant to Maryland Rules 5-802.1(a) and 5-802.1(e).[7] Acosta testified that as he and Appellants were in the van driving to Fox Chapel,

[7] Rule 5-802.1 states, in relevant part:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> (a) **A statement that is inconsistent with the declarant's testimony, if the statement was** (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) **reduced to writing and was signed by the declarant;** or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement;
>
> * * *
>
> (e) A statement that is in the form of a memorandum or record concerning a matter about which the witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, if the statement was made or adopted by the witness when the matter was fresh in the witness's memory and reflects that knowledge correctly. If admitted, the statement may be read into evidence but the memorandum or record may not itself be received as an exhibit unless offered by an adverse party.

(Continued)

M.C.H. rapped, "If I catch me a Ta-Ta, I'm going to off him." Acosta stated that Appellants threatened him after the shooting but he did not remember how. A portion of his signed statement was then read into the record, in which Acosta related that Appellants told him, "[i]f you tip, we are going to kill you."

Laura Lightstone, a firearms examiner with the Montgomery County Police Department, testified that the nine cartridge casings recovered at the scene of the shooting were consistent with being fired from the same firearm. The Defense requested permission to ask Lightstone about a National Integrated Ballistics Information Network (NIBIN) report she prepared showing a potential investigative link between Cline's shooting and two other unsolved shootings. However, the trial court denied the Defense's request.[8]

On September 29, the Defense called Travis Williams to testify. Travis Williams was a validated member of One Way Hustle, a rival gang to Cline's Hittsquad. The Defense asked Williams about his rap song "Call of Duty," which he published on May 15, 2022. A version of the music video was played with certain lines redacted and Williams was questioned about various lyrics. Williams was not permitted to discuss his last statement on that video, "We got Tay," which the court determined to be inadmissible hearsay.[9] Williams testified that all of the lyrics referred to "fictional events. Nothing,

(Emphasis added).

[8] This issue is discussed in greater detail in Section III of the Discussion, *infra*.

[9] This song, and surrounding issues, are discussed in greater detail in Section III of the Discussion, *infra*.

reflective of anything [ ] real[.]" Williams stated that on the night of April 22 he was in Wheaton with his fiancée to celebrate their anniversary and that he had provided proof of this to Det. Marable.

The Defense also called Jaison Williams, Travis's brother, who was featured in the "Call of Duty" music video. However, Jaison invoked his Fifth Amendment privilege against self-incrimination and refused to testify.

Closing arguments were delivered on October 2, 2023, and the jury rendered its verdict the following day. The jury found Appellants not guilty of the murder of Taon Cline or use of a firearm in the commission of the murder, but found them both guilty of conspiracy to commit murder. On February 27, 2024, M.K.H. and M.C.H. were each sentenced to life in prison with all but 30 years suspended. Appellants timely noted their appeals to this Court.

These facts will be supplemented in the discussion that follows.

DISCUSSION

I.

SCOPE OF CONSPIRACY

Parties' Contentions

Appellants argue that the Indictments put them "on notice that they were called to defend themselves against the allegation that, 'on or about April 22, 2022,' they conspired to 'kill and murder Taon Lamont Cline.'" Appellants contend that when the State explained, on September 1, 2023, that it had obtained evidence that Appellants wanted "to

kill all opps" starting in February 2022, the State effectively altered the charge to "a new conspiracy that differed materially in both time and scope from what was charged" in the Indictments. According to Appellants, this violated their rights under the Due Process Clause of the United States Constitution and Articles 21 and 24 of the Maryland Declaration of Rights, which "ensure that a criminal defendant cannot be convicted of a crime for which he was not indicted" and require "that defendants be provided fair notice of the crimes with which they have been charged."

The State counters that admitting evidence outside the date of the indictment did not unfairly broaden the scope of the charged conspiracy. It avers that "[i]n conspiracy cases, 'the acts of co-conspirators evidencing the general plan are admissible even if they occur prior to the date charged in the indictment.'" (Quoting *Manuel v. State*, 85 Md. App. 1, 16-17 (1990)). The State contends that "evidence of the [Appellants'] conspiracy consisted largely of messages and photographs that they regularly posted on social media during the two months preceding and days after the murder[,]" and that these messages and photographs were also evidence of premeditation related to the first-degree murder charges. The State argues that there was also other evidence of the conspiracy, and that the court invited Appellants to object to the individual messages "as deemed necessary." "To whatever extent [Appellants] identified specific evidence in the circuit court, the trial court did not err or abuse its discretion in admitting evidence probative of a conspiracy in advance of the execution of the conspiracy's purpose."

Appellants reply that "charges of conspiracy are not to be made out by piling

inference upon inference, thus fashioning ". . . a dragnet to draw in all substantive crimes." (Quoting *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1943)). Appellants contend that "when it comes to the nature and time period of an alleged conspiracy, '[t]he government must be held to some standards' and the 'the defendant must have some ability to prepare his defense without being required to respond to inchoate attacks on the bulk of his life.'" (Quoting *United States v. McLean*, 166 F.3d 336, 1998 WL 879497, at *7 (4th Cir. Dec. 17, 1998)). Appellants argue that "[l]ess than three weeks before trial, the State first articulated a theory that, rather than an April 22, 2022 conspiracy to kill Cline, Appellants were involved in a conspiracy starting sometime in February 2022 and continuing indefinitely to kill *all who opposed them*."

Legal Framework

It is well-established that "a criminal charge must so characterize the crime and describe the particular offense so as to give the accused notice of what he is called upon to defend and to prevent a future prosecution for the same offense." *Corbin v. State*, 237 Md. 486, 490 (1965); *see also State v. Canova*, 278 Md. 483, 498 (1976); *Albrecht v. State*, 105 Md. App. 45, 68 (1995). Consistent with this principle, "[e]very charge or accusation, whether at common law or under statute, must include at least two elements: First, the characterization of the crime; and second, such description of the particular act alleged to have been committed by the accused as will enable him to properly defend against the accusation." *Canova*, 278 Md. at 498-99 (quoting *State v. Lassotovitch*, 162 Md. 147, 156 (1932)).

The Maryland Code specifies the language that should be used to set out a conspiracy indictment:

> [a]n indictment or warrant for conspiracy is sufficient if it substantially states:
>
> "(name of defendant) and (name of co-conspirator) on (date) in (county) unlawfully conspired together to murder (name of victim) (or other object of conspiracy), against the peace, government, and dignity of the State."

Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CR") § 1-203. Our decisional law, however, has clarified that "in a prosecution for conspiracy, it is essential only that the indictment state that there was a conspiracy and what the object of the conspiracy was." *Manuel v. State*, 85 Md. App. 1, 20 (1990). Therefore, "the State is not confined in its proof to the date alleged in the indictment." *Id.* at 19 (quoting *Tucker v. State*, 5 Md. App. 32, 35 (1968)). More recently we emphasized:

> The Court of Appeals has made clear that, because the date of an offense generally is not an element of the offense, a variance between the time period alleged in the indictment and the proof at trial is not fatal to a conviction.

Reece v. State, 220 Md. App. 309, 333 (2014).

Article 21 of the Maryland Declaration of Rights states that "in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence[.]" Md. Const., Decl. of Rts. Art 21. A similar guarantee is found in the Sixth Amendment to the United States Constitution: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation[.]" U.S. Const. amend. Art.VI. The Supreme Court of Maryland has explained the purpose of Article 21 as

follows:

> (i) to put the accused on notice of what he is called upon to defend by characterizing and describing the crime and conduct; (ii) to protect the accused from a future prosecution for the same offense; (iii) to enable the defendant to prepare for his trial; (iv) to provide a basis for the court to consider the legal sufficiency of the charging document; and (v) to inform the court of the specific crime charged so that, if required, sentence may be pronounced in accordance with the right of the case.

Ayre v. State, 291 Md. 155, 163 (1981).

Pursuant to Maryland Rule 4-204, "[o]n motion of a party or on its own initiative, the court at any time before verdict may permit a charging document to be amended except that if the amendment changes the character of the offense charged, the consent of the parties is required." The Supreme Court of Maryland has explained the purpose of Rule 4-204 as follows:

> The purpose of Maryland Rule 4-204, governing the amendment of charging documents, is to prevent any unfair surprise to the defendant and his counsel. . . . If the State's proposed amendment changes the character of the offense, and the defendant does not consent, then the amendment is deemed prejudicial to the defendant.

Johnson v. State, 427 Md. 356, 374 (2012) (quoting *Johnson v. State*, 358 Md. 384, 392 (2000)). An amendment changes the character of the offense when it changes the elements to be proved, *see Counts v. State*, 444 Md. 52, 60 (2015) (holding amendment substituting felony theft for misdemeanor theft changed character of offense), or when "an entirely different act is alleged to constitute the crime[,]" *Johnson*, 358 Md. at 389, 393 (quoting *Thanos v. State*, 282 Md. 709, 716 (1978)) (holding amendment to information changed character of offense when it initially accused defendant of possessing marijuana and

changed to possession of cocaine).

