Circuit Court for Baltimore County
Case Nos. 03-K-17-003444, 03-K-17-003445

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 831
September Term, 2018

DERRICK RAMONT SIMMONS
v.
STATE OF MARYLAND

No. 1028
September Term, 2018

TERICA ANTOINETTE EVANS
v.
STATE OF MARYLAND

Friedman,
Wells,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Friedman, J.

Filed: December 10, 2020

Appellants, Derrick Simmons and Terica Evans, were tried together for the shooting deaths of Angel Crespo and Edgardo Estremera at the Motel 6 in the Woodlawn area of Baltimore County. Following a six-day jury trial, Simmons and Evans were each convicted of two counts of first-degree murder, one count of robbery with a deadly weapon, two counts of using a handgun in the commission of a crime of violence, and one count of illegal possession of a regulated firearm. Simmons and Evans each received consecutive life sentences for the murders of Crespo and Estremera, and additional concurrent sentences for the remaining counts. For the reasons that follow, we affirm their convictions.

FACTS

When Edgardo Estremera moved to Maryland from Puerto Rico in June 2017, his friend Angel Crespo helped him find a job working as an auto mechanic. Until Estremera found a place to live, he was staying in motel rooms, and around 9 p.m. on Friday, June 16th, Estremera and Crespo checked into the Motel 6 in Woodlawn. Throughout the evening and into the night, Crespo was in contact with Simmons and Evans, attempting to arrange a drug transaction. Shortly before 1:30 a.m., Simmons and Evans arrived at the Motel 6. Around that time, the guest in the room next door reported hearing loud noises, like gunshots. Although she called the front desk, no one acted on her report. Early the next afternoon when Estremera and Crespo failed to check out on time, housekeeping unlocked the door to their room and immediately called the police. Estremera's body was visible from the doorway, and Crespo was found in between the beds. Both men had suffered several gunshot wounds and were pronounced dead at the scene.

After Crespo and Estremera were identified, police obtained Crespo's phone records and noticed that he'd been in contact with one particular number, (443) 553-[----], throughout the evening prior to his death, and that it had been the last contact with Crespo's phone before all activity abruptly ended. Although Crespo's phone records showed the existence of the calls and text messages, his service provider did not retain the content of text messages. Police obtained a warrant to seize the records of the other phone number, from a different cellular carrier, which did contain the content of the text messages:

05:15 p.m.	Crespo:	Mami I have bars white for sell
05:17 p.m.	(443) 553-[----]:	I get off at 7 B round at 730
05:18 p.m.	Crespo:	ok let me know I have bars white for sell and I want perks
05:19 p.m.	(443) 553-[----]:	grey 20 I got 5 how many u want
05:20 p.m.	Crespo:	20mlg op??
05:20 p.m.	(443) 553-[----]:	no op
05:21 p.m.	Crespo:	cool
	* * *	
11:42 p.m.	Crespo:	and $20 dollars in weed for my girl
11:44 p.m.	Crespo:	she paid you cash
11:46 p.m.	Crespo:	you come right????
11:48 p.m.	Crespo:	Mami
11:48 p.m.	(443) 553-[----]:	Si
11:49 p.m.	Crespo:	cool and $20 dollars in smoke please for my girl

12:06 a.m.	(443) 553-[----]:	o[n] m[y] w[ay] 15 mins
12:06 a.m.	Crespo:	cool
12:07 a.m.	Crespo:	text me in front parking
12:07 a.m.	(443) 553-[----]:	[o]k
12:07 a.m.	Crespo:	ok
	* * *	
12:33 a.m.	Crespo:	w[here] y[ou] a[t]??? you come or no??
12:38 a.m.	(443) 553-[----]:	yes 15
12:38 a.m.	Crespo:	15 what??
12:44 a.m.	(443) 553-[----]:	mins
12:45 a.m.	Crespo:	ok
	* * *	
01:22 a.m.	(443) 553-[----]:	pul[li]n[g] up

Because Simmons and Evans had already been under surveillance in an unrelated matter, police were able to connect the 553-phone number to Simmons. Police were also already familiar with the vehicle that Simmons and Evans were often seen driving, a distinctive gold Mercury Grand Marquis with three missing hubcaps. Police surveillance cameras located near the Motel 6 captured video of the Grand Marquis traveling in the direction of the Motel 6 shortly after 1 a.m., and traveling away from the Motel 6 shortly after 1:30 a.m., right around the time that Crespo's phone activity abruptly ended and the occupant of the neighboring room heard gunshots.

Police obtained arrest warrants for both Simmons and Evans on charges of first-degree murder. On the morning of June 21, 2017, police waited near where the Grand

Marquis was parked outside Simmons' residence. As Simmons and Evans approached the car around 6 a.m., police pulled up behind where it was parked and announced themselves. Simmons and Evans immediately fled.

Simmons ran through a nearby apartment complex, jumped a fence, and ran into an intersection where he was cut-off by a police car. Although he collided with the car, he kept running for a short distance before eventually surrendering. When he was apprehended, Simmons was in possession of the keys to the Grand Marquis and a cellphone with the number (410) 553-[----].

