Circuit Court for Prince George's County
Case No.: C-16-CR-23-002382

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 825

September Term, 2024

DANE GAYLE

v.

STATE OF MARYLAND

Nazarian,
Beachley,**
Albright,

JJ.

Opinion by Albright, J.

Filed: March 10, 2026

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

**Beachley, J., now retired, participated in the hearing and conference of this case while an active member of this Court. He participated in the adoption of this opinion after being recalled pursuant to Maryland Constitution, Article IV, Section 3A.

Appellant, Dane Gayle, was indicted in the Circuit Court for Prince George's County and charged with murder, armed robbery, and various conspiracy and firearm-related counts. He was convicted by a jury of first-degree felony murder, attempted robbery with a dangerous weapon, use of a firearm in the commission of a crime of violence, and conspiracy to commit robbery with a dangerous weapon. Mr. Gayle was sentenced to an aggregate term of life imprisonment, with all but fifty years suspended. The first five years of the fifty-year term are to be served without the possibility of parole, followed by five years of supervised probation. On this timely appeal, Mr. Gayle asks us to address the following questions:

1. Did the trial court err in denying Mr. Gayle's request to display his injuries to the jury in support of his self-defense claim?
2. Did the trial court err in permitting Detective Canady to offer her personal opinion about what Mr. Gayle said during a recorded phone call?

For the following reasons, we shall affirm.

BACKGROUND

On the afternoon of July 1, 2023, at approximately 5:40 p.m., Prince George's County police and EMS personnel responded to a reported shooting at an apartment complex near 9819 Good Luck Road in Lanham. Officers found Malcolm Maurice Bradley, age thirty-one, lying on the ground, unable to speak or move. Mr. Bradley was transported to the University of Maryland Capital Regional Medical Center, where he was breathing upon arrival. Mr. Bradley did not survive his injuries, and at approximately 6:40 p.m., he was pronounced dead.

The next day, Dr. Joseph Mininni, a forensic pathologist with the Office of the Chief Medical Examiner, performed an autopsy on Mr. Bradley. Mr. Bradley sustained eleven gunshot wounds: to the left lower abdomen, right mid-back, right lower back, right elbow, left arm, front of the left thigh, back of the right thigh, twice to the back of the left knee, and twice to the back of the left thigh. Three of the wounds were fatal: a wound to the right lower back that injured the right lung, and two wounds to the back of the left thigh that severed the left femoral artery and vein and fractured the left femur. The cause of death was multiple gunshot wounds, and the manner of death was homicide.

On the day of the shooting, police obtained copies of surveillance video, which were admitted at trial without objection. The first vehicle of interest to arrive on the scene was a blue Hyundai, containing Shakcor Madden, Mohamed Jalloh, and a person identified in the record only as "Mok." The next vehicle to arrive was a black Ford Fusion containing Mr. Bradley and his driver, Destiny Barker.[1]

Based on our review of the videos, supported by testimony, as well as the statement of facts in Mr. Gayle's brief, Mr. Bradley exited the Ford and leaned against the rear passenger door to wait. Moments later, Mr. Gayle and a person identified throughout the trial as "Ty" entered the frame on foot from the left, approached Mr. Bradley, and greeted him. Approximately six seconds after the handshakes, a burst of activity was visible: Mr. Bradley raised his arms, Mr. Gayle turned towards Mr. Bradley,

[1] The videos were narrated at trial by Mr. Barker, Mr. Jalloh, and Mr. Madden, who identified the participants. Mr. Gayle's brief contains an accurate summary of their contents.

and Ty took off running to the right. It was unclear from the video who fired first. Mr. Bradley fell to the ground, and Mr. Gayle was seen standing over him with a firearm in his hand. Mr. Gayle then staggered back to the left and fell to the ground about a car length away, at which point Mr. Bradley pulled himself forward with a firearm visible in his hand.

Simultaneously with the gunfire, Ms. Barker, who had arrived with Mr. Bradley, pulled the Ford forward out of its parking spot and T-boned the blue Hyundai as it attempted to leave to the left. As the Ford exited to the right, the Hyundai continued moving and exited to the left. Around 17:38:12, Mr. Gayle got up and staggered in the direction of the Hyundai.

State's Exhibit 56 picked up at that point. The Hyundai was driven into frame and stopped, and Mr. Madden got out with a firearm pointed in the direction of Mr. Gayle and Mr. Bradley. Mr. Madden testified that he also shot Mr. Bradley. Mr. Madden and Mr. Gayle, who by then had staggered in from the scene of the shooting, both got into the Hyundai. Mr. Gayle then emerged from the far side of the vehicle and appeared to point towards Mr. Bradley, whereupon Mr. Madden got out and ran back in that direction. Mr. Madden then returned to Mr. Bradley, bent down twice to retrieve something from the ground, and ran back to the Hyundai. Mr. Madden testified that he retrieved Mr. Bradley's firearm. The Hyundai was then driven away from the scene.[2]

[2] No gun was ever recovered. After the shooting, there was evidence that Mr. Gayle did not want to go to the hospital. Instead, Mr. Gayle was taken to the home of Crystal Smith in Laurel, where Ms. Smith arrived later and found him bleeding on her floor. Ms. Smith cleaned his wounds and transported him to a Patient First urgent care near her home.