"Evidence of uncharged conduct is not 'other crimes' evidence subject to [Federal Rule of Evidence] 404 if the uncharged conduct 'arose out of the same series of transactions as the charged offense, or if [evidence of the uncharged conduct] is necessary to complete the story of the crime on trial.'" *United States v. Siegel*, 536 F.3d 306, 316 (4th Cir. 2008) (second alteration in original) (quoting *United States v. Kennedy*, 32 F.3d 876, 885 (4th Cir. 1994)); *accord* Md. Rule 5-404(b) ("Evidence of other crimes, wrongs, or acts . . . may be admissible for [purposes other than propensity], such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, [or] absence of mistake or accident[.]").[10]

Analysis

The indictment against M.K.H. for Count Two, Conspiracy to Commit Murder, accuses M.K.H. of conspiring to kill Taon Cline on April 22, 2022:

> The Grand Jurors of the State of Maryland, for the body of Montgomery County, upon their oaths and affirmations, present that [M.K.H.], on or about April 22, 2022, in Montgomery County, Maryland, did conspire with [J.A.] and [M.C.H.] and others to feloniously, willfully and with deliberately premeditated malice aforethought, kill and murder TAON LAMONT CLINE in violation of the Common Law against the peace, government, and dignity of the State.

The indictment against M.C.H. contains identical language, with his name swapped for

[10] The notes to Maryland Rule 5-404 state that "[t]his rule is derived from F.R.Ev. 404[,]" and the language of Maryland Rule 5-404(b) closely tracks Federal Rule of Evidence 404(b). Thus, federal cases interpreting Federal Rule of Evidence 404 are relevant to our evaluation of prior bad acts evidence under Maryland Rule 5-404.

M.K.H. in the relevant places. The language of these indictments closely tracks CR § 1-203 and was sufficient to put Appellants on notice to defend a charge of conspiring to murder Taon Cline.

Appellants have been on notice since well before the start of trial that the charges against them included conduct and social media posts dating back to February 2022 and that the conspiracy charged was part of a broader gang conflict. The application stated that "the above subjects are known to be associated with 'Ridge', a[ ] criminal street gang in Montgomery County . . . based out of Germantown[,]" and that Cline was a known associate of "L3," based out of Gaithersburg, and "there is an on-going feud between Gaithersburg gangs and Germantown gangs." It also quoted and referenced multiple messages and social media posts made by Appellants, including the message to Cline that "u barred from tha [fox emoji]" and an Instagram story posted by M.C.H. on April 25, 2022, stating, "got hit with that shit & his ass started glitching." The allegations in the application for statement of charges—part of the chain of charging documents—were sufficient to put Appellants on notice, far enough in advance to prepare for trial, that the State would introduce social media posts, text messages, and other evidence going back over a period of two months to put their conspiracy in the context of a gang dispute. This fulfilled the purpose of the constitutional notice requirements.

Even setting aside the application for statement of charges, to the extent that Appellants are challenging evidence of a conspiracy "starting sometime in February 2022 and continuing indefinitely," it is well established that the State is not confined in its proof

to the date alleged in the indictment. *See Greenwald v. State*, 221 Md. 245, 252 (1960) ("In criminal cases generally[,] the State is not limited to the date set out in the indictment[.]"); *Reece,* 220 Md. App. at 333; *Manuel*, 85 Md. App. at 20. February 2022 was only two months prior to the fatal shooting in this case, and it was reasonable for all parties to presume that evidence of the conspiracy could reach back for at least several months.

To the extent that Appellants aver that the gang related plans to "kill opps" were different in character from a conspiracy to kill Taon Cline, we disagree. As articulated by the State, the conspiracy to kill Cline was part and parcel of Appellants' broader plan to kill all opposition to their Ridge gang. This is not a case where "an entirely different act is alleged to constitute the crime[,]" such as where the underlying act is changed from possession of marijuana to possession of cocaine. *Johnson*, 358 Md. at 389 (quoting *Thanos*, 282 Md. at 716). Nor did the introduction of evidence related to Appellants' broader plan to kill all opposition change the elements necessary to prove the conspiracy charge. *See Counts*, 444 Md. App. at 60. Here, "the uncharged conduct 'arose out of the same series of transactions as the charged offense,'" and was "necessary to complete the story of the crime on trial." *Siegel*, 536 F.3d at 316 (quoting *Kennedy*, 32 F.3d at 885). Appellants conspired to kill Taon Cline because he was a member of a rival gang, and they

had a plan to kill all opposition. Evidence of Appellants' other actions in furtherance of that plan was necessary to complete the story of the crime on trial.[11]

In sum, we do not find that Appellants' right to the fair notice protections afforded under Article 21 of the Maryland Constitution and the Sixth Amendment to the United States Constitution were violated by the conspiracy that was prosecuted in the underlying case.

II.

IRRELEVANT AND PREJUDICIAL EVIDENCE

Parties' Contentions

Appellants

Appellants contend that the State introduced "an abundance of irrelevant and unduly prejudicial evidence[,]" including "vulgar rap songs created by Appellants; photos of firearms taken, sent, and received by Appellants; and text and social media messages about violence and prior bad acts sent and received by Appellants." Appellants point to the rap song "Reply," which they argue "was posted online on February 22, 2022, two months before Cline's death, and therefore could not have been about the charged shooting. There was thus little, if any, probative value to these lyrics, and there was substantial danger of unfair prejudice." Appellants also briefly mention three other rap songs, stating that "none

[11] Evidence of Appellants' prior bad acts was specially relevant for additional purposes pursuant to Maryland Rule 5-404(b), such as motive, intent, and preparation. The evidence admitted was also more probative than unfairly prejudicial. This issue is discussed in greater detail in Section II, *infra*.

mentions Cline or his Hittsquad gang."

Appellants specifically point to thirteen photographs of firearms and argue that "none of the firearms in the photographs was shown—or even argued—to be the never-recovered murder weapon. Indeed, despite the fact that the murder weapon was determined to be a .45-calliber handgun, the court admitted photographs of Appellants holding plainly unrelated firearms, including an AK-47-style assault weapon." Thus, Appellants argue, the photographs were irrelevant and highly prejudicial.

Appellants further contend that the text and social media messages admitted into evidence constituted inadmissible propensity evidence. More specifically, Appellants claim that "the trial court admitted, over objection, hundreds of text and social media messages sent to and received by Appellants, largely dated months before the death of Taon Cline, and which the State suggested documented a variety of crimes and other bad acts." Appellants point to nine messages, including one in which M.C.H. "suggests that he previously attempted to shoot at a person named Doulaye and would have killed him if his gun had not jammed." Appellants argue that "none of these messages concerned Taon Cline or other members of his Hittsquad gang."

According to Appellants, the State used this evidence in a highly prejudicial manner, focusing "the jury not on the minimal evidence connecting Appellants to Taon Cline, but on the substantial evidence that Appellants were fascinated by gangs, guns, and trying to look tough." Appellants argue that any minimal relevance this evidence may have had "was substantially outweighed by the very real danger of unfair prejudice[,]" and that the

evidence and argument suggested that Appellants deserved punishment for conduct outside of the charged crimes.

The State

The State counters that Appellants "attempt to argue that entire categories of evidence should have been excluded, but they expressly identify only 22 photographs, lyrics, and messages that were admitted at trial." The State urges that only these pieces of evidence should be considered on appeal. The State also urges that Appellants' objections were not preserved during trial because they made only generalized objections to all relevant evidence with references to "pretrial objections" or "previously stated objections." Because there were "so many motions and hearings and rulings, particularly with varying arguments," the State argues that these basic objections were insufficient to preserve Appellants' pretrial arguments. The State also identifies two rap song lyrics that Appellants objected to on other grounds, thereby waiving any relevance or unfair prejudice objection.

On the merits, the State argues that the messages, photographs, and lyrics were properly admitted. The State contends that "Reply," the "only rap song which Appellants objected to at trial and identify on appeal," included several facts which line up with the alleged conspiracy: "The lyrics include threats that if 'you all come on my block' the gang would 'start fucking them up' and that if the gang caught anyone, they 'better duck.'" The lyrics also "included threats that if someone 'looks at me wrong, I'm letting it blow' and that the writer would 'kill' the opposition and 'be shooting him up.'" The State also

contends that "[t]he video was posted on February 22, 2023—within the time frame of the conspiracy."

Regarding the photographs and messages, the State posits that they were relevant to "corroborate[ ] the [Appellants'] intent and state of mind as reflected in their messages: that other people had challenged their legitimacy and they responded that they possessed guns and were purchasing more." At least two photographs were relevant because they "corroborated [M.C.H.]'s message that he wanted to buy a gun with a sight and a witness statement that the shooters used a gun with a red laser sight." "Thus," the State contends, "this evidence was proof of the ongoing conspiracy, the preparations [Appellants] took in furtherance of that conspiracy, and the premeditated nature of the murder." In addition, the State highlights that the trial court "carefully balanced" the probative value of the photographs and messages against the danger of unfair prejudice, individually evaluating each and "admitting only those that were relevant and whose probative value outweighed the risk of unfair prejudice." The State argues that the trial court also properly engaged in the analysis required to admit evidence of prior bad acts.

