Circuit Court for Montgomery County
Case No.: 138324C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 969

September Term, 2023

REGINALD DUNLAP

v.

STATE OF MARYLAND

Zic,
Kehoe, S.,
McDonald, Robert N.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: April 8, 2025

* 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 Maryland Rule 1-104(a)(2)(B).

On March 10, 2023, following trial in the Circuit Court for Montgomery County, a jury found Reginald Dunlap, appellant, guilty of first-degree murder. On July 7, 2023, the court sentenced him to life imprisonment with all but fifty-five years suspended followed by five years' probation.

Thereafter appellant noted a direct appeal to this Court presenting the following questions for our review:

1. Did the trial court err in denying the motion to suppress the cell phone evidence?

2. Did the trial court err in admitting the testimony of Detective Zito, who was the reviewer of Detective Webster's forensic cell phone report, in violation of Mr. Dunlap's constitutional right of confrontation; and in admitting an opinion beyond Zito's expertise?

3. Did the trial court err in admitting Detective Galladora's testimony regarding "geofence" evidence?

4. Did the trial court err in admitting irrelevant evidence and/or impermissible character evidence?

5. Did the trial court err in admitting other unfairly prejudicial testimony from family attorney Katherine O'Rourke?

6. Did the trial court err in admitting hearsay and/or abuse its discretion in admitting unnecessarily cumulative evidence?

7. Did the trial court err in allowing improper rebuttal closing argument by the prosecutor?

BACKGROUND

In May of 2019, appellant and Lauren Charles got married. The couple lived in a home owned by Ms. Charles who was the primary breadwinner. Appellant's daughter sometimes stayed with them. Over time, their marriage deteriorated to the point that they slept in different bedrooms, and Ms. Charles had asked appellant to move out of the house

by the end of March 2021.

On March 7, 2021, appellant called 911 and reported that "I just got in from church and I think my wife is dead." At about 1:40 p.m., police and paramedics arrived at their home in Silver Spring and found appellant on the front steps with his head in his hands. They entered the home, smelled bleach, and found a bedroom on the main floor in major disarray. One paramedic said that it looked like "a tornado went through the room." Ms. Charles was lying face down on the floor and there was "dried blood all over the room." The remainder of the house was, according to a police officer, "very, very clean." There was no sign of forced entry into the home, and the doors on the back of the house were locked and deadbolted.

The police transported appellant to headquarters around 3:50 p.m. At the police station, after being advised of his rights, appellant gave a recorded statement, a portion of which the State introduced into evidence at trial. In that portion of the statement, appellant explained that he had awoken that morning around 8:00 a.m., watched television, eaten breakfast, and left for church arriving around 11:45 a.m. He said that he left church between 12:30 and 1:00 p.m. and went home. After arriving at home, he changed his clothes and went to the kitchen, looked for something to eat, and ate a cookie. He said that, after he had been home for about 30 minutes, he found it odd that his wife had not yet awoken, and he therefore went to check on her in her bedroom where he found her dead body. Appellant did not testify at trial.

Forensic services photographed and processed the scene. At trial, the State introduced into evidence hundreds of forensic exhibits in the form of crime scene

photographs, blood spatter evidence, and physical evidence including, among other things, an empty bleach bottle, a blood-stained Buddha statue, swabs of suspected blood for scientific testing, bed sheets, clothing, and personal electronics. In addition, photographs of BlueStar reactions to substances on the sink, shower curtain, bathtub, and floor of the bathroom adjacent to where the victim was murdered were admitted into evidence.[1]

The Medical Examiner, Richard Morris, M.D., testified that the victim suffered multiple blunt force injuries to her head, she had injuries to the back of her hands that were consistent with defensive wounds, and she had post-mortem chemical burns on her back that were consistent with being burned by bleach. In addition, she had a 28-inch by 18-inch pillowcase shoved in her mouth which was forced partially down her airway. He opined that victim's cause of death was asphyxia and multiple injuries, and manner of her death was homicide.

DNA samples were obtained from appellant, his daughter, and the victim. At trial, the State called Naomi Lobosco as an expert witness in the field of forensic biology and DNA testing and analysis and introduced her DNA report into evidence as State's Exhibit #286. She testified that comparisons were made between the DNA samples taken from appellant, his daughter, and the victim, and DNA recovered from a variety of items of evidence from the scene. Those comparisons revealed, among other things, that a swab from a blood stain on appellant's left hand contained a mixture of DNA that included the victim's DNA. In addition, DNA consistent with both appellant's and the victim's DNA

[1] BlueStar is a chemical which luminesces in blue when it comes in contact with, among other things, blood, bleach, and cleaning products.

was found on the sink handle in the bathroom adjacent to the victim's bedroom, and on the Buddha statue found under the victim's body. On cross-examination, the DNA expert agreed that it was not possible to tell when the DNA was placed on any of the objects.

Appellant's cell phones were later seized and searched. Expert witnesses testified regarding information received from cell phone service providers and regarding evidence obtained from appellant's cell phones and the victim's smart watch and cell phone, showing the operation and location of these devices during the time period between March 6 & 7, 2021.