The State proceeded on the theory that this was all a planned robbery by Mr. Gayle and his companions and that Mr. Bradley was fatally shot during the attempt. The jury heard evidence that the group arranged to meet Mr. Bradley under the pretense of buying marijuana, intending instead to rob him. Joshua Jones testified that on July 1, 2023, Mr. Gayle, Mr. Jalloh, Mr. Madden, Ty, and Mok gathered at his apartment at 9813 Good Luck Road. Mr. Jones overheard the group discussing their intentions to buy or rob marijuana from someone in the complex, though he did not hear the specifics of any plan. All five left Mr. Jones's apartment shortly thereafter, and Mr. Jones remained behind. After they left, Mr. Jones heard gunfire approximately fifteen to twenty minutes later.

Mr. Jalloh testified that the group had arranged, through the individual identified as Ty, to meet a marijuana dealer known as "Freebands" at a location a few apartments down from Mr. Jones's unit. The plan, as Mr. Jalloh described it, was to take the marijuana by force. Mr. Jalloh, Mr. Madden, and Mok drove to the meeting point in the blue Hyundai and waited, while Mr. Gayle and Ty waited on foot. According to Mr. Jalloh, the role of the occupants of the Hyundai was simply to wait; it was Mr. Gayle and Ty who were supposed to take the marijuana from Freebands. Mr. Jalloh testified that Freebands never arrived but that Mr. Bradley came instead.

Mr. Madden provided a more detailed account of the plan. He testified that the idea of robbing a marijuana dealer was raised at Mr. Jones's apartment by Ty and Mr. Jalloh, and that the plan was presented to him and Mr. Gayle while the two of them were seated inside. The assigned roles were that Mr. Gayle and Ty would approach the dealer and make contact, while Mr. Madden would wait in the Hyundai with Mr. Jalloh and

Mok, and then sneak up from behind and put his gun on the dealer while Mr. Gayle and Ty were talking to him. Mr. Madden confirmed that Mr. Gayle was present and aware of this plan when it was discussed.

The jury also heard eyewitness testimony about the shooting. Ms. Barker testified that she remained in the driver's seat of the Ford throughout the incident and glanced back at Mr. Bradley and the two men who approached him, but did not directly observe the shooting. She heard gunshots approximately thirty seconds after Mr. Gayle and Ty reached Mr. Bradley. She confirmed on cross-examination that she had told police Mr. Bradley had a handgun in his lap during the drive to the parking lot, and that he took the gun with him when he got out of the car. She also confirmed that when she saw Mr. Gayle and Ty walking up to Mr. Bradley, she did not see guns on either of them.

Mr. Jalloh testified on direct examination that from the back seat of the Hyundai, he saw Mr. Gayle and Mr. Bradley begin shooting at each other. He acknowledged that he could not clearly see who fired first, as the altercation occurred approximately two car lengths away. He further testified that he directed Mok to pull the Hyundai forward toward where Mr. Gayle and Mr. Bradley were shooting. On cross-examination, Mr. Jalloh confirmed that he saw Mr. Gayle get shot and that when Mr. Gayle got into the back seat of the Hyundai, Mr. Gayle was bleeding extensively.

Mr. Madden offered more details about the shooting. He testified that, from the front passenger seat of the Hyundai, approximately two car lengths away, he saw Mr. Bradley reach into his pocket. When he saw Mr. Bradley reaching, he told Mok to pull the Hyundai forward. By the time the Hyundai had pulled up to a position where Mr.

Madden could get out directly behind Mr. Bradley, Mr. Madden testified that he saw Mr. Bradley raising his gun and shooting at Mr. Gayle and Ty. Mr. Madden testified that he also saw Mr. Gayle shooting back at Mr. Bradley.

When asked directly who fired first, Mr. Madden stated that he did not know who took the first shot and that by the time he had a clear view, both men were shooting at each other. Mr. Madden acknowledged that from two car-lengths away, he could not see a handgun, only movement suggesting Mr. Bradley was reaching for something, and that he did not see the gun until the Hyundai pulled up closer. When confronted by the prosecutor, Mr. Madden acknowledged that during his proffer session, he told police only that Mr. Gayle and Mr. Bradley were shooting back and forth at each other and that he was not entirely sure who fired first.