Appellants' Reply[12]

Appellants argue that their pretrial objections were preserved because a general objection is sufficient unless the court or the other party requests an explanation, and because "the trial court explicitly permitted Appellants to summarily renew their pretrial

[12] Section III.A of Appellants' Reply Brief, dealing with the rap lyrics, was stricken on the basis that Appellants relied on "unofficial, partial transcripts" of four songs that were admitted into evidence in the trial court.

objections by simply stating: 'subject to your ruling, we still object.'" Appellants contend that there was no witness testimony that the gun used in the shooting had a laser sight, and that in fact testimony at trial contradicted the State's assertion. Regarding the text and social media messages, Appellants point out that the State does not dispute that none of the messages "concern[ ] Cline or his Hittsquad gang." They assert that "[t]o the extent the State contends that Appellants intended to shoot—or to conspire to shoot—Cline because they previously shot at other individuals, '[t]hat would be a classic forbidden instance of proving present intent by demonstrating a criminal propensity.'" (Second alteration in original) (quoting *Emory v. State*, 101 Md. App. 585, 607 (1994)).

Preservation

Objections to the admission of evidence are governed by Maryland Rule 4-323. Under this rule, "saying 'objection' is enough to preserve the issue for appeal" unless "the court or the other party requests an explanation." *Huggins v. State*, 479 Md. 433, 446-47 (2022). Prior to trial, a party may file a motion *in limine* on the admission of evidence to "give the court sufficient time to consider the matter in making a ruling, thereby minimizing interruptions during the trial." *Id.* at 447 n.7. When evidence has been ruled admissible after a motion *in limine*, a general reference to the earlier motion is sufficient to preserve the party's objection during trial. *Handy v. State*, 201 Md. App. 521, 538 (2011). This accords with the purpose of the preservation rule, which is "to prevent the trial court from being sandbagged by unseen error." *Jordan v. State*, 246 Md. App. 561, 586 (2020). Although an objection may be preserved in the trial court, "[i]t is incumbent

upon the appellant claiming error to produce a sufficient factual record for the appellate court to determine whether error was committed." *Mora v. State*, 355 Md. 639, 650, (1999).

Under Maryland Rule 4-323, "[t]he grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs." Here, the trial court explicitly permitted Appellants to summarily renew their pretrial objections by simply stating: "subject to your ruling, we still object." Therefore, Appellants' general objections were sufficient to preserve the arguments from their motions *in limine*.

Legal Framework

Relevance

Maryland Rule 5-402 provides that "[e]vidence that is not relevant is not admissible." "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.'" *Montague v. State*, 471 Md. 657, 674 (2020) (quoting Md. Rule 5-401). "The determination of evidentiary relevance is a legal question that is reviewed *de novo*." *State v. Robertson*, 463 Md. 342, 353 (2019). Justice Booth, writing for the majority in *Akers v. State*, recently explained that:

> "While trial judges are vested with discretion in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence." *State v. Simms*, 420 Md. 705, 724, 25 A.3d 144 (2011); *see also Parker v. State*, 408 Md. 428, 436–37, 970 A.2d 320 (2009) (explaining that the de novo standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not "of consequence to the determination of the action" (quoting Md. Rule 5-401)); *Pearson v. State*, 182 Md. 1, 13, 31 A.2d 624 (1943) (noting that "the

> rule [of discretion] will not be extended to facts obviously irrelevant as well as prejudicial to the defendant").

490 Md. 1, 24-25 (2025). The majority opinion further instructs, "[w]hile '[i]t is true that relevance is generally a low bar,' relevance 'is a legal requirement nonetheless.'" *Id.* at 25 (quoting *Simms*, 420 Md. at 727).

Relevant evidence has two components—its materiality and its probative value. *State v. Joynes*, 314 Md. 113, 119 (1988)). "'Evidence is material if it bears on a fact of consequence to an issue in the case.'" *Akers*, 490 Md. at 25 (internal quotations omitted). Evidence has probative value, on the other hand, if it has "'the tendency [] to establish the proposition that it is offered to prove.'" *Id.* (quoting *Joynes*, 314 Md. at 119). In *Akers*, Justice Booth expounded:

> The probative value inquiry—and therefore also the relevancy inquiry as a whole—often depends upon how attenuated the evidence is to the material fact it is intended to prove or disprove. Where the proffered evidence is several inferential leaps removed from the consequential fact, or where it involves a speculative chain of inferences to reach a determination, the less likely the evidence will make that fact more or less probable. This means that the evidence is not probative and, therefore, is irrelevant.

Id. at 26-27.

Probative Value vs. Unfair Prejudice

Pursuant to Maryland Rule 5-403, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" "In balancing probative value against unfair prejudice, this Court is mindful that prejudicial evidence is not excluded under Rule 5-403 only because it hurts one party's case." *Montague*, 471 Md. at 674. "Instead, probative value is substantially outweighed by unfair

prejudice when the evidence 'tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission.'" *Id.* (quoting *State v. Heath*, 464 Md. 445, 464 (2019)). The trial court's determination on unfair prejudice is reviewed for abuse of discretion. *Id.* "An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Williams v. State*, 457 Md. 551, 563 (2018) (quoting *Fuentes v. State*, 454 Md. 296, 325 (2017)).

In *Montague v. State*, Judge Getty, writing for the majority, recognized two "guiding principles" from appellate decisions concerning the admissibility of rap lyrics: "(1) even when probative, rap lyric evidence has inherent prejudicial effect, and; (2) the probative value of rap lyric evidence may outweigh that prejudicial effect when the lyrics bear a close nexus to the details of the alleged crime." 471 Md. at 687. "Courts have also recognized that a close temporal nexus bolsters the admissibility of rap lyric evidence." *Id.* at 688. Rap lyrics should be excluded when they are "insufficiently tethered to the details of the alleged crime" and "include only general references glorifying violence[.]" *Id.* at 687 (internal quotations omitted). In determining that the rap lyrics at issue in *Montague* were properly admitted into evidence, the majority determined that they bore "a close nexus to the details of the murder . . . because the lyrics mirror details of the murder, were composed after the murder occurred, and included 'stop snitching' references that were published to potentially intimidate witnesses to the murder." *Id.* at 697; *but see* Watts, J. dissenting at 699-700 ("[T]he rap lyrics that were admitted into evidence bore no 'close nexus' (factual or temporal) to the crimes with which Montague was charged—indeed, it is unclear when

the lyrics were even written—and did nothing more than create the impression that Montague was a person with a penchant for violence who was capable of murder.").

Evidence of Prior Bad Acts

Pursuant to Maryland Rule 5-404(b), "[e]vidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith." "Evidence of other crimes may be admitted, 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." *State v. Faulkner*, 314 Md. 630, 634 (1989). Purposes for which prior bad acts evidence may be admitted include "proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, [or] absence of mistake or accident[.]" Md. Rule 5-404(b).

The Supreme Court of Maryland has established three requirements that a proponent of "bad acts evidence" must satisfy before it may be admitted. First, the evidence must have "special relevance—that it 'is substantially relevant to some contested issue and is not offered simply to prove criminal character.'" *Wynn v. State*, 351 Md. 307, 316 (1998) (quoting *State v. Taylor*, 347 Md. 363, 368 (1997)). Thus, the evidence is deemed specially relevant "if it shows notice, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Id.*; *see* Md. Rule 5-404(b). Next, "[i]f a trial court determines that the other bad acts evidence is specially relevant, the second requirement . . . is that the accused's involvement in the other bad act(s) must be

established by clear and convincing evidence." *Browne v. State*, 486 Md. 169, 193 (2023). Finally, once these two requirements are satisfied, "the necessity for and probative value of the evidence must not be substantially outweighed by the risk of unfair prejudice." *Id.* at 190, 193. The first determination is reviewed *de novo*, the second is reviewed for sufficiency of the evidence, and the third is reviewed for abuse of discretion. *Faulkner*, 314 Md. at 634-35.

Analysis

Rap Lyrics

Appellants identify a rap song, "Reply," in their brief, and argue that it should have been excluded for two primary reasons: (1) it did not specifically mention Cline or his Hittsquad gang; and (2) it was posted two months before Cline's death. Appellants argue that three other rap songs should be excluded for similar reasons.

Unfortunately, although the court viewed the rap videos and listened to the audio files during the hearing on September 5, 2023, the rap lyric transcripts relied upon by the court are not in the record before us.[13] "It is incumbent upon the appellant claiming error to produce a sufficient factual record for the appellate court to determine whether error was committed." *Mora*, 355 Md. at 650. The transcripts provided to this Court were prepared

[13] At oral argument, the parties stated that the trial court examined unofficial transcripts provided by the State that were never entered into the record. It does not appear that either Appellant objected at the time the decision was made.

in February 2025, well after trial. None of the song lyrics appear in the trial transcript.[14] The transcript from a pre-trial hearing contains transcribed lyrics that appear rushed, jumbled, and incomplete. It is also unclear which song is which. We can discern some lyrics that contain profane language and others that reference drug use. However, without a complete and accurate transcript, it is difficult to effectively review the trial court's determination on unfair prejudice.