Evans, who had fled in the opposite direction, was pursued down a tree line and eventually onto a grassy embankment. As she was running, she pulled out a gun. Evans then began to stumble. She slipped and fell, dropping several items that she had been carrying, including the gun, which was thrown into a nearby storm drain. Evans was then apprehended by police. She was in possession of a pocketknife, two cellphones, a pill bottle containing oxycodone, a small bag that contained marijuana, and a smaller bag containing cocaine. The gun was later recovered from the storm drain.

From the Grand Marquis, police recovered a backpack on the floor by the front passenger seat that contained baggies of ammunition, a sock containing more ammunition, and an old report card bearing the name "Derrick R. Simmons." In the pocket on the back of one of the front seats, police recovered a notebook containing a variety of papers bearing Terica Evans' name. In addition, a bag of marijuana was found in the glove compartment.

Following the arrests, police searched both Simmons' and Evans' residences. From Simmons' bedroom, police recovered a learner's permit and other paperwork bearing

Simmons' name, several cellphones, and a firearm. At Evans' residence, police recovered the title to the Grand Marquis.

A police firearm and toolmark expert examined both firearms that were recovered during the investigation. The gun recovered from the storm drain that had been in Evans' possession was a .32 caliber Smith & Wesson revolver. The gun recovered from Simmons' bedroom was a .32 caliber semiautomatic pistol. Also during the investigation, bullets and bullet fragments were recovered from the autopsies of Crespo and Estremera, and some shell casings were recovered from the motel room. At trial, the expert testified that four fired shell casings and a live round recovered from the motel room, and the bullets recovered from Estremera's body during his autopsy, had all been fired by the semiautomatic pistol recovered from Simmons' bedroom. The expert further testified that a bullet recovered from Crespo's head during his autopsy had been fired by the revolver that was dropped by Evans and later recovered from the storm drain. Additional bullet fragments recovered from Crespo's body and the motel room could not be conclusively identified as having been fired by the revolver due to their condition, but the police expert testified that the revolver could not be eliminated as having fired them.

DISCUSSION

Altogether we will address six issues: First, Simmons and Evans both challenge that (1) the trial court erred in denying their motions to suppress evidence that was discovered as a result of an insufficient search warrant, and that (2) the trial court erred in denying their motions to sever. Next, Simmons individually challenges that (3) the trial court erred in refusing to give the jury an instruction regarding the absence of evidence that he had

been incarcerated prior to trial, and that (4) the trial court erred in prohibiting re-cross examination. Then Evans individually challenges that (5) her trial counsel was ineffective for failing to object to voir dire questions that improperly shifted the burden for determining individual bias to the jurors themselves.[1] And finally, (6) both Simmons and Evans separately challenge that the evidence was insufficient to sustain their convictions.

I. MOTION TO SUPPRESS

First, both Simmons and Evans challenge that the trial court erred in denying their motions to suppress all of the direct and derivative evidence discovered as a result of the warrant issued for Simmons' cellphone records. In a pre-trial hearing, Simmons and Evans argued that the warrant was invalid, *first*, because the issuing judge did not have a substantial basis for finding probable cause, and *second*, because the warrant failed to meet the particularity requirements. No witnesses were presented at the suppression hearing. The suppression court denied Simmons' and Evans' motions, finding that there was probable cause to support the issuance of the warrant and that it had the necessary specificity as to the place to be searched and the things to be seized. On appeal, Simmons and Evans raise these same issues, and we reach the same conclusions as did the suppression court.

Both the federal and state constitutions protect against unreasonable searches and seizures.[2] *State v. Faulkner*, 190 Md. App. 37, 47 (2010) (citing *Illinois v. Gates*, 462 U.S.

[1] In her brief, Evans raised an additional issue about failure to poll the jury, which she voluntarily dismissed after discovering that there was no error in the trial proceedings but, rather, in the transcript.

[2] Although Simmons cites to Article 26 of the Maryland Declaration of Rights, he does not present any argument that he is entitled to different or broader protection under

213, 236 (1983)). The law developed under these provisions has a strong preference for searches conducted pursuant to a warrant. *Id.* Thus, when evidence has been recovered in a search authorized by a warrant, a reviewing court—whether it is a "[trial] court ruling on a motion to suppress, or an appellate court reviewing the suppression decision on appeal"—evaluates the issuing judge's decision under a highly deferential standard. *Faulkner*, 190 Md. App. at 46-47; *State v. Amerman*, 84 Md. App. 461, 471-72 (1990). Under circumstances where reasonable minds might differ, a reviewing court defers to the issuing judge's determination. *Moats v. State*, 455 Md. 682, 699-700 (2017) (citing *United States v. Ventresca*, 380 U.S. 102, 108-09 (1965)).