Mr. Madden confirmed that, after Mr. Gayle and Mr. Bradley exchanged gunfire, he got out of the Hyundai and shot at Mr. Bradley approximately seven to ten more times. When he shot Mr. Bradley, Mr. Bradley was already on the ground, lying on his side, and had dropped his weapon, and he shot Mr. Bradley in the back. Mr. Madden added that Mr. Gayle told him to go back and get Mr. Bradley's gun, and he ran back and removed it from the scene.

Mr. Madden further testified that after the shooting, as the Hyundai drove away, Mr. Gayle was shot and bleeding in the back seat, and that the group applied napkins and pressure to his wound. Mr. Madden did not testify as to the specific location of Mr. Gayle's wounds.

Through Mr. Madden, the State introduced two recordings of phone conversations between Mr. Gayle and Mr. Madden while Mr. Gayle was incarcerated. In the first call, Mr. Gayle stated that "the n***** who died got hit 23 times." Mr. Madden responded that "we both ain't miss." Mr. Madden confirmed at trial that the two were referring to the victim, Mr. Bradley. In the second call, Mr. Gayle told Mr. Madden that police had found the blue Hyundai. Mr. Madden confirmed that they had, and testified that he had told others to get rid of the car by burning it, specifically to destroy the evidence.[3]

The jury also heard evidence relating to a third call from the jail. Through Detective Canady, the State introduced a recording of a phone conversation between Mr. Gayle and an unknown individual while Mr. Gayle was incarcerated. Detective Canady testified that she listened to the call, and that in it, Mr. Gayle stated: "If everybody would've shut the F up, we all would've been good."

We shall include additional detail in the following discussion.

DISCUSSION

I. The trial court did not err in denying Mr. Gayle's request to display his injuries to the jury in support of his self-defense claim.

Mr. Gayle first contends that the court abused its discretion in denying his request to display his injuries to the jury. Specifically, Mr. Gayle argues "[t]he court's finding that the probative value of seeing Mr. Gayle's injury was 'not great,' and its finding that

[3] The police ultimately found the Hyundai at 190 Jill Lane in Laurel and recovered cartridge casings as well as blood and DNA evidence. The DNA evidence in the back seat was consistent with Mr. Gayle's known DNA profile.

his colostomy bag posed a significant risk of 'unfair' prejudice, were both clearly erroneous." Our understanding of Mr. Gayle's argument is that he wanted to display his injuries to show that he was shot in the back and that this supported a self-defense claim and countered the State's theory that he fled the scene out of consciousness of guilt.[4]

The State observes that "self-defense is not a defense to felony murder," the offense of which Mr. Gayle was ultimately convicted. *See Sutton v. State*, 139 Md. App. 412, 454, *cert. denied*, 366 Md. 249 (2001). The State asserts that the probative value of this display was questionable given that "there was no dispute that Mr. Gayle had been shot," that there was an inadequate foundation for the jury to discern whether the injury to his back was an entrance wound or some other incision either made during surgery or the autopsy, and that the jury could have been misled by the evidence. The State also argues that there was a danger of unfair prejudice because, as Defense Counsel conceded at trial, the injury could not be viewed without also viewing Mr. Gayle's colostomy bag and that the display "could render unwarranted sympathy for Mr. Gayle based on a condition unrelated to his injuries and immaterial to his prosecution or defense" and "could inflame the jury to sympathize with Mr. Gayle and lure the jury to disregard the evidence supporting his crimes but decide the case on an emotional basis."

[4] The jury was given the pattern instructions on Homicide-First Degree Premeditated Murder and Voluntary Manslaughter (Perfect/Imperfect Self-Defense). *See* Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions* ("MPJI-Cr") 4:17.2 (C1) (3d ed. 2024). In addition, although not precisely following the pattern, the jury was given a flight instruction. *See generally*, MPJI-Cr 3:24. Mr. Gayle does not challenge this instruction.

The court first became aware that Defense Counsel wanted to display Mr. Gayle's injuries during cross-examination of Mr. Madden. At that point, the court declined counsel's request because it was not yet the defense's turn to present evidence. Counsel later attempted to elicit evidence about Mr. Gayle's injuries during the cross-examination of Detective Canady. After the detective testified she was aware that Mr. Gayle was injured, counsel asked "[a]nd what were those are [sic] injuries?" The following ensued at a bench conference:

> [PROSECUTOR]: I don't see where the injuries to Dane Gayle is [sic] relevant.
>
> [DEFENSE COUNSEL]: Part of our self-defense, we're saying that [Mr.] Bradley shot Dane Gayle in the back as he's running away, so that's relevant that he was shot and injured by Mr. Bradley. It's relevant to our self-defense Mr. Bradley was the aggressor.
>
> THE COURT: As far as relevance (inaudible).
>
> [PROSECUTOR]: Foundation laid with this witness as far as what she knows of the injuries to Dane Gayle. Also, if she wants to -- again, this is way outside the scope. I only asked her to walk through a couple things. If she wants to get in all this information, she can call --
>
> [DEFENSE COUNSEL]: I had just asked her were you familiar with his injuries and she said yes, and then I asked her what were those injuries.
>
> THE COURT: What's the (inaudible)?
>
> [DEFENSE COUNSEL]: What's the foundation? I said had she visited Dane in the hospital as part of her investigation, was she familiar with his injuries. Then I asked what were his injuries. Then she said she knew about the injuries. She visited him herself while he was in the hospital.
>
> THE COURT: What is she going to say? Foundation (inaudible).
>
> [DEFENSE COUNSEL]: That she saw it and she saw the video.
>
> THE COURT: Well, you still got to establish a foundation. How is she able to recognize a bullet wound versus any other type of laceration?
>
> [DEFENSE COUNSEL]: Okay.