Fortunately, the court quoted and paraphrased extensively from relevant portions of the lyrics in her ruling:

> April 16th, April 17th, certainly after February 22nd when this video ["Reply"] was made, that is -- it is hard to hear, and it's hard to listen to at times, and if you've never heard that, you kind of, have to orient yourself to what's being said. But what is clearly depicted in that video are -- is language about Ridge, ops, the village, and all other kinds of same things like that. There are references to, I believe it's [M.K.H] having some beef with Mr. Cline. There is ongoing reference to what we're going to do – I'm paraphrasing wildly here. But what we're going to do if we see you here, you're not welcome here, all to that effect.
>
> * * *
>
> And certainly when it is said on the 17th, Ridge is going to be a household word, and guns and ops are mentioned, well, why is it going to be a household word? Why? What is with -- for what? Just because -- or because in that environment, that is part of the turf war.
>
> * * *

[14] For all four songs, the trial transcript merely states some variation of:

(Whereupon, the audio file referred to was played.)
Unidentified Male: (Playing song.)
(Whereupon, the audio file was concluded.)

I believe as to the 16th and the 17th it -- well, on the 16th talks about switching to an automatic with automatic -- just, what is an automatic? In this sense if you take it out of context it could mean anything. If it's in the context of these other pieces of evidence where they are actively looking for firearms and building an arsenal.

* * *

And then in the 16th, talks about the Ridge walk, opening fire on the ops, guns referenced as sticks, and making someone's heart stop. So that's a pretty general term. I don't know that that in and of itself would mean anything. But in the context of all of this and the nature of these allegations, and the proclamations that were being made in the conspiratorial context from February right up to April 16th and 17th, certainly I think go to motive, they go to intent, they go to common scheme, they go to planning, they go to premeditation perhaps if a trier of fact believes them to be such.

* * *

As it relates to the April 28th one that we just heard last, using that same analysis, this -- and I'm looking at this transcript just because it tells me what it says without playing it again. It is referencing as I heard it, two different voices. It has been indicated by the State that they believe they can -- they will have evidence of identifying these two voices as being one being [M.C.H.], one being [M.K.H]. And this specifically, I could go line for line, talks about Germantown, the village, Ridge block, bitch, yes, we sliding for an axe. And next N talk down, N get whacked, get put in a pack. I don't know what that means but it talks about being in the ground in a pack. Talks about G town, which is Germantown. Shit Ridge, walk shit. And then that is represented to [M.C.H.] speaking, then it switches to [M.K.H.]. NBS, no bullshit man, you hear me? A whole lot of ground, Ridge -- or G town Ridge block shit, yes, on my soul. Run up on me, you get shot in your hair. Catch me an op boy, all I'm seeing is red. Hop in the car, get put in the pack. Run up on me, you get shot in your back. So certainly references to what could certainly be memorializing this homicide occurred on April 22nd.

Now we're back to [M.C.H.]. In summertime coming, better have it on tuck. If I catch me an SHH, I'm knocking him off. That's certainly reference to plan from February [sic] to acquire more weapons and designate themselves and do what they have to, to make themselves relevant.

Here, the court determined, for example, that the song posted on April 28, less than

a week after the murder, was probably referencing the homicide in this case when one of the Appellants referenced "G town Ridge" and said "Catch me an op boy, all I'm seeing is red. Hop in the car, get put in the pack. Run up on me, you get shot in your back." The court explained in her ruling that the songs and videos evidenced a common scheme or plan, and that "as it gets closer to this date of this homicide, there's certainly ramping up what's being said." The first, the "Reply" video, which was posted two months before Cline's death, falls within a range where the temporal nexus is neither extremely close to the shooting, nor too far to be relevant. *Compare Montague*, 471 Md. at 670, 692 (holding rap lyrics composed after murder bore close temporal nexus to details of murder), *with Hannah v. State*, 420 Md. 339, 340-41 (2011) (holding that permitting cross-examination based on rap lyrics composed two years prior to murder was reversible error). The other songs were posted even closer to Cline's death, with two being posted within a week prior to the shooting and one, as just mentioned, that was posted on April 28. The State contended that Appellants had already begun planning the conspiracy and gathering weapons in February 2022, and given the details that line up in these recordings with the alleged shooting, we conclude that the trial court did not abuse its discretion in ruling that the probative value of the lyrics to "Reply" and the other rap songs was not substantially outweighed by the danger of unfair prejudice.

Firearm Photos

Appellants argue that the firearm photos were irrelevant and that their probative value was outweighed by the danger of unfair prejudice. However, the photos were

relevant because they tended to prove that Appellants had a motive and plan to kill all opposition to their "Ridge" gang, including Taon Cline. This made it more likely that they would murder him and that they would conspire to murder him.

The trial court carefully weighed the probative value and danger of unfair prejudice of each image during the pretrial hearing on September 5, 2023:

> So the one I'm going to allow as coming from this discussion -- so the motion on the firearms, I'm going call it, individual person with gun, and then, group photos, because they are all bound together here. The one where he's holding it up, covering his face, and holding the clip and the gun – I know you can't see that far -- but that's the one I'm going to permit to be available to the State as evidence because this other person's face has no value, no importance, and I don't think that the big smile on that person's face should be associated either defendant. So when I balance that out, I think that that is not -- the prejudice is greatly outweighed by the probative value. So the one gun and the reference to the account, and that the defendant, [M.C.H.], is involved in that conversation, and it is talking about guns, I think certainly is probative and within the same time frame.
>
> And the time frame was established through State's Exhibit 1 today after the weekend to clarify because when we left, it was asked of me to figure out who's in the picture, and as I said, I don't really think that's my job. It would be for the trier of fact, but it's now clarified that it's neither of these defendants. But the discussion is in March 18th of 2022. And certainly talking about – [M.C.H.] is within this conversation talking about accessing firearms.
>
> Then, turning to the group photos, and if I'm remembering right there's two, maybe there's three. There's three, three of them. So they are all somewhat similar in that everyone in the photos is either wearing a hood, or sunglasses, but I think a hood, maybe one has a ski helmet on, I don't know, but they're -- all heads are covered. Each one is holding what appears to be a firearm or something. There is someone kneeling down, two people kneeling down, also with their faces covered. And I'm looking -- the one I'm looking at, so there's one picture with six people and a foot of another person. So it's sort of cut off. The two kneeling people are in a same position. Everyone seems to be in the same position, either kneeling or standing, but doing different things. The same person is holding the long gun with ripped holes in their jeans and

> sweatshirt on, and two people kneeling in front, one holding a clip and one doing something.
>
> And in the second one, there's half a person cut off and the same positioning of everyone. So I'm not going to permit the half cutoff pictures at all. I don't think that they're particularly helpful and certainly don't need three of them. What has been represented as being to the State's theory and its motive, has to do with the one with the laser sight that is alleged to have been one of the firearms that a witness at the scene has indicated seeing that night that Mr. Cline died. And I can't remember off the top of my head if Mr. Acosta testified to that or would testify to that or not, but there is reference. There are two -- the two people kneeling, there are beams coming off of both of those -- whatever they're holding, and it looked to be guns -- that could certainly fit that same description.
>
> * * *
>
> So balancing that and the day before, I believe on balance that one photograph -- and I'll make sure everyone can see it -- in this one photograph, all seven people, their whole person is in the photo, not half cut-off. And also the other pictures, some of the participants felt it helpful to give the finger, other lovely gestures, so I don't know why that would be helpful either, but certainly this one photo, which is part of Defendant's 2, would be what I would allow to be used as evidence in this case. So on that issue, that motion is granted in part and denied in part.
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> * * *
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> So understanding that the defense expert would say that there's not a .45 depicted there, I don't think that renders the evidence inadmissible. It certainly an area of cross-examination and one that that expert can certainly testify to that and the jury would do with it as they see fit. But I don't think on balance and balancing the probative value versus any undue prejudice, I think the limitations there and to those photos and that information, certainly with the proximity to the commission of this crime, certainly makes it that the probative value is significant and I don't think by limiting it, it is unduly prejudicial and actually goes to the State's theory of its case.

The trial court distinguished *Smith v. State*, 218 Md. App. 689 (2014), in which the defendant was charged with involuntary manslaughter, from this case, in which Appellants

were charged with conspiracy and pre-meditated murder, and the trial court determined that the photos in this case were more probative and less unfairly prejudicial.

We hold that the trial judge did not abuse her discretion in this case when she carefully weighed the probative value of each photo against the danger of unfair prejudice by its admission into evidence and determined that some of the photos would not be admitted. "An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Williams v. State*, 457 Md. 551, 563 (2018) (quoting *Fuentes v. State*, 454 Md. 296, 325 (2017)). Here, there certainly was prejudice to Appellants in those photos that were admitted, showing them holding various firearms, but a reasonable person could take the view adopted by the trial court—that the admitted photographs were relevant to show Appellants' preparation to commit murder and that this probative value was not substantially outweighed by the danger of unfair prejudice.