For purposes of a search warrant, "probable cause" is not a technical legal term. *Patterson v. State*, 401 Md. 76, 91-92 (2007). Rather, it is intended to represent a "practical common-sense decision whether, given all the circumstances set forth in the affidavit … there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238; *Patterson*, 401 Md. at 91-92. Moreover, the role of a reviewing court is not to determine whether it would have found probable cause under the same circumstances, but whether the issuing judge had a "substantial basis" for finding probable cause to issue the warrant. *Carroll v. State*, 240 Md. App. 629, 649 (2019); *Faulkner*, 190 Md. App. at 47. A substantial basis is "something less than finding the existence of probable cause," and the application of this standard acknowledges that affidavits in support of search warrants "are normally drafted by nonlawyers in the midst

the state constitution than under the federal constitution. We therefore address his claims only in the context of the Fourth Amendment.

and haste of a criminal investigation." *Faulkner*, 190 Md. App. at 47 (quoting *State v. Coley*, 145 Md. App. 502, 521 (2002)); *see also Ventresca*, 380 U.S. at 108.

A. Probable Cause

Simmons and Evans challenge that the affidavit did not establish a substantial basis for the issuing judge to have found probable cause to issue the warrant. In relevant part, the supporting affidavit provides:

> The deceased subjects have been identified as Angel Luis Mendez Crespo M/H 5/22/90 and Edgardo Castro Estremera M/H 06/25/86. On 06/18/17, an autopsy was conducted on both subjects and the following was determined for both:
>
> Cause of Death: Multiple Gunshot Wounds
>
> Manner of Death: Homicide
>
> During the investigation it was learned that Angel Mendez Crespo's phone number was 443-818-[----] (AT&T). Investigators received call detail records/subscriber information pursuant to a court order for 443-818-[----]. After examining the records it was determined that victim Angel Mendez Crespo had a text message conversation (incoming and outgoing) with 410-553-[----] from 06/16/17 at 1:42 P.M. to 06/17/17 at 1:22 A.M. that included 18 messages. This text message conversation includes the last outgoing text message sent from victim Angel Mendez Crespo's cellular phone before the murder. The phone number 410-553-[----] is a Verizon Wireless phone number and they retain text message content detail for several days. A preservation request was submitted to Verizon Wireless to preserve the text message content for the phone number 410-553-[----].
>
> Investigators are requesting this search and seizure warrant to obtain the content of the text messages to further this investigation.

At the suppression hearing and again on appeal, appellants specifically challenge that the affidavit failed to provide sufficient information about the unnamed source of

Angel Crespo's phone number, and that without evidence establishing the veracity and reliability of the source of the information, there was no substantial basis for the issuing judge to have determined that the phone number belonged to Angel Crespo.

Whether information provided by an unnamed source or informant can support a finding of probable cause "depends on a practical, nontechnical 'totality of the circumstances' approach." *Birchead v. State*, 317 Md. 691, 701 (1989) (citing *Gates*, 462 U.S. at 233). While an informant's veracity and basis of knowledge are part of that totality, they are not indispensable determinative factors. *Birchead*, 317 Md. at 701-02 (citing *Potts v. State*, 300 Md. 567, 581-82 (1984) (rejecting the stringent 2-pronged *Aguilar-Spinelli* test)). Information from an unnamed source can be validated by other "indicia of reliability," such as the corroboration of details by independent police investigation. *Birchead*, 317 Md. at 702.

Here, although the affidavit does not identify the initial source of Angel Crespo's phone number during the investigation, the affidavit does state that the information was verified by the subscriber information provided by the cellphone carrier. We are persuaded that this independent corroboration is sufficient to support the issuing judge's finding of probable cause.

B. Particularity

Next, Simmons and Evans challenge that the search warrant failed to meet the particularity requirements for two reasons: *first*, because the "and etc." language used in the description of the evidence to be seized made the warrant overly broad, and *second*,

because the warrant failed to state the crime that was being investigated. We address each claim in turn.

Appellants' first argument is based on their interpretation of the description of the items to be seized. The warrant application and affidavit stated that it sought to recover "All incoming and outgoing text messages with content (SMS, MMS, and etc.)" over a 6-day period. Appellants argue that the phrase "and etc." could be interpreted to apply to any information stored in Simmons' cell phone records, thereby making the warrant an overly intrusive and impermissible "general warrant." We disagree.

The suppression court concluded that the "and etc." modified only the type of text messages to be seized—"(SMS, MMS, and etc.)"—but did not expand the search to any other content or information. We agree. Because the "and etc." is on the inside of the parenthesis, it applies only to the other content within the parenthesis. Thus, while it broadens the type of text message files that may be seized, it does not broaden the scope of the warrant to other content beyond text messages. The warrant therefore identifies the "items" to be seized with sufficient particularity.

Next, Appellants argue that the warrant fails to identify the crime being investigated. They point out that, when viewed in isolation, the warrant itself only states:

> An application and affidavit were made and delivered to me by Detective Needham #4271, a sworn member of the Baltimore County Police Department, who has reason to believe that:
>
> IN THE BUSINESS RECORDS OF THE CELLULAR TELEPHONE COMPANY KNOWN AS:
>
> Cellco Partnership, D.B.A. Verizon Wireless

> Law Enforcement Resource Team
> 180 Washington Valley Road
> Bedminster, New Jersey 07921
>
> CUSTOMER ACCOUNT DESCRIBED AS FOLLOWS:
>
> Cellular Telephone Number- 410-553-[----]
>
> There is presently concealed certain property, NAMELY:
>
> 1. All incoming and outgoing text messages with content (SMS, MMS, and etc.)
>
> Which is evidence relating to the commission of the crime of **(crime type)**, in violation of Maryland Code Annotated Code, **(Article number)** Article **(section)**, and I am satisfied that there is probable cause to believe that the property is described is in the location above described and that probable cause for issuance of the Search and Seizure Warrant exists, as stated on the Application and Affidavit attached to this warrant.