Defense Counsel then returned to this issue at the end of the State's case-in-chief and asked permission to display Mr. Gayle's injuries to the jury. The State objected on the following grounds:

> We object to that. We feel as though the only reason they would do that is to garner sympathy from the jury. I mean, there's no testimony as to what's going on. The only reason that would be is just so that the jury could sympathize with Mr. Gayle.

Defense Counsel responded:

> In part, Mr. Madden indicated that it was the injuries to Mr. Gayle. That was why they fled the scene and why they did not call the police. He said that it was stressful. Mr. Gayle was bleeding and they were trying to stop the bleeding.
>
> So the State is going to argue that they were fleeing as consciousness of guilt, but I believe that his injuries counteract that. I also think that they go to self-defense to show that he was, in fact, shot by Mr. Bradley. It's visible on the video, but it's more real to the jury when it's in person.

The court and Defense Counsel engaged in the following colloquy:

> THE COURT: Okay. So with regard to the facts, the State has not alleged or is not disputing that the defendant was shot. So why would the injuries be relevant?
>
> [DEFENSE COUNSEL]: Again, because that was the reason given by Mr. Madden as to why they didn't call the police or render aid to Mr. Bradley.
>
> THE COURT: You two dispute the motivation behind the injuries, but (inaudible) dispute the actual injuries.
>
> [DEFENSE COUNSEL]: Well, I haven't been able to get into evidence so far the injuries. He's objected every time I tried to ask either Mr. Madden or Detective Canady.
>
> THE COURT: Well, so Canady didn't have the foundation to talk about that. Where is there that there was any dispute that your client was shot by the State?
>
> [DEFENSE COUNSEL]: Not that he was shot, but the extent of his injuries, which are two different things. Could have just a graze through his left side, but it's clear it's not from the injuries.

THE COURT: The man (inaudible) about the injuries, the allegation about all that blood in the back seat about the injuries. …

The court then asked about Mr. Gayle's colostomy bag:

[THE COURT:] Let me ask you this question: Are you going to be able to show -- publish the injuries without exposing the jury to the other device?

[DEFENSE COUNSEL]: No, Your Honor. It's in the front. I think you're referring to the bag?

THE COURT: Correct.

[DEFENSE COUNSEL]: Yeah, the bag is right next, obviously, because it's put in -- it's right next to the scarring from the surgery.

THE COURT: What about the injuries to the back, could he show the injuries to the back?

[DEFENSE COUNSEL]: Physically he could not.

THE COURT: Then --

[DEFENSE COUNSEL]: I mean, pretty much obvious even almost just sitting here, so I would not be able to hide that.

THE COURT: Why should they be able to see the bag?

[DEFENSE COUNSEL]: I would say that that's part of his injuries.

The court then ruled as follows:

I think that's -- that's strong -- stronger the State's objection that it's sympathy. Also, now you're getting into more, to me, requiring foundational expert testimony to explain what this bag is for and why the bag was necessary, et cetera.

So the Court finds that the -- a person does have a right to publish their body if it's relevant, but in this case, the Court finds the probative value is outweighed by the prejudice -- unfair prejudice, which would be possible sympathy for the defendant after seeing a [colostomy] bag. I also find that the probative value, as I said before, is -- it's not great because everybody who has testified talked about the shooting, defendant being shot, the injuries.

There was a lady who talked about how he was laying on her floor bleeding. She took him to the hospital. (Inaudible) about getting him to the hospital. Got the photographs, the allegations of the swab because concerns about blood in the car, I'll deny the defense's motion to publish.

"Appellate courts generally defer to the trial court's evidentiary findings and are loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion." *Covel v. State*, 258 Md. App. 308, 322–23, *cert. denied*, 486 Md. 157 (2023) (cleaned up). "A trial court abuses its discretion when no reasonable person would take the view adopted by the trial court, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Lewis v. State*, 263 Md. App. 631, 664 (2024) (cleaned up). An abuse of discretion also exists "when the court acts without reference to guiding rules or principles." *State v. Robertson*, 463 Md. 342, 364 (2019) (cleaned up).