Text and Social Media Messages

Both parties agree that Appellants, individually or collectively, were involved in the text and social media messages that Appellants challenge on appeal. Accordingly, Appellants only challenge this evidence under the first and third prongs of the test for admission of prior bad acts evidence under Maryland Rule 5-404(b).

As noted previously, under the first prong, "the evidence must be specially relevant." *Browne v. State*, 486 Md. 169, 190 (2023). The State argues that the text and social media messages were specially relevant because they established motive and common plan. We agree. Although the State may have toed the line at certain points in

its argument, we conclude that it did not introduce these messages "to prove [Appellants'] guilt based on propensity to commit crime or [their] character as [] criminal[s]." *State v. Faulkner*, 314 Md. 630, 634 (1989). The trial court observed that the messages link up with the plans and events described in the videos and songs, and were specially relevant to show that Appellants were engaged in a turf war, or at least had a motive to protect what they viewed as their "territory." This is consistent with the motive that the State argued at trial.

Turning to the third prong, we observe that over the course of the hearing on September 5, 2023, the trial court carefully weighed the probative value against the danger of unfair prejudice for each message that Appellants objected to. *Browne*, 486 Md. at 190. The court ultimately found that the messages were probative, along with the rap lyrics and other evidence, in the context of Appellants' gang-related turf war:

> And if [the rap lyrics are] taken out of context with the other Instagram evidence or whatever other collective evidence there might be, it certainly – somebody might not know, well, what is the Ridge. Does it rhyme and that's why they use that or does it have some particular meaning? When you put it in context where this homicide occurred, in the middle [of] Fox Chapel in the Ridge neighborhood, which is the self-proclaimed name of this gang that is alleged to have the rival[ry] with the Montgomery Village gang in Gaithersburg, it puts it in a different light. When there are messages going back and forth in this time frame[,] I'm speaking of February 2022, we need more guns, we're going to take care of the ops, we're going to carry that out in the summer.
>
> With a plan going forward, not detailed, but certainly the framework or an outline for a plan. And as it gets closer to this date of this homicide, there is certainly ramping up what's being said. And certainly when it is said on the 17th, Ridge is going to be a household word, and guns and ops are mentioned, well, why is it going to be a household word? Why? . . . [B]ecause in that environment, that is part of the turf war.

> And the planning through the conspiracy charge under the State's theory is that this was being planned to carry [out] making themselves more relevant and more of a threat to tap down or eliminate their rival gang, that they see this other gang as a rival in a territorial sense. And certainly, also would be evidence in furtherance of the planning and of the conspiracy.

Although these messages had prejudicial effect in showing that Appellants attempted to purchase other weapons and were engaged in petty drug transactions, a reasonable person could certainly take the position that these messages were probative of Appellants' motive in conspiring to kill Cline as part of a gang-related turf war, and that the probative value of these messages was not substantially outweighed by the danger of unfair prejudice. Therefore, we hold that the trial court did not abuse its discretion in admitting the messages.

III.

EXCLUSION OF EXCULPATORY EVIDENCE

About three weeks after Cline's murder, a rap music video titled "Call of Duty" was posted online. Call of Duty was written and performed by Travis Williams, who was a member of the One Way Hustle gang, a known rival of Cline's gang, Hittsquad. The lyrics of Call of Duty describe a shooting and include details that appear to comport with Cline's death. The lyrics were, in relevant part:

- Mask on, hoodie on, gloves on I'm bout to do me
- [I heard sh didn't make it to the door]
- Pop out the shadows n[****]s ain't even peep
- 'Who dat?' *gunshot noise effects* That's all he heard
- [Me and my twin both shoot like drrr]

- You know that fifth loud when it bark
- [Neck shot hit him he fell]
- [Left baby boy right there on the curb]
- That's a bucket, confirmed kill . . . Bro caught a bucket like he doing chores
- We up one tryna go up three . . . check the stats, check the score.

At the conclusion of Call of Duty, Travis Williams says: "[We got Tay]".

During the testimony of Travis Williams on September 29, 2023, the State objected to the admission of the Call of Duty video on the ground that it was not relevant and that it constituted inadmissible hearsay evidence. After extended argument and discussion, the trial court ruled that Appellants could present a portion of the video to the jury but not the lyrics shown in brackets above. The trial court reasoned that those statements were inadmissible hearsay not subject to any exception:

> These are the lyrics that I have issue with in the discussion – understanding the State objects to the whole thing. I am mindful that this is your defense, however normally you would not ever be able to put this in because it's hearsay. So I would be allowing the defense to the play this video with these lines out, and there's one or two on this page. There may just be more. Specifically we got Tay is not coming in in this proceeding because that would require this person to be a party. This person is right here, there is no need to play that part and I rule with the State on that issue.
>
> * * *
>
> Under [Maryland Rule 5-803(b)(24)] forward, it says under exceptional circumstances, the following are not excluded by the hearsay rule: statement not specifically covered by any other hearsay exception. This one is covered. The only exception that I see that is central to the defense that's been raised, and that is the only factor that I am looking at here. And I think to exclude any ability for the defense to display the video to the jury would be unduly prejudicial to the defense.

> However, I have looked at the translation as best as anybody can translate what all of this says, and I have put a redline through at the end of each line that I have an issue with, perhaps to be either an admission or somehow specifically dealing with this case, which it will be hearsay. And this video document would not be coming in unless he[ ] were not available to say who is part of the lyrics, specifically "we got Tay". Tay means only one thing in this courtroom and that means the victim.
>
> The other ones I put a mark next to, for example, so I asked you what "S-H" means, who knows? It could mean – I mean, I have no idea what it means. It could mean as you said there is a hush sound but didn't make it to the door and that would be fact-specific this case. He has no independent knowledge in this case other than what he's heard, read and somehow explored in social media.
>
> And neck shot him, he fell. I don't know whether that was specific or not but I put a mark there mostly to remember where it was. Left baby blow right there on the curb. Me and my twin brother shoot like DRRR. Whatever that means. I don't know what[.] [H]e and Jaison Williams can't be twins because they are two years apart. And then on the second page, three lines from the bottom, we got Tay. I don't find it fits any exception and it goes on to say, for admissibility, I am going to allow these in without these lines for exceptional circumstances because I believe it is what the defense has focused on, someone other than the defendants were responsible for the homicide. And I am not going to allow these other lines because I believe they are hearsay, and they do not fall under any of the exceptions, not a past recollection or his music. He is very versed on his music.

Earlier, during Examiner Laura Lightstone's testimony on September 21, the trial court excluded Lightstone's NIBIN report suggesting that the unrecovered weapon was consistent with one that had been used in two prior shootings in the months before Cline's death. The court noted that Appellants had not been connected to either of the other two shootings, but neither had they been excluded. The court also observed that guns can be stolen, traded, or borrowed and recalled evidence that, on the day of the murder, one of the Appellants sought to borrow something represented by "a fireworks emoji[.]" Ultimately,

the court held that "[t]here is no correlation" between the prior shootings and the present case and ruled that evidence of the NIBIN report was inadmissible.

Parties' Contentions

Appellants argue that the excluded lyrics:

> plainly supported the defense's theory that actors entirely unrelated to Appellants . . . conspired to and did murder Cline. Yet, the trial court refused to let these key lyrics be played or recited to the jury, or to let Travis Williams, who appeared as a defense witness, be questioned about them.

Appellants contend that "several of the lyrics" were not hearsay because they "were not being offered for the truth of any matter asserted, *e.g.*, that Cline was shot in the neck and died on the sidewalk curb, but to show that Williams had non-public knowledge about the shooting." Appellants argue that "[o]ther lyrics, such as the confession to the shooting—'We got Tay'—should have been admissible as a prior inconsistent statement." Alternatively, Appellants aver that "all of the lyrics should have been admissible under Rule 5-803(b)(24) given their key relevance to Appellants' defense and the availability of Williams to explain the meaning behind his lyrics."

Regarding the NIBIN report, Appellants contend that "[b]ecause neither Appellant was ever suspected of involvement in those shootings, this evidence was plainly exculpatory." They assert that the NIBIN analysis "was also relevant to demonstrate [Det.] Marable's failure to investigate other suspects, particularly given that he received the reports of these leads but did not follow up to have them confirmed." Appellants argue that the trial court's decision to exclude the NIBIN report "cannot be squared with the trial court's simultaneous decision to allow in the State's photos of dozens of entirely different

firearms, none of which was ever argued to be the murder weapon."

The State maintains that "any similarity between the ["Call of Duty"] lyrics and Cline's death had minimal probative value and carried a substantial risk of misleading the jury." The State points out that some of the lyrics do not match up with the facts of the crime:

> Cline was shot in four parts of his body rather than only in his neck; and the lyrics claimed that "me and my twin both shoot like drrr"; but Williams testified, without contradiction, that he was two years older than his brother. Furthermore, the crime scene evidence indicated that only one weapon shot Cline. Thus, "Call of Duty" did not have a "close nexus" to the details of Cline's murder.