(Emphasis added). Appellants' argument rises and falls on their assertion that the warrant must be read in isolation, without reference to the application and affidavit. Contrary to the appellants' position, however, a reviewing court "may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant." *Groh v. Ramirez*, 540 U.S. 551, 557-58 (2004); *see also Wood v. State*, 196 Md. App. 146, 166 (2010) (holding that it was "permissible to look to the affidavit as well as the warrant since the affidavit is part of the warrant and incorporated by reference therein").

Here, the warrant specifically referenced and incorporated the application and affidavit. The warrant, along with the application and affidavit, are contained in a single 5-page document, and there is no indication in the record that the warrant was at any point

separate from the application and affidavit.[3] Although we share the opinion of the suppression court that the failure to fill in all of the blanks made for a sloppy draft, we are also "mindful that we must assess affidavits for search warrants in a commonsense and realistic fashion, keeping in mind that they are normally drafted by nonlawyers in the midst and haste of a criminal investigation." *Faulkner*, 190 Md. App. at 47 (internal quotation omitted). In contrast to the warrant itself, the application stated:

> To the Honorable Judge of the Circuit Court for Baltimore County, your affiant, Detective C. Needham #4271, a sworn member of the Baltimore County Police Department, states that he has reason to believe that:
>
> IN THE BUSINESS RECORDS OF THE CELLULAR TELEPHONE COMPANY KNOWN AS:
>
> Cellco Partnership, D.B.A. Verizon Wireless
> Law Enforcement Resource Team
> 180 Washington Valley Road
> Bedminster, New Jersey 07921
>
> CUSTOMER ACCOUNT DESCRIBED AS FOLLOWS:
>
> Cellular Telephone Number- 410-553-[----]
>
> There is presently concealed certain property, NAMELY:
>
> 1. All incoming and outgoing text messages with content (SMS, MMS, and etc.) which is evidence relating to the

[3] At trial and again on appeal, Simmons and Evans argue that under *Groh v. Ramirez*, 540 U.S. 551 (2004), the application and affidavit cannot be considered in conjunction with the warrant because they were "under seal." Their argument is based on a notation in the warrant that states: "It is Ordered that the service provider NOT disclose the existence of this request from the date of this request." Their reliance on *Groh* is inapposite, however. In *Groh*, the affidavit and application were placed under seal in such a way that they did not accompany the warrant when it was served. *Id*. at 557-58. Thus, in a practical way, the documents were not available for review in conjunction with the warrant. Here, although Simmons was not made aware of the seizure of the phone records at the time it occurred, there is no indication that the application and affidavit were ever separated from the warrant and unavailable for review by anyone reviewing the warrant.

> commission of a crime of **Murder**, in violation of **Maryland Annotated Code, Article CR 2-201**. The facts tending to establish grounds for the issuance of a Search and Seizure Warrant are set forth below in the Affidavit.

(Emphasis added). Thus, while the warrant itself did not identify the crime being investigated, the application accompanying it clearly identified the crime as murder. Moreover, the affidavit attached to the application stated that the cause of death of the deceased subjects was "Multiple Gunshot Wounds" and that the manner of death was "Homicide." Because the warrant can be viewed in conjunction with the application and affidavit, the application and affidavit can "supply the missing gap in [the] warrant." *Couser v. State*, 36 Md. App. 485, 494 (1977). Viewing all three documents together—the warrant, the application, and the affidavit—the crime is sufficiently identified to meet the particularity requirement.

We conclude that the suppression court did not err in denying Simmons' and Evans' motions to suppress.

II. MOTIONS TO SEVER

Next, Simmons and Evans both challenge that the trial court abused its discretion in denying their repeated motions for severance. They argue that severance was necessary because, *first*, they each relied on an antagonistic defense strategy that was prejudicial to the other, and *second*, they were each prejudiced by evidence that was only admissible against the other. We are not persuaded.

Under Maryland Rule 4-253, two or more defendants can be tried together "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[,]" MD. RULE 4-253(a), and "most of the evidence admissible at trial is mutually admissible." *State v. Zadeh*, 468 Md. 124, 147 (2020) (quoting *State v. Hines*, 450 Md. 352, 355 (2016)). But "if it appears that any party will be prejudiced by the joinder for trial … the court may, on its own initiative or on motion of any party, order separate trials … or grant any other relief as justice requires." MD. RULE 4-253(c). Whether to grant or deny a motion to sever is a decision within the sound discretion of the trial court, and we review a trial court's ruling only for an abuse of that discretion. *Zadeh*, 468 Md. at 147; *Hines*, 450 Md. at 366.