Generally, "all relevant evidence is admissible." Md. Rule 5-402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Maryland courts have consistently noted that "[h]aving any tendency to make any fact more or less probable is a very low bar to meet." *Williams v. State*, 457 Md. 551, 563 (2018) (cleaned up). However, even relevant evidence may be excluded under Rule 5-403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

We review the trial court's "balancing of probative value against the danger of unfair prejudice for an abuse of discretion[,]" *Browne v. State*, 486 Md. 169, 194 (2023), and reverse only in case of "rare and bizarre exercises of discretion that are, in the

judgment of the appellate court, not only wrong but flagrantly and outrageously so[,]" *Crawford v. State*, 265 Md. App. 374, 394 (2025) (cleaned up). In doing so, "[w]e determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). Significantly, "[e]vidence is never excluded merely because it is 'prejudicial.'" *White v. State*, 250 Md. App. 604, 645 (2021). Even if evidence is prejudicial, "that does not mean that it was 'unfairly' prejudicial such that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice." *Ford v. State*, 462 Md. 3, 58 (2018). Nor is the evidence considered unfairly prejudicial simply because it "prejudices one party or the other, in the sense that it hurts his or her case." *Id*. Rather, in order to qualify as "unfairly prejudicial" evidence under Rule 5-403,

> the nature of the evidence must be such that it generates such a strong emotional response from the jury such that the inflammatory nature of the evidence makes it unlikely for the jury to make a rational evaluation of the evidentiary weight. The inflammatory nature of the evidence must be such that the "shock value" on a layperson serving as a juror would prevent the proper evaluation or weight in context of the other evidence.

Urbanski v. State, 256 Md. App. 414, 434 (2022). As we have previously stated:

> We emphasize that prejudice in this context means more than damage to Appellant's cause, for damage alone is not a sufficient basis for exclusion. What is meant here is an undue tendency to persuade the jury to decide the case on an improper basis, usually an emotional one.

Weiner v. State, 55 Md. App. 548, 555 (1983), *aff'd sub nom. State v. Werner*, 302 Md. 550 (1985).

Although we have not found, nor have the parties cited, any case concerning the admission of a defendant's wounds to support a self-defense claim, there are numerous cases, both in Maryland and elsewhere, that confirm that the admission of evidence of injuries is subject to trial court discretion. For instance, after the briefs were filed in this case, we decided *Campbell v. State*, 267 Md. App. 248 (2025), *cert. denied*, __ Md. __, Pet. No. 361, Sept. Term, 2025 (filed Jan. 28, 2026). There, the defendant was convicted of first-degree murder following a jury trial in the Circuit Court for Baltimore County. The State's theory was that the defendant shot the victim once in the eye at point-blank range following an argument inside a hookah lounge. *Campbell*, 267 Md. App. at 261. Prior to trial, defense counsel filed a motion *in limine* seeking to preclude or limit three categories of visual evidence depicting the victim's injuries: (1) body worn camera footage from the first responding officer; (2) three photographs taken by a forensic technician at the hospital depicting the victim's bloody wounds; and (3) autopsy photographs taken by an Assistant Medical Examiner. *Id*. at 279. The defendant argued that these pieces of evidence were "highly prejudicial due to their graphic nature" and that their unfair prejudice outweighed their probative value. *Id*.

This Court first reaffirmed the standard of review, stating that the trial court is "vested with wide discretion in conducting a Rule 5-403 balancing test," and its decision "will not be disturbed unless plainly arbitrary, because the trial judge is in the best position to make this assessment." *Id*. at 292 (cleaned up). We then acknowledged that the evidence "could be considered graphic," but upheld admission of all three categories.

Id. at 292–95.[5] As to the forensic technician's hospital photographs, the court found them probative of the State's theory of "an execution with one shot at pointblank range," and noted that depictions of bloodied injuries were "limited to three photographs—out of the total of the nine admitted into evidence." *Id.* at 293–94. As to the autopsy photographs, the court found them "probative of the manner and cause of the injury, which was at issue for the jury," and noted they were "limited in nature." *Id*. at 294. Therefore, we held that the trial court did not abuse its discretion in determining that the probative value of each outweighed any potential unfair prejudice under Maryland Rule 5-403. *Id*. at 294.