The State argues that "[s]everal people were present when Cline was killed and immediately afterwards," and "the State introduced uncontroverted evidence that Williams had an alibi and could not have been involved in Cline's death." The State contends that Appellants failed to preserve the argument that the line "We got Tay" was a prior inconsistent statement, and that in any case "We got Tay" was not inconsistent with a denial of culpability because Williams testified the lyrics were fictional. The State also argues that the "exceptional circumstances" exception of Maryland Rule 5-803(b)(24) does not apply because the lyrics do not have sufficient "guarantees of trustworthiness[.]"

The State also contends that the court correctly excluded the NIBIN report because it lacked evidentiary value insofar as its purpose is to find potential investigative leads, not to perform any "comparison" or "exporter review or examination of the evidence." The State avers that Appellants conceded before trial that the NIBIN report had identified only "a potential investigatory lead." Regardless, the State argues, "even if the NIBIN report

was conclusive evidence that the same gun had been used in all three shootings, the court correctly determined it was irrelevant" because "no comparison had been attempted between evidence from the three crime scenes[,]" and there was no evidence about Appellants' involvement one way or the other.

Legal Framework

Under the Maryland Rules of Evidence, "hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is generally inadmissible unless an exception applies. Md. Rule 5-802. One such exception is the "catch-all" exception set forth in Maryland Rule 5-803(b)(24), which provides:

> Under exceptional circumstances, the following are not excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

See Wood v. State, 209 Md. App. 246, 272 (2012).

The Rules also carve out an exception to the hearsay rule for statements that are inconsistent with a declarant's testimony under certain circumstances. Md. Rule 5-802.1(a). A prior inconsistent statement is admissible for its substance if it complies with the requirements of Maryland Rule 5-802.1(a):

> [T]he statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing

> and signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement.

See Hardison v. State, 118 Md. App. 225, 234-35 (1997) (quoting Md. Rule 5-802.1(a)).

A trial court's ultimate determination of whether a particular statement is hearsay is reviewed *de novo*, but its factual findings underpinning the legal conclusion are reviewed for abuse of discretion. *Esposito v. State*, 264 Md. App. 54, 84-85 (2024) (citing *Gordon v. State*, 431 Md. 527, 536-38 (2013)). Although a trial court may have committed error, we will not reverse the judgment if we conclude, beyond a reasonable doubt, that the error was "harmless" and in no way influenced the verdict. *Gross v. State*, 481 Md. 233, 271 (2022); *Dorsey v. State*, 276 Md. 638, 659 (1976).

Analysis

"Call of Duty" Lyrics

We hold that the trial court did not err in holding that the redacted lyrics of "Call of Duty" constituted inadmissible hearsay. First, we conclude that the trial court did not err in determining that the lyrics were inadmissible under the "catch-all" exception of Maryland Rule 5-803(b)(24). The lyrics did not have sufficient "guarantees of trustworthiness," as the narrative presented in the song does not line up with the uncontroverted facts of Cline's murder. As the State points out, Cline was shot in four parts of his body and not only in his neck. Although Appellants contend that the lyrics were offered "to show that Williams had non-public knowledge about the shooting," none of the information in the lyrics reflects any particularly confidential information about

Cline's murder. There were at least three direct witnesses to the shooting, and the facts that Cline was hit in the neck and died on the ground were not secrets. Thus, the trial court could properly find that the interests of justice were not best served by their admission.

Appellants contend that the statement "We got Tay" should have been admissible as a prior inconsistent statement.[15] We observe that the statement was made as part of a music video, and therefore complies with the provision of Maryland Rule 5-802.1(a) that permits the admission of a prior inconsistent statement if it was "recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement." However, the statement "We got Tay" was not inconsistent with Williams' denial of involvement in Cline's murder, because he testified that the lyrics to the song were entirely fictional. Nor do the facts outlined in the song rebut Williams' statement that the lyrics are fictional, as the lyrics do not line up with the facts of the murder or with real life—Travis Williams and Jaison Williams are not twins—and Travis had an uncontroverted alibi on the night of the murder. We agree with the trial court that the admission of the statement, under these circumstances, would be confusing to the jury. Therefore, we hold that the trial court did not err in holding that the redacted lyrics constituted inadmissible hearsay.

NIBIN Report

As noted previously, relevance "is a very low bar to meet." *Montague v. State*, 471

[15] Although it is difficult to ascertain from the transcript, with numerous "unintelligible" notations, whether this objection was actually preserved, we will assume it was and consider the merits of Appellants' contentions.

Md. 657, 674 (2020) (quoting *Williams v. State*, 457 Md. 551, 564 (2018)). The trial court was correct in its conclusion that the NIBIN report was not meaningfully probative of whether Appellants were involved in Cline's murder, because there was no evidence on whether Appellants were involved in the other two shootings. However, the NIBIN report was relevant for one limited purpose: to show that Det. Marable's investigation may have been incomplete and that he may have overlooked other suspects in Cline's murder.[16] Therefore, we conclude that the trial court erred in excluding the NIBIN report on grounds of relevance.

We hold, however, that the trial court's error was harmless beyond a reasonable doubt. The jury acquitted Appellants of Cline's murder, and only convicted them of conspiring to murder Cline. The jury had a variety of independent evidence to this effect, including threatening social media messages, Acosta's testimony that Appellants had guns and stashed them under his bed after the shooting, and photographs and messages demonstrating a plan to purchase firearms and "kill all opps." The jury already determined not to convict Appellants on the murder charge, and therefore, an inference that Det. Marable may have overlooked a lead in his investigation of Cline's murder would not have meaningfully influenced the jury on the question of whether Appellants were guilty of conspiracy. Because this error was harmless, it is not grounds for reversal. *See Gross*, 481 Md. at 271.

IV.

[16] The State, of course, would be permitted to rebut this inference.

RIGHT TO PUBLIC TRIAL

Appellants claim that their Sixth Amendment right to a public trial was violated when the trial court refused to permit their family members into the courtroom during the first day of jury selection. On that day, the court addressed M.C.H.'s counsel, stating:

> Oh, and Mr. Collins, you asked about the family being able to sit in the courtroom. I'm told by the jury commissioner that in order to seat the panel of 150 people, we need every chair here in the courtroom.
>
> So as soon as that number dwindles down some and there are some chairs in the back, any family members in moderation would be certainly permitted to have a seat in the back of the courtroom. But I don't permit anyone to stand during jury selection either, and that is something I've always subscribed to, not just in this case. So when we have that opportunity, I will be happy to have them come into the courtroom. But I need the seats for the panel so we can get jury selection underway.

No party noted an objection on the record.[17]

At about 11:15 a.m. on the same day, the court dismissed the jury for a break and reiterated that there was not enough space in the courtroom for Appellants' family members:

> So as I said, once we get some people on their way and we have some more space in here, anybody who's not under the rule on witnesses, family member could certainly take up the back row or something like that.
>
> * * *
>
> And then I also -- I don't know if I told you this, but in the courtrooms, wherever we land from selection to selection, I have asked the sheriffs to be

[17] A short colloquy followed, during which the State noted that two of Appellants' family members were subpoenaed witnesses. The State invoked the rule on witnesses to exclude those family members from the courtroom, and the trial court agreed to exclude those witnesses until they were excused from their subpoena. No party objected to this decision on the record.

> mindful that the first rows would be for family members. So I'm presuming the one on my left would be for the defendants' family. The one on my right would be for the victim's family.

Again, no party noted an objection on the record.

At the end of the first day of jury selection, the trial court stated that Appellants' family members could sit in on jury selection the next day, "[b]ut if anybody comes, they're going to need to be in the courtroom before the jury comes in so I can make sure that they know there is to be no discussion around anybody[.]" No party objected on the record. According to Appellants, "[d]espite the trial judge's passing assurance at the time of closing the courtroom to the public that the closing would be relaxed at some point, the family was never granted permission to be present for any portion of the critical *voir dire* and jury selection phases of trial."

Parties' Contentions

Appellants urge that "[t]he courtroom closure by the trial judge in this case was constitutionally prohibited and requires reversal." They point out that under United States Supreme Court precedent, "a violation of the right to a public trial is 'structural error,' which, when objected to at trial and raised on direct appeal, generally entitles the defendant to 'automatic reversal[,] regardless of the error's actual effect on the outcome.'" (Quoting *Weaver v. Massachusetts*, 582 U.S. 286, 299 (2017)). Appellants contend that a trial court must make adequate findings under a four-part test to justify closure of the courtroom, and the trial court made no such findings here.

The State argues that Appellants failed to preserve the issue of courtroom closure for review, and that "the record is insufficient for Appellants to meet their burden to prove that the trial court erred." The State points out that neither Appellant objected or raised Sixth Amendment concerns when the trial court raised the issue of closing the courtroom, stating that "[a]n off-the-record question about whether there is room for the family in the courtroom cannot be construed as an objection about a perceived constitutional violation[.]" The State also maintains that the record does not support Appellants' allegations that the courtroom was closed for all three days of jury selection.