The primary concern in determining whether to grant a criminal defendant's motion for a separate trial is to "safeguard against potential prejudice." *Hines*, 450 Md. at 369 (quoting *Frazier v. State*, 318 Md. 597, 607 (1990)). In the context of severance, however, "[p]rejudice [is] a term of art [that] means damage from inadmissible evidence, not damage from admissible evidence." *Eiland v. State*, 92 Md. App. 56, 72 (1992), *rev'd on other grounds sub nom., Tyler v. State*, 330 Md. 261 (1993) (quoting *Sye v. State*, 55 Md. App. 356, 362 (1983)). Thus, to determine if severance is necessary, the trial court must first consider if evidence will be introduced at trial that is only admissible as to one defendant. *Zadeh*, 468 Md. at 145; *Hines*, 450 Md. at 369. If such evidence will be introduced, the trial court must next determine whether its admission "will cause unfair prejudice to the defendant who is requesting a severance." *Hines*, 450 Md. at 369. If so, the trial court has broad discretion to decide whether to grant the motion for severance, or "other relief as justice requires," to avoid unfair prejudice. MD. RULE 4-253(c); *Zadeh*, 468 Md. at 145; *Hines*, 450 Md. at 369-70. In cases "where a limiting instruction or other relief is

inadequate to cure the prejudice, the denial of severance is an abuse of discretion." *Zadeh*, 468 Md. at 148 (finding an abuse of discretion to deny severance where the sheer number of limiting instructions would make it impossible for a jury to sort through what evidence was admissible against which defendant); *Hines*, 450 Md. at 385-86 (finding an abuse of discretion to deny severance where the non-mutually admissible statement implicated the defendant in such an obvious manner that "it would have been practically impossible for the jurors to dismiss [the statement] from their minds" and follow a limiting instruction).

Contrary to Simmons' and Evans' assertions, the presentation of mutually antagonistic defenses does not require or favor severance.[4] "The mere fact that a joint trial may place a defendant in an uncomfortable or difficult tactical situation does not compel a severance." *Eiland*, 92 Md. App. at 76. Codefendants may present "mutually hostile jury arguments, [make] mutually hostile insinuations, and [take] mutually hostile tones on cross-examination," but so long as the evidence against them both is mutually admissible, severance is not required. *Id*. at 75. It is only an abuse of discretion to deny severance where

[4] Simmons and Evans both erroneously rely on *Erman v. State* for the proposition that mutually hostile defenses, when combined with prejudicial evidence, can be a valid basis to require severance. 49 Md. App. 605, 616 (1981). In *Erman*, although this Court acknowledged that "hostile positions appear to have existed" between Erman and his codefendant, the holding that severance was necessary was based solely on the admission of prejudicial evidence. *Id*. at 616. Specifically, this Court held that the number of curative instructions given by the trial court diminished the effectiveness of each to the point that the cumulative effect actually denied Erman a fair trial. *Id*. at 615-16. As this Court has pointed out before, identifying the existence of mutually hostile defenses "in the context of mutually inadmissible and damaging evidence" does "not articulate some new and different test but simply [describes] long settled Maryland law." *Eiland*, 92 Md. App. at 75.

a defendant would be incurably prejudiced by evidence that was only admissible against a codefendant. *Id*. at 73-74.

Thus, for severance to have been required, either Simmons or Evans needed to identify evidence that (1) was not mutually admissible and (2) would cause unfair prejudice that (3) could not be cured by any means other than a severance. *Zadeh*, 468 Md. at 145; *Hines*, 450 Md. at 369. But while both Simmons and Evans complain that they were prejudiced by evidence that should have only been considered against the other, they fail to identify any evidence that was actually admissible only against one of them.[5] Indeed, no instructions were issued or even requested to limit the jury's consideration of evidence against one defendant but not the other. Because all the evidence admitted at trial was admissible against both co-defendants, there were no grounds for a severance to be granted.

[5] Specifically, Simmons argues that the evidence that Evans had pulled out a gun as she was being pursued by police was relevant only to the charge of first-degree assault, which was brought against Evans alone. Simmons asserts that, because he was not charged with assault, evidence related to that crime would not have been admissible against him if he had been tried alone and was, therefore, unfairly prejudicial to him. We are not persuaded, and neither was the trial court. The gun that Evans pulled out was one of the two murder weapons, and the other was found in Simmons' bedroom. Simmons and Evans were both charged with first-degree murder for the deaths of Estremera and Crespo. While Evans' actions also served as the basis for the additional charge of first-degree assault (of which she was acquitted), the evidence was also relevant to the charges of murder and thus independently admissible against Simmons.

Evans argues that the historical cell site analysis and text messages to and from the 553-phone would not have been admissible against her if she had been tried separately because the phone belonged to Simmons, not her. Again, we are not persuaded. There was sufficient evidence to establish that Evans' had access to and used the 553-phone to make the evidence independently relevant, and therefore admissible, against her.

We therefore conclude that the trial court did not abuse its discretion in denying Simmons' and Evans' repeated motions.

III. JURY INSTRUCTION ON EVIDENCE OF INCARCERATION

Next, Simmons individually challenges that the trial court erred in refusing to give the jury an instruction that they had heard no evidence that he had been incarcerated prior to trial.

During Evans' case-in-chief, her alibi witness was questioned about having visited Evans in jail numerous times prior to trial. As a result of that questioning, the trial judge gave the jury a curative instruction:

> You have heard testimony that one of the Defendants may have been in jail prior to trial. You are instructed that the fact that the Defendant may have been in jail prior to trial must not be held against that person, and must not be considered by you in any way or even discussed by you.