Here, on the question of whether the display of Mr. Gayle's injuries had probative value, it is difficult to ignore that the display went to issues before the jury. As defense counsel argued when she first sought to display Mr. Gayle's injuries during Mr. Madden's cross-examination, the wounds were "consistent with the testimony that he was shot and injured," and their location was relevant to whether Mr. Bradley was the aggressor. When counsel renewed the request at the close of the State's case, she elaborated that Mr. Gayle's injuries explained why the group fled without calling police

[5] We initially agreed the evidence was relevant, stating that "[a]lthough inherently cumulative, the rationale for allowing photographic evidence to be presented in conjunction with verbal testimony is that in some cases, photographs present more clearly than words what a witness is describing." *Campbell*, 267 Md. App. at 290 (cleaned up); *see also Johnson v. State*, 303 Md. 487, 503 (1985) ("We have previously held that photographs of the deceased are admissible even where the location of injuries was previously described and conceded by the defendant."). The evidence was particularly relevant to the degree of murder because it depicted that the victim "was shot in the eye, and that the bullet exited his body through the back of his brain—which the State argued was evidence of premeditation, a necessary element of first-degree murder." *Id.* at 291–92.

or rendering aid to Mr. Bradley, rebutting the State's consciousness-of-guilt theory. Further, although the shooting was visible on video, we do not disagree with counsel's assessment that "it's more real to the jury when it's in person." The location and severity of Mr. Gayle's wound bore directly on whether he was shot while fleeing, consistent with self-defense, or while leaning over Mr. Bradley, consistent with the State's robbery theory. This was a genuinely contested factual question, and a live display would have given the jury something the video and testimony could not fully replicate.

The danger of unfair prejudice, on the other hand, was substantial on several fronts. The most obvious problem was the colostomy bag. Defense counsel conceded that the injuries could not be displayed without it. But the bag was not a product of the gunshot wound, it was a surgical appliance installed after the murder, and no expert testimony had been offered, or even proffered, to explain what it was or why it was there. Left to their own devices, jurors might well have concluded that Mr. Gayle faced a diminished quality of life or worse as a result of the shooting. That is exactly the kind of emotional response that has nothing to do with guilt or innocence. *Compare People v. Barnes*, 3 N.E.3d 330, 333 (Ill. App. Ct. 2013) (holding that trial court abused its discretion by permitting the State to display child victim's burn scars to jury where same element established through photographs and expert testimony) *with Pouliot v. Paul Arpin Van Lines, Inc*., 235 F.R.D. 537, 545–46 (D. Conn. 2006) (concluding court did not abuse its discretion in admitting a video showing plaintiff's injuries, as well as colostomy bag and catheter, stating "[w]hile Pouliot's ulcer, muscular degeneration, colostomy, and

need for a catheter are themselves upsetting, the video showed no more than necessary to give jurors an understanding of the medical consequences of Pouliot's injury").

The display also risked misleading the jury for a separate reason. As the court pointed out when defense counsel tried to elicit testimony about the wounds from Detective Canady, there was no foundation to help the jury tell the difference between an entrance wound, a surgical incision, or some other type of laceration. The same problem would have applied to a live display. Seven months had passed since the shooting, surgery had altered the appearance of the wounds, and without expert guidance, the jury would have been drawing guesses, not inferences.

Finally, and perhaps most straightforwardly, the display would have been cumulative. The fact that Mr. Gayle was shot and seriously injured was not in dispute and was already in evidence from multiple sources: the surveillance video; Mr. Jalloh's testimony that Mr. Gayle was bleeding heavily in the back seat; Mr. Madden's account of the group applying pressure to the wound as they drove away; Crystal Smith's testimony that she found Mr. Gayle bleeding on her floor; and DNA confirming the blood in the rear passenger seat was Mr. Gayle's. Bringing Mr. Gayle before the jury to display wounds the jury already knew about, in a condition altered by surgery, arguably would have added little of substance while creating a real risk of unfair prejudice.

Ultimately, based on the standard of our review, we are persuaded that the trial court did not abuse its discretion. The probative value of the display, while real, was limited by the fact that Mr. Gayle's injuries were already before the jury through testimony, video, and DNA evidence. The danger of unfair prejudice was substantial. The

colostomy bag risked introducing sympathy into a proceeding that called for a straightforward factual determination, the altered condition of the wounds risked misleading the jury without expert guidance, and the display would have been needlessly cumulative of evidence already in the record. The trial court weighed these considerations and reached a reasoned conclusion. We are not prepared to second-guess that judgment, and we conclude that the court did not abuse its discretion in denying Mr. Gayle's request. *See generally, Newman v. State*, 236 Md. App. 533, 557 (2018) ("On appellate review, we do not, *de novo*, make close calls with respect to the exercise of discretion. We approve many discretionary calls that we ourselves might not have made. We reverse only egregiously bad calls as abuses of discretion").

Even setting aside the Rule 5-403 analysis, Mr. Gayle's principal justification for the display faces an additional obstacle. As the State points out, self-defense is not a defense to felony murder. *See Sutton*, 139 Md. App. at 454. *Accord Nicholson v. State*, 239 Md. App. 228, 245 (2018) (holding that self-defense is inapplicable to a charge of second-degree felony murder), *cert. denied*, 462 Md. 576 (2019). As one court has explained:

> The purpose of the felony-murder rule is to deter even accidental killings in the commission of designated felonies by holding the felon strictly liable for murder[.] . . . [I]n the vast majority of situations, a defendant charged with felony murder is precluded as a matter of law from relying on a justification defense since, having created a potentially life threatening situation, the defendant forfeits the right to use deadly physical force against the victim or any rescuer.
>
> Indeed, nearly every jurisdiction that has opined on the matter makes a justification defense unavailable to those who initiated the underlying felonies[.]