In reply, Appellants argue "the record is clear that the courtroom was closed, at a minimum, for the entire first day of jury selection[,]" a closure long enough to require reversal. Appellants also contend that the issue was sufficiently preserved. Appellants point to the unreported case *Scarboro v. State*, No. 1646, 2023 WL 8479243 (Md. App. Dec. 7, 2023), in which this Court reversed a conviction based on a courtroom closure despite the defense only making a cursory request to open the courtroom and not raising any constitutional issues. *See Scarboro*, 2023 WL 8479243 at *1-2.

Legal Framework

The Sixth Amendment guarantees defendants "the right to a speedy and public trial." U.S. Const. amend. VI. "[T]he Sixth Amendment right to a public trial extends to the *voir dire* of prospective jurors." *Presley v. Georgia*, 558 U.S. 209, 213 (2010). "The accused has a particular interest in having his or her family and friends attend the trial because '[o]f all members of the public, a criminal defendant's family and friends are the

people most likely to be interested in, and concerned about, the defendant's treatment and fate.'" *Longus v. State*, 416 Md. 433, 446 (2010) (quoting *Tinsley v. United States*, 868 A.2d 867, 873 (D.C. 2005)); *see also In re Oliver*, 333 U.S. 257, 271-72, (1948) ("And without exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter with what offense he may be charged.").

The Supreme Court of the United States has adopted a four-part test that a court must satisfy for a closure to comport with the Sixth Amendment. *Waller v. Georgia*, 467 U.S. 39, 48 (1984). There must be "an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Id.* "[T]hese cases should be rare," and a courtroom may only be closed if the court makes "proper factual findings in support of the decision to do so." *Weaver*, 582 U.S. at 298.

A violation of the right to a public trial is a structural error, meaning that the government cannot seek to uphold the defendant's conviction on the grounds that the error was harmless. *Id.* at 299. This does not mean that a defendant cannot waive the right to a public trial. *Robinson v. State*, 410 Md. 91, 106 (2009). "[A] claimed violation of the right to a public trial must be preserved for appellate review by a timely objection at trial, notwithstanding that the allegation implicates structural error." *Id.* at 110; *see also Weaver*, 582 U.S. at 286 ("[W]hen a structural error is objected to and then raised on direct review,

the defendant is entitled to relief without any inquiry into harm."). If there were no requirement to make a contemporaneous objection to preserve the issue of a court closure, the defense might have an incentive to stay silent when the constitutional violation could be corrected if brought to the court's attention. *See Robinson*, 410 Md. at 111.

Analysis

Because Appellants did not object to the court closure during jury selection, they did not preserve the issue for appellate review. The record reflects that at some point prior to jury selection, M.C.H's counsel requested that Appellants' family be allowed to sit in court during jury selection. Neither Appellant objected to the court's statement that "in order to seat the panel of 150 people, we need every chair here in the courtroom," or that no person could stand during jury selection. Neither Appellant objected when the courtroom remained closed to family members at 11:15 a.m., or when the court stated that "if anybody comes, they're going to need to be in the courtroom before the jury comes in[.]" The Sixth Amendment right to a public trial was never raised until the instant appeal.

Appellants argue that their objection was sufficient based on *Scarboro v. State*, No. 1646, Sept. Term, 2023, 2023 WL 8479243, at *1-2 (Md. App. filed Dec. 7, 2023), in which this Court reversed a conviction because the defendant's mother was prevented from entering the courtroom during *voir dire*. In *Scarboro*, the extent of the defendant's objection was as follows:

> [DEFENSE]: The Court's guidance, my client's mother is out in the hallway, she'd like to come in.
>
> THE COURT: We can't do that during jury selection.

> [DEFENSE]: Okay. All I could do was ask.
>
> THE COURT: Yup. Okay. Sorry, sir, that's just—you see we've got a full room and everything, so.
>
> [SCARBORO]: I understand.

Id. at *2 (alterations in original). In that case, however, it appears that the State never raised the issue of preservation on appeal, contending only that the trial court's closure was *de minimus*. *See id.* As a result, this Court had no reason to consider the issue of preservation.

In other cases where a conviction has been overturned based on a courtroom closure, the defense noted a clear objection. *See, e.g.*, *Presley*, 558 U.S. at 210 (defense counsel objected to closure on the record); *Waller*, 467 U.S. at 42 (defense counsel objected to closure on the record); *Watters v. State*, 328 Md. 38, 42 (1992) (defendant moved for a mistrial after learning of closure). And in a comparable case, in which the trial court ordered the defendant's family to leave the courtroom with no objection from defense counsel, the Supreme Court of Maryland held that the defendant's claimed violation of his right to a public trial was not preserved. *See Robinson*, 410 Md. at 100, 110. Here, Appellants merely asked off the record that their family be permitted to watch jury selection. Appellants never objected on the record to the trial court's statement that there was no room for their family, nor did they raise their Sixth Amendment right to a public trial. As a result, we hold that Appellants' claimed violation of their right to a public trial was not preserved for review.

V.

JOINT TRIAL

Parties' Contentions

Appellants argue that "a substantial amount of evidence was admitted against one Appellant but not the other[,]" and that "[t]he nature and volume of this evidence created a substantial and impermissible risk that the jury considered against each Appellant evidence that would not have been admitted had he been tried separately." Appellants point out that "the trial court issued at least 24 limiting instructions," significantly more than the nine considered "too many" by the Supreme Court of Maryland in *State v. Zadeh*, 468 Md. 124, 149 (2020). Appellants specifically highlight messages from M.K.H. to Taon Cline, which reference M.K.H. and Cline having previously engaged in a drug transaction and in which M.K.H. warns Cline not to go to the Germantown area. Appellants also highlight messages admitted only against M.C.H. in which the State suggested he describes prior shooting attempts. According to Appellants, "it would have been 'practically impossible' for the jurors to 'dismiss from their minds' these messages when reaching a Verdict as to" the party against whom they were not admitted. (Quoting *State v. Hines*, 450 Md. 352, 384 (2016)). "Accordingly, the cases against Appellants should have been severed."

The State counters that Appellants identified only ten social media posts at the initial severance hearing, identified no specific additional evidence when they renewed the severance motions during trial, and identify only three messages on appeal. State contends

that this Court's review should be confined to those exhibits specifically identified by Appellants. Next, the State argues that the Maryland Rules reflect a policy favoring joint trials when two or more people are accused of committing the same crime. The State avers that the messages identified by Appellants were mutually admissible because they were offered not for their truth but instead "to prove their state of mind, intent, and common goal." To the extent that the messages were offered for their truth, the State contends that they were admissible as "[a] statement by a coconspirator of the party during the course and in furtherance of the conspiracy[.]" (Quoting Md. Rule 5-803(a)(5)).

The State further argues that even if the messages were not mutually admissible, they were not unfairly prejudicial because "non-mutually admissible evidence justifies severance only when it *significantly* damages the defendant." The State points out that "[t]he trial court's assessment of prejudice is reviewed for abuse of discretion[,]" and that the trial court issued limiting instructions as to the non-mutually admissible evidence to limit prejudice. The State argues that "absent evidence to the contrary, it is presumed that the jury followed the limiting instructions." The State contends that the trial court also properly weighed judicial economy, as the trial was scheduled for 14 days with complete overlap in witnesses and nearly 500 exhibits being admissible against both defendants. The State avers that "the court properly determined that the efficiency of a joint trial outweighed the minimal prejudice that may have resulted" from the admission of about 24 non-mutually admissible messages.

Appellants respond that they moved to sever pretrial "based on evidence expected to be offered at trial[,]" and that they renewed their motions mid-trial based on the amount of evidence that had come in, including the nature of the evidence and the number of limiting instructions given. Thus, Appellants contend, "all of the non-mutually admissible evidence challenged before and during trial is properly preserved for review." Appellants maintain that the challenged evidence was offered for its truth, but the messages could not have been offered as statements in furtherance of a conspiracy because there was no evidence that a conspiracy had been formed at the time the messages were sent. Appellants insist that the challenged evidence was prejudicial because "the State took every opportunity to tie [the Appellants] to one another," referring to them jointly and "emphasizing their joint membership in a gang called 'Ridge.'" Finally, Appellants contend that the limiting instructions were insufficient to cure the prejudice because the jury "could not have sifted through each piece of non-mutually admissible evidence and the subsequent limiting instructions." (Quoting *Zadeh*, 468 Md. at 149).

Legal Framework

Maryland Rule 4-253 contemplates a joint trial for two or more defendants "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." The Rule further states that "[i]f 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[.]" We review a trial court's decision on a severance motion for abuse of discretion. *State v. Hines*, 450

Md. 352, 366 (2016). The Supreme Court of Maryland has adopted a three-step test to determine whether a motion to sever the trials of multiple defendants should be granted:

> [T]he test for determining whether a motion for severance of defendants should be granted is whether (1) non-mutually admissible evidence will be introduced; (2) the admission of that evidence will unfairly prejudice the defendant requesting severance; and (3) any unfair prejudice that results from admitting the non-mutually admissible evidence can be cured either by severance of the defendants or some other relief such as limiting instructions or redactions.