During discussion of the curative instruction, it was undisputed that the evidence of incarceration had referred only to Evans and that a curative instruction was warranted. Counsel for Simmons and Evans disagreed, however, on how the instruction should be worded. Simmons' attorney requested that the instruction refer to Evans by name, while Evans' attorney requested that the instruction not include her name so as to not further highlight her incarceration. The trial court granted Evans' request, on the grounds that the evidence had pertained to her. In response, Simmons requested that the jury be given an additional instruction: "you have not heard any testimony that Mr. Simmons was incarcerated at all during the course of this trial." The trial court denied this request.

On appeal, Simmons challenges that the trial court erred in denying his requested instruction because it was properly generated by the evidence and necessary to prevent the jury from mistakenly thinking that it was he, rather than Evans, who had been incarcerated prior to trial. The State responds that the subject of the requested instruction was fairly covered by other instructions.

We review a trial court's decision to give or refuse a requested jury instruction under an abuse of discretion standard. *Hall v. State*, 437 Md. 534, 539 (2014); *Appraicio v. State*, 431 Md. 42, 51 (2013); *Nicholson v. State*, 239 Md. App. 228, 239 (2018). To determine if the trial court has abused its discretion, we review the jury instructions as a whole to evaluate whether they "sufficiently protect the defendant's rights and adequately covered the theory of the defense." *Carroll v. State*, 428 Md. 679, 689 (2012) (quoting *Fleming v. State*, 373 Md. 426, 433 (2003)). We will only disturb the trial court's ruling if there is a clear showing that the trial court's exercise of discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Appraicio*, 431 Md. at 51 (quoting *Atkins v. State*, 421 Md. 434, 447 (2011)).

Maryland Rule 4-325(c) provides that "at the request of any party [the court] shall … instruct the jury as to the applicable law and the extent to which the instructions are binding." MD. RULE 4-325(c). When a party requests a jury instruction, the trial court must give it if the instruction (1) correctly states the law, (2) is applicable to the facts and circumstances of the case, and (3) is not repetitive of other instructions already being given. *Preston v. State*, 444 Md. 67, 81-82 (2015); *Holt v. State*, 236 Md. App. 604, 620 (2018).

While Rule 4-325(c) requires the trial court to give requested instructions on the applicable law, the same requirement does not apply to instructions on facts or inferences. *Atkins*, 421 Md. at 445 (quoting *Patterson*, 356 Md. at 684); *Wagner v. State*, 213 Md. App. 419, 473 (2013). Although a trial court *may* instruct a jury on the presence or absence of an evidentiary inference, such an instruction is not required even when it would be supported by the facts of the case. *Wagner*, 213 Md. App. at 473-74 (quoting *Patterson*, 356 Md. at 694). Whether such an instruction would provide necessary guidance to the jury or risk being an improper comment on the weight of the evidence is a question left to the sound discretion of the trial court. *Atkins*, 421 Md. at 443-47; *see also Jarrett v. State*, 220 Md. App. 571, 592 (2014) ("Although a trial court is required to instruct the jury on the applicable law in a case, a trial court is not generally required to instruct the jury as to facts and inferences") (citing *Patterson*, 356 Md. at 680)).

The trial court recognized that unfair prejudice could result if the jury were to improperly infer that Evans' pretrial incarceration meant she was more likely to be guilty of the crimes charged. *See Smith v. State*, 218 Md. App. 689, 705 (2014) ("Evidence is prejudicial when it tends to have some adverse effect beyond tending to prove the fact or issue that justified its admission." (quoting *Hannah v. State*, 420 Md. 339, 347 (2011) (cleaned up)). The trial court determined, therefore, that a curative instruction was appropriate. Simmons' requested instruction, however, was merely a comment on the evidence that the jury had heard and risked "invading the province of the jury." It was within the trial court's discretion to deny Simmons' requested instruction.

IV. RE-CROSS EXAMINATION

Simmons next individually challenges that the trial court abused its discretion by issuing a blanket prohibition on any re-cross examinations prior to the start of trial.

During a pre-trial motions hearing, the trial court instructed the parties that it was his understanding that, under Rule 5-611, "the basic rule is there is no rule [permitting] re-cross, and the basic rule is that anything new on redirect is subject to an objection." The trial court admonished the parties that it was going "to count on everybody to try to stick to that rule" to "keep [the] case moving." Simmons argues that the trial court's statement amounted to a bright-line rule prohibiting re-cross examination and was an abuse of discretion because the court abdicated its decision-making authority. We are not persuaded.

Trial courts have broad discretion over the conduct of trial proceedings and the presentation of evidence. *Thurman v. State*, 21 Md. App. 455, 470 (2013). Maryland Rule 5-611 provides that the trial court "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence." MD. RULE 5-611(a). While the Maryland Rules specifically note that "cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness," MD. RULE 5-611(b)(1), they are silent as to the right to redirect or re-cross examinations. Indeed, this Court has previously noted that there is "a dearth of Maryland case law discussing the right of redirect and re-cross examinations." *Thurman*, 211 Md. App. at 469-70. As such, a trial court has broad discretion in controlling the presentation of such evidence.