People v. Walker, 78 A.D.3d 63, 68-69, 908 N.Y.S.2d 419 (N.Y. App. Div. 2010) (collecting cases, cleaned up), *leave to appeal denied*, 942 N.E.2d 327 (N.Y. 2010). *See also State v. Amado*, 756 A.2d 274, 284 (Conn. 2000) ("For purposes of felony murder, 'it is immaterial whether the victim of the [felony] or the defendant [first utilizes physical force].' It is inconsistent with the purpose of the felony murder statute to allow a defendant who causes a death in the course of a felony to claim self-defense because the victim attempted to thwart such a felony") (cleaned up).

To be sure, Mr. Gayle also argued that displaying his injuries would rebut the State's consciousness-of-guilt theory, independent of any self-defense claim. That argument failed on the Rule 5-403 balancing, however, because the evidence of his injuries was already fully before the jury. The self-defense rationale, the centerpiece of his argument, simply does not apply to a felony murder conviction.[6]

Finally, we conclude any error in excluding the display was harmless beyond a reasonable doubt. *See Gonzalez v. State*, 487 Md. 136, 184 (2024) (explaining that an

[6] We note that Mr. Gayle argues in his reply brief that he "never attempted to take anything from [Bradley] and was shot in the back while running away - consistent with his claim that there was no planned or attempted robbery and he acted in imperfect or self-defense." Although a back wound is consistent with this theory, and bears directly on an element the State was required to prove, i.e., the underlying felony supporting the felony murder, Defense Counsel *did not* advance this theory as a basis for admission at trial. Instead, counsel only argued that the display of Mr. Gayle's injury was relevant to rebut consciousness of guilt and corroborate that Bradley fired first, thus supporting his argument that he acted in self-defense to the murder charge. Counsel arguably invoked the robbery-negation theory during closing argument, arguing there was no plan for a robbery and that Bradley shot Mr. Gayle in the back as he was fleeing, but by then the evidence had already been excluded, and the trial court had no opportunity to weigh it. The theory is not before us.

error will be harmless when the reviewing court, upon "its own independent review of the record," is "satisfied beyond a reasonable doubt" that there is no reasonable possibility that the error "influenc[ed] the outcome of the case"). *Accord Dorsey v. State*, 276 Md. 638, 659 (1976). Notably, the jury was instructed on both perfect and imperfect self-defense as part of the court's instruction on voluntary manslaughter. Thus, the jury was well aware that self-defense was an issue for them to decide in this case.

Furthermore, the evidence against Mr. Gayle was strong. The jury heard testimony that Mr. Gayle, along with others, planned to rob a person known as "Freebands" of marijuana. There was an elaborate plan involving two people approaching him on foot, while three others waited nearby in a blue Hyundai. When Mr. Bradley showed up instead, armed with a gun, there was evidence that Mr. Gayle was directly involved in the shooting that followed. Surveillance video captured the shooting as it happened, and Mr. Gayle was identified as being one of the individuals involved. There was also DNA evidence placing Mr. Gayle in the back seat of the blue Hyundai. We are persuaded that, even if preserved, any error was harmless beyond a reasonable doubt.

II. The trial court did not err in permitting Detective Canady to offer her personal opinion about what Mr. Gayle said during a recorded phone call.

Mr. Gayle next asserts that the trial court erred in overruling his objection to Detective Canady's testimony about what he said on a recorded phone call. Mr. Gayle argues the testimony was irrelevant and inadmissible lay opinion. The State responds that the issue was waived when Mr. Gayle failed to object to the admission of the recording of the phone call itself. The State continues that the grounds raised on appeal, relevance and

lay opinion, are different than the grounds raised at trial. On the merits, the State argues the testimony was relevant because it tended to show consciousness of guilt, that it was not an opinion, and that the detective merely relayed what Mr. Gayle said in the phone call. In any event, the State concludes that admission of the testimony was harmless beyond a reasonable doubt because the recording was later admitted without objection. The pertinent colloquy follows:

> Q. I'm going to show you what's been placed – State's Exhibit Number 58, which is a jail phone call.
>
> Did you happen to look at that -- listen to that jail phone call?
>
> A. Yes.
>
> Q. Who did that -- who was in that jail phone call?
>
> A. Dane Gayle and another unknown individual.
>
> Q. Okay. And, essentially, what was Dane Gayle saying?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Basis?
>
> [DEFENSE COUNSEL]: If the recording is admitted, it would speak for itself. I don't want the detective's guess as to what it says.
>
> [PROSECUTOR]: She's not guessing.
>
> [DEFENSE COUNSEL]: Or opinion.
>
> THE COURT: Overruled.
>
> BY [PROSECUTOR]:
>
> Q. What did Dane Gayle specifically say?
>
> A. If everybody would've shut the F up, we all would've been good.
>
> [DEFENSE COUNSEL]: Objection.