Zadeh, 468 Md. at 148 (quoting *Hines*, 450 Md. at 369-70). "In such cases, where a limiting instruction or other relief is inadequate to cure the prejudice, the denial of severance is an abuse of discretion." *Id.*

Analysis

In this case, limiting instructions were sufficient to cure any unfair prejudice from non-mutually admissible evidence. Although the trial court gave a significant number of limiting instructions, the evidence at issue was not so highly prejudicial that it left the jury unable to follow the court's instructions. To explain why, we must first describe the facts of *State v. Hines* and *State v. Zadeh.*

State v. Hines

In *Hines*, two codefendants, Allen and Hines, were charged with crimes including murder, attempted murder, and conspiracy to commit robbery with a deadly weapon. 450 Md. at 365. The two codefendants had allegedly robbed a couple attempting to buy heroin, killing the woman and wounding the man. *Id.* at 356. On the same day as the alleged robbery, police saw Allen on the street and detained him for a recorded interview. *Id.* at

357. In his recorded statement, Allen told police that at the time of the shooting he had been recording a music video at the house of a friend, whose name he did not know, at a specific block. *Id.* Evidence was admitted at trial establishing that Hines' address was on that block. *Id.*

There was no dispute that Allen's statement would have been inadmissible hearsay had Hines been tried separately from Allen. *Id.* at 362. When Hines made a pretrial motion for severance, however, the trial court denied the motion and admitted the statement "subject to a limiting instruction to the jury that the statement was only evidence against Allen and was not to be considered against Hines." *Id.* The Supreme Court held that the trial court abused its discretion, stating that "it would have been practically impossible for the jurors to dismiss from their minds the statements of Allen when evaluating the evidence against Hines." *Id.* at 384. The Court emphasized that Allen's statements about his friend, combined with the detectives' questions and testimony that Hines lived on the relevant block, heavily implicated Hines. *Id.* Because the evidence was so prejudicial that there was a risk the jury would not have followed the limiting instruction, the Court held that the trial court erred in denying Hines' motion to sever. *Id.* at 385.

State v. Zadeh

In *Zadeh*, two codefendants, Pannell-Brown and Zadeh, were charged with the murder of Pannell-Brown's husband. 468 Md. at 131. The State's theory at their joint trial was that Pannell-Brown and Zadeh had a romantic relationship and conspired to kill Pannell-Brown's husband for financial benefit and to maintain their affair. *Id.* at 138, 140.

The State introduced a variety of evidence that was admissible only against Pannell-Brown, including (1) testimony from the husband's adopted son that Pannell-Brown told him she grabbed her husband, but that Pannell-Brown did not have any blood on her at the time; (2) testimony from a neighbor that Pannell-Brown "suggested she that she was seeing someone, a boyfriend"; (3) testimony from the same neighbor that Pannell-Brown confided in her about financial difficulties and problems in her marriage; (4) statements from Pannell-Brown suggesting she was hiding money from her husband and having an affair; (5) testimony from Pannell-Brown's son that Pannell-Brown referred to the door leading to the backyard as his "father's bedroom door";[18] (6) testimony that Pannell-Brown inquired with her mortgage company about a potential insurance policy on the house or the mortgage; (7) testimony that Pannell-Brown entered into a contract to sell the home she shared with her husband.[19] *Id.* at 141-43.

During the trial, the trial court gave at least nine different limiting instructions. *Id.* at 143. After a certain point the trial court refused to give a limiting instruction every time a statement by Pannell-Brown was introduced, reasoning that the jury "understood" the statements were not admissible against Zadeh. *Id.* at 143, 143 n.15. By the end of trial,

[18] This testimony was heard by the jury but ultimately struck from the record. *See Zadeh*, 468 Md. at 142, 150.

[19] The police also uncovered handwritten notes in Pannell-Brown's house referring to homemade poisons, including a recipe for cyanide, and a search of Pannell-Brown's computer revealed searches such as "how harmful are energy drinks for people over 70 years of age?" and "what causes sudden cardiac arrest?" *Zadeh*, 468 Md. at 137-38. Zadeh argued that this evidence unfairly prejudiced him. *See id.* at 147.

"the prosecution acknowledged it would be an 'insurmountable task' for the attorneys to classify which evidence was admissible against Mr. Zadeh and which evidence was only admissible against Ms. Pannell-Brown." *Id.* at 150. Likewise, the trial court "remarked that a proposed jury instruction listing what evidence was admissible against which defendant would serve to 'create[ ] confusion if [they] c[ould]n't agree on what it is that [the jury] need[ed] to consider separately.'" *Id.* at 150-51 (alterations in original).

The trial court denied Zadeh's pretrial motion to sever. *Id.* at 139. Before the close of the evidence, Zadeh moved for a mistrial, arguing that copious evidence was admissible only against Pannell-Brown and severance was no longer available to cure the resulting prejudice. *Id.* at 143. The trial court denied the motion for a mistrial. *Id.* at 144. Zadeh later moved for a mistrial a second time, and the motion was again denied. *Id.*

The Supreme Court of Maryland held that the trial court erred in denying Zadeh's motion to sever, reasoning that "Zadeh was unduly prejudiced by the non-mutually admissible evidence." *Id.* at 149. The Court specifically pointed to the testimony about the "bedroom door," reasoning that the mention of this door at various points in trial, combined with other evidence admissible only against Pannell-Brown, had the "cumulative effect" of prejudicing Zadeh. *Id.* at 150 (quoting *Erman v. State*, 49 Md. App. 605, 616 (1981)). The Court held that the prejudice could not be cured by limiting instructions "because a reasonable jury could not have sifted through each piece of non-mutually admissible evidence and the subsequent limiting instructions to determine which evidence was admissible against which defendant." *Id.* at 149. The Court also held that "the trial

court erred in denying the motion for a mistrial because, once the trial judge determined that there was significantly more non-mutually admissible evidence than he originally thought, the only available and appropriate remedy was a mistrial." *Id.* at 151.

Application to The Instant Case

Although this appeal is being pursued jointly by both Appellants, the prejudice must be evaluated as to each Appellant individually. *See Zadeh*, 468 Md. at 148 (defining the test as whether the admission of non-mutually admissible evidence "will unfairly prejudice the defendant requesting severance"). Appellants assert that the trial court issued "at least 24 limiting instructions[,]" but point to only 14 in their brief. Of these, five limiting instructions concerned evidence admissible only against M.K.H. and nine concerned evidence admissible only against M.C.H.

With regard to M.C.H., the exhibits admissible only against M.K.H. did not have a cumulative effect so prejudicial that limiting instructions could not cure the prejudice. These exhibits demonstrated that M.K.H. had a contentious relationship with Taon Cline, with the strongest evidence being the message from M.K.H. stating "any my men see u ur gettin upped" followed by thirteen laughing emojis. Cline reacted to this message with a rolling-on-the-floor laughing emoji. To be sure, this was a strong piece of evidence suggesting that M.K.H. had a motive to murder Cline. Critically, however, it did not implicate M.C.H. so strongly that the jury would be likely to disregard the limiting instruction and consider the evidence against M.C.H. This evidence is distinguishable from Allen's statement in *Hines*, which clearly implicated Hines in the murder, and the excluded

evidence in *Zadeh*, which cumulatively implicated Zadeh as his co-defendant's lover and a participant in the conspiracy to murder her husband. Therefore, the trial court did not abuse its discretion in denying M.C.H.'s pretrial motion to sever or the renewed motion during trial.[20]

Of the exhibits excluded as to M.K.H., none were substantially prejudicial; most were background conversations about the activities of the "Ridge" gang and buying guns. Although the court gave a number of limiting instructions—nine instructing the jury not to apply evidence to M.K.H., and fourteen total—these instructions were all clearly applied to specific exhibits by the trial court.[21] This is significantly different from *Zadeh*, in which so many non-mutually admissible statements came in that the court stopped giving limiting instructions and neither the prosecution nor the trial court were able to determine which evidence was admissible against which defendant. Therefore, we hold that the trial court did not abuse its discretion in denying M.K.H.'s motion to sever or the renewed motion during trial.[22]

[20] Although counsel for M.C.H. purported to renew his pretrial motion to sever, the remedy of severance is no longer available once a joint trial has started and the only appropriate remedy at that stage is a mistrial. *See Zadeh*, 468 Md. at 143, 151. Construing M.C.H.'s renewed motion to sever as a motion for a mistrial, the motion was properly denied.

[21] There was one instance in which the trial court was confused about which exhibits were subject to a limiting instruction, but the issue was clarified and a corrected instruction was quickly provided to the jury.

[22] Counsel for M.K.H. also purported to renew his pretrial motion to sever. Construing the renewed motion to sever as a motion for a mistrial, the motion was properly denied.

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