But even broad discretion can be subject to abuse, and the refusal to exercise discretion can itself be an abuse of discretion. *Atkins*, 421 Md. at 447. In particular, it would

be an improper exercise of discretion for a trial court to "adopt a predetermined policy that permits redirect examination but never allows follow up questions to be asked on re-cross. Because of the great variation in circumstances that can arise during trials, it is not appropriate for a trial judge to determine before ever hearing the redirect examination that no re-cross examination will be permitted." *Thurman*, 211 Md. App. at 470-71.

We are not persuaded that the trial court's statement was intended to or did in fact act as a blanket ruling on future requests for re-cross examination. Rather, we interpret it as a warning to make sure all relevant topics were covered during cross examination (and objected to during re-direct) so as to obviate the potential need for re-cross. While Simmons points out that there were no re-cross examinations conducted throughout the entirety of the trial, he does not point to any requests for re-cross examination that were denied. *See Muhammad v. State*, 177 Md. App. 188, 321-22 (2007) (noting that for there to be reversible error there must first be some objectionable error for us to review). To the contrary, the record shows that the trial court offered Evans' counsel the opportunity to conduct a limited re-cross examination if desired, which Evans' counsel declined. By exercising its discretion according to the circumstances at hand, the trial court demonstrated that it had not, in fact, abdicated that discretion by implementing a bright-line rule prohibiting re-cross examinations. The trial court therefore did not abuse its discretion.

V. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, Evans argues that she received ineffective assistance of trial counsel because during voir dire, her counsel failed to object that the trial court asked a "strong feelings"

question in an improper compound format, and as a result, counsel failed to preserve the issue for direct appeal. Evans asserts that because a "strong feelings" question in a compound form results in structural error that would have entitled her to a new trial on direct appeal, failure to preserve the issue for appeal constitutes ineffective assistance of counsel that entitles her to a new trial.

Typically, claims of ineffective assistance of counsel are "more appropriately addressed in a post-conviction proceeding." *Martin v. State*, 218 Md. App. 1, 23-24 (2014) (citing *Mosley v. State*, 378 Md. 548, 558-62 (2003)). On direct appeal, the record is often insufficient to allow any reasonable evaluation of the intent behind counsel's actions. *Harris v. State*, 295 Md. 329, 337-38 (1983) (*Johnson v. State*, 292 Md. 405, 434-35 (1982)). In contrast, during a post-conviction proceeding, a petitioner has the ability to conduct discovery, depose witness, and otherwise develop a record for the court to evaluate. *Mosley*, 378 Md. at 558-59. Here, the record is silent as to who requested the "strong feelings" question and in what form. Any assessment we might make would be based on no more than speculation. We, therefore, decline to address Evans' allegation of ineffective assistance of counsel so as to leave open the option of pursuing the matter in post-conviction should she choose to do so.

VI. SUFFICIENCY OF THE EVIDENCE

Finally, Simmons and Evans each independently challenge that the evidence was insufficient to sustain their convictions.

To address a challenge to the sufficiency of the evidence supporting a conviction, an appellate court asks whether "after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Roes v. State*, 236 Md. App. 569, 582 (2018) (cleaned up). In doing so, we give significant deference to the fact finder's ability to observe the witnesses and assess their credibility, to draw reasonable inferences, and to resolve conflicts in the evidence. *Brice v. State*, 225 Md. App. 666, 692-93 (2015) (quoting *Moye v. State*, 369 Md. 2, 12-13 (2002)). "A conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence." *Hall v. State*, 225 Md. App. 72, 80 (2015) (cleaned up). We do not reweigh the evidence or consider whether we would have been persuaded that guilt was established beyond a reasonable doubt. *Roes*, 236 Md. App. at 583; *Hall*, 225 Md. App. at 80. Our only concern is to determine whether the State met its burden of production and produced enough evidence to legally sustain a guilty verdict. *Roes*, 236 Md. App. at 583.[6]

Having reviewed the record, we are persuaded that there was ample evidence for the jury to conclude that Simmons and Evans shot and killed Crespo and Estremera and robbed them of their belongings before leaving the motel room. Three significant pieces of evidence connect Simmons and Evans to the murders of Crespo and Estremera: cell phone

[6] At trial and again on appeal, Simmons and Evans assert that the evidence against them was entirely circumstantial, and thus for their convictions to stand, the State had to refute any reasonable hypothesis of innocence. This principle, however, has been repeatedly rejected by Maryland courts. *See Ross v. State*, 232 Md. App. 72, 94-101 (2017) (citing cases). Our law makes no distinction between direct and circumstantial evidence. *Id*. at 94 (citing *Nichols v. State*, 5 Md. App. 340, 350 (1968)). If more than one inference can be argued from the evidence presented, it is the role of the jury to evaluate those inferences against the weight of the evidence and determine what conclusions, if any, should be drawn. *Ross*, 232 Md. App. at 98 (citing *Smith v. State*, 415 Md. 174, 183 (2010)).

records; the gold Mercury Grand Marquis; and the guns that were recovered from Simmons and Evans. We address all three.