In *Yates v. State*, our Supreme Court stated, "Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received." 429 Md. 112, 120–21 (2012) (cleaned up); *see also DeLeon v.*

State, 407 Md. 16, 30–31 (2008) (holding that a defendant waived an objection to what he claimed was irrelevant and highly prejudicial testimony about his purported gang affiliation because "evidence on the same point [was] admitted without objection" elsewhere at trial); *Benton v. State*, 224 Md. App. 612, 627 (2015) ("[O]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection." (cleaned up)).

The recorded jail calls at issue were admitted into evidence without objection at trial. Moreover, Defense Counsel did not object when the detective identified Mr. Gayle as one of the voices on the phone call. Thus, Mr. Gayle waived this issue for further review.[7]

[7] We agree with the State that the statement's relevance was not raised at trial, but disagree that Mr. Gayle never raised lay opinion as an objection. *See generally, Perry v. State*, 229 Md. App. 687, 709 (2016) ("[W]here an appellant states specific grounds when objecting to evidence at trial, the appellant has forfeited all other grounds for objection on appeal."). Defense Counsel argued that the recording "would speak for itself," and that it was "opinion." Had the issue not been waived, this objection would have been sufficient to preserve the lay opinion argument on the merits. However, we do not reach the merits because, as we will explain, we conclude that the issue was harmless beyond a reasonable doubt. *See also Cromartie v. State*, 490 Md. 297, 305 (2025) (declining to consider the merits of an argument under Md. Rule 5-615(b)(2) because any error was harmless beyond a reasonable doubt).

We note, however, although our holding is that the issue was waived and harmless, based on the record presented, we tend to agree with Mr. Gayle on the merits. Detective Alexis Canady, the lead detective on this case, was not admitted as an expert and testified as a lay witness. "Pursuant to Maryland Rule 5-701, lay witness opinion or inference testimony is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." *Freeman v. State*, 259 Md. App. 212, 230 (2023), *aff'd*, 487 Md. 420 (2024) (cleaned up). We have reviewed State's Exhibit 58 and discern at least two distinct voices in the very short snippet provided, but those voices overlap, and the content of the conversation is not entirely clear. Although

(continued)

Moreover, even if this issue was preserved, we conclude any error in admitting the testimony was harmless beyond a reasonable doubt. *See Gonzalez*, 487 Md. at 184; *Cromartie*, 490 Md. at 305. The statement at issue went to consciousness of guilt. *See State v. Simms*, 420 Md. 705, 726 (2011) ("A person's post-crime behavior often is considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind." (cleaned up)). The jail call was cumulative of other evidence of consciousness of guilt properly admitted at trial. This included: Mr. Gayle's flight from the scene; evidence that Mr. Madden told Mr. Gayle in a different call that he asked others to burn the Hyundai and destroy any evidence therein; Mr. Madden's retrieval of Mr. Bradley's gun; and the remaining jail call where Mr. Gayle and Mr. Madden discussed the number of times Mr. Bradley was shot and that "we both ain't miss." Further evidence of flight also included that, after being shot, Mr. Gayle did not want to go to the hospital but sought treatment at Ms. Smith's home. We further note that the jury was instructed on flight from the scene.

the detective testified without objection that Mr. Gayle was one of the voices on the phone call, there was no evidence that the detective was familiar with his voice or otherwise had personal knowledge of that conversation. Again, had this issue not been waived, we might have been persuaded by Mr. Gayle's argument, stated in his brief, that the detective's testimony as to the content of the call was "nothing more than a subjective 'conclusion,' that the 'jury [was] capable of making on its own[.]" *Cf., United States v. Bard*, 73 F.4th 464, 478 (7th Cir. 2023) (concluding that a detective's lay opinion testimony interpreting conversations in recorded phone calls was based on adequate foundation); *State v. Lowery*, 860 S.E.2d 332, 340 (N.C. Ct. App. 2021) (concluding that detective's testimony identifying defendant in an incriminating phone call made from county jail was admissible lay opinion given the detective's familiarity with the phone system and the voices involved).

And again, the evidence against Mr. Gayle was strong. The jury heard testimony that Mr. Gayle and others planned to rob a person of marijuana, with two individuals approaching on foot while three others waited in a blue Hyundai. When the victim arrived armed, Mr. Gayle was directly involved in the ensuing shooting, which was captured on surveillance video. DNA evidence also placed Mr. Gayle in the back seat of the getaway vehicle after the shooting. We are persuaded that, even if preserved, any error in admitting the jail call in question was harmless beyond a reasonable doubt.

JUDGMENTS AFFIRMED. COSTS TO BE ASSESSED TO APPELLANT.