A. Cell Phone Records

Crespo's cell phone records show calls and text messages between his phone and the 553-phone going back through at least June 9, 2017. On the afternoon that Crespo and Estremera checked into the Motel 6, communication began around 5:15 p.m. with numerous text messages back and forth, and at least one phone call. The exchange of text messages rolled over into the next day, June 17th. The last text message sent by Crespo's phone was to the 553-phone at 1:22 a.m., and the last text message received by Crespo's phone was from the 553-phone at 1:26 a.m.

Although the 553-phone primarily belonged to Simmons and was in his possession when he was arrested, the text message history on the phone included content that was specific to both Simmons and Evans, establishing that they both had access to and used the phone at various times. The records of the 553-phone included text messages to and from Simmons regarding his daughter, specific references to his nickname "Roach," and fathers' day greetings sent to him. There were also messages in which Evans identifies herself as the user of the phone, either by name—"Boy, this me, Terica"—or through slang—"This is shorty from the morn."[7]

[7] When the 553-phone was recovered from Simmons, the text message history to and from Crespo had been manually deleted. Crespo's phone number was, however, saved as a contact in at least two other phones recovered from Simmons and Evans.

In addition to the substance of the text messages placing Simmons and Evans at the Motel 6 at the time of the murders, historical cell site analysis of the records of the 553-phone tracked the phone to the area near the Motel 6 at the time of the murders, and then eventually back to Simmons' residence. And while Crespo's phone was never recovered, historical cell site analysis of his phone records showed that his phone was stationary in the area of the Motel 6 from 9 p.m. on June 16th through 1:26 a.m. on June 17th when the last message was received from the 553-phone. Crespo's phone then went silent, except for one last brief data connection that occurred at 4:15 a.m., and placed Crespo's phone away from the Motel 6 and in the area near Simmons' residence.

From this evidence, it would be reasonable for the jury have inferred that either Simmons or Evans, or possible both, were in contact with Crespo leading up to the murders. Both the content of the messages and the historical cell site analysis place the phone, and thus Simmons and Evans, at the Motel 6 at the time of the murders. Finally, the last brief data connection from Crespo's phone to a cell tower in the area of Simmons' residence supports the inference that Simmons was inside the motel room where Crespo and Estremera were murdered and took Crespo's phone with him when he left.[8]

[8] Video from the lobby of the Motel 6 showed that when Crespo and Estremera checked in, Crespo was holding his cellphone and wearing a long necklace, a wristwatch, and a bracelet. Estremera was shown wearing a wristwatch and holding a backpack and a cell phone. None of these items were recovered from the motel room. Estremera's passport, which he used to check in to the motel, was never found, nor were the keys to Crespo's car, a BMW that was parked outside the room. An ATM receipt recovered from Crespo's car showed that at 6:26 p.m. on June 16th, Crespo had withdrawn $250 from an ATM, but no cash was recovered from the room. Although none of the missing property was ever found, it was not unreasonable for the jury to infer that the people who murdered Crespo and Estremera also robbed them of their missing property. Moreover, the evidence that

B. The Grand Marquis

The gold Mercury Grand Marquis driven by Simmons and Evans had a distinctive look that made it easy to identify: it had two black rails running along the roof and was missing three hubcaps. While the car was registered to Evans, testimony throughout trial established that both Simmons and Evans used the car, and often when one was driving the other was a passenger. The car was often parked outside Simmons' residence, and indeed, that was where the car was found on the day Simmons and Evans were arrested. When the car was searched following Simmons' and Evans' arrest, items bearing Simmons' name were found, and items bearing Evans' name were found.

Two police surveillance cameras located in the area captured images of the Grand Marquis traveling both to and from the Motel 6 the night of the murders. The first camera recorded the Grand Marquis heading in the direction of the Motel 6 at approximately 1:13 a.m. Footage from the second camera shows the Grand Marquis traveling away from the Motel 6 at approximately 1:33 a.m. To further aid in identifying the car from the camera footage, after it had been seized, police drove the Grand Marquis in the same area after dark to compare the footage to see if it matched. It did.

This evidence supports the inference that Simmons and Evans arrived at the Motel 6 shortly before the murders and left shortly after.

Crespo's cellphone ended up in the area of Simmons' residence after the murders lends further support to the inference that it, and all of the other missing property, was taken by Simmons and Evans.

C. The Murder Weapons

The evidence established that two separate weapons were used to kill Crespo and Estremera. When Simmons and Evans were arrested, they were each in possession of a weapon that was forensically linked to the murders. The semiautomatic pistol that was recovered from Simmons' bedroom was identified as having fired the bullets that were recovered from Estremera's body. The revolver that Evans pulled out as she was being pursued by police was identified as having fired one of the bullets recovered from Crespo's body. Moreover, the headstamp on some of the ammunition found in the black backpack inside the Grand Marquis—"GFL765"—matched the headstamp on the fired shell casings recovered from the motel room.

This evidence supports the conclusion that Simmons and Evans were in possession of not only the weapons, but the ammunition, used to murder Estremera and Crespo.

D. Conclusion

Having reviewed the evidence in the record, we are persuaded that there was more than sufficient evidence to support the jury's verdicts.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE DIVIDED EVENLY BETWEEN APPELLANTS.