Michael Fowler, a special agent from the FBI, was admitted as an expert in cellular network setup, cell phone operation, cellular phone protocols, cellular historical and real-time analysis, cell phone location services, and cell phone mapping. He received a request from the Montgomery County Police Department to conduct cellular record analysis for one of appellant's cell phone numbers. That number was on the Sprint network and associated with appellant's Samsung Galaxy Note 10 phone. His report was admitted as State's Exhibit #300. He testified that the cell site analysis he did started at around 10:00 p.m. on the night before the murder and concluded at 1:50 p.m. on March 7. He said that appellant's cell phone was connected to a cell phone site consistent with his phone being in the vicinity of the victim's home until 1:22 a.m. At that point, for approximately 10 hours, or from 1:22 a.m. until 11:15 a.m. the next day, his cell phone was not connected to the cellular network. At 11:15 a.m., appellant's cell phone re-connected to the network via a cell tower south of the victim's house, and the phone appeared to be moving farther south in the direction of appellant's church. On March 7, 2021, from 11:36 a.m. until 12:39 p.m.,

Appellant's cell phone was in an area consistent with the location of his church. The data showed that appellant's cell phone returned to the area of the victim's home at 1:18 p.m.

Detective Michael Zito from the Montgomery County Police Electronic Crimes Unit was admitted as an expert in digital forensics examination. His report showed that, on March 6, 2021, appellant's phone became disconnected from the wi-fi at the victim's home from 1:43 a.m. until 8:00 a.m. on the morning of March 7, 2021. The report indicated that the phone showed other system activity during that timeframe indicating that it was powered on during that time.[2]

Detective Zito also examined the victim's Apple smart watch. Photographs of the watch were shown to the jury which showed that the watch was heavily damaged or destroyed. Detective Zito testified that the watch appeared to have blood on it and that owing to the heavy damage, he was unable to perform a data extraction on it. He was able, however, to perform a full file system data extraction from the victim's cell phone after sending the phone to an outside vendor to bypass the phone's security. From that extraction, Detective Zito created several reports, including a report concerning the battery level of the cell phone which showed that the phone had 97% battery at 12:01 a.m. on March 7, 2021, and 92% at 6:43 a.m. which was the last battery life record listed. Detective Zito testified that was consistent with the phone either being switched off or destroyed. Another report contained Apple Health Step data which showed that no steps had been recorded on her phone after March 7, 2023 at 4:54 a.m. from either her Apple watch or her

[2] As noted earlier, FBI Agent Fowler testified that the phone was disconnected from the cellular network for all of this time.

phone.

Officer Joseph Salerno testified that he observed footage from a doorbell camera on the house next door to the victim's house which was aimed toward the street in front of both houses and it showed no movement between the nighttime hours of March 6th into the morning hours of March 7th. Both officer Salerno and Detective Sherry Galladora testified that a canvassing of the neighborhood produced no leads.

Detective Galladora also obtained "Geofence" records from Google for a specified area near the victim's house. Geofence records show what cell phones were present within a specified area at a specified time. Detective Galladora testified that, upon reviewing the Geofence records, she did not see any cell phones present in the area specified near the victim's house that were not expected to be there.

Various witnesses testified for the State concerning the victim's dissatisfaction with her marriage to appellant. For example, Melissa Call, a friend of the victim, testified that the victim had expressed her distrust of appellant and her desire to end their marriage. Melissa Tyler, another friend of the victim, testified that the victim communicated her desire to end her marriage in the Fall of 2020. She said that the victim forwarded her a copy of an email sent to appellant outlining a proposed separation agreement which, among other things, would have required appellant to move out of their house by March 28, 2021. She last spoke with the victim the day before the murder.

Chambra Tansek, another friend of the victim, testified that the victim had expressed her desire to end the marriage. She also said that the victim had told her that she wanted appellant out of the house and she planned on removing his access to her financial accounts

and credit cards. Other witnesses, to include the victim's father, and several of the victim's friends testified to their knowledge of the victim's dissatisfaction with her marriage and its impending dissolution. Some of them attended their wedding and testified that they were not aware of any of appellant's friends or family in attendance.

Katherine O'Rourke, a family law attorney, testified that she had advised the victim beginning in October 2020 about divorcing appellant.

Robert C. White, a Catholic Deacon, who had engaged in pre-marital counseling with appellant and the victim in 2018, testified that, about a month before her murder, he had spoken with her about her dissatisfaction with appellant and their marriage. In addition, Deacon White testified that appellant had told him that he was not giving up on the marriage.

Kayena Pierre-Louis, who, in December 2019, had dated appellant, testified that appellant told her that his name was Miles and that she eventually figured out his real identity and the fact that he was married. Thereafter, she ended the relationship and informed the victim about it.

Similarly, Enid Hopkins, who dated appellant on and off between 2015 and 2020, learned, in September of 2020, that appellant was married. As a result, she broke off their relationship and contacted the victim to tell her about it.

From the evidence outlined *supra*, and from other evidence adduced at trial, the State advanced the theory that appellant, attacked the victim while she laid in her bed. Because of the impending conclusion of that marriage, according to the State, appellant faced eviction and economic collapse without her continued financial support. Moreover,

he sought to gain from her death as he was the beneficiary of her life insurance policy.

In support of that theory, in closing argument, the State argued appellant's guilt and sought to disprove appellant's assertion that the killing occurred while he attended church by highlighting various pieces of evidence adduced at trial, including that (1) the smart watch and cell phone evidence suggested that the time of Ms. Charles' death was in the early morning hours and not while appellant attended church, (2) appellant turned off his phone during the night and turned it back on while on his way to church, (3) appellant attempted to "stage the scene" or "cover his tracks" to mis-direct whoever would investigate the killing by ransacking the room, and cleaning up with bleach, (4) nothing of value appeared to have been taken from the home, despite that valuables were present, (5) no other area of the home was disturbed, (6) there was no evidence of forced entry and the next-door neighbor's doorbell camera showed no activity during the relevant time period, (7) appellant conspicuously placed the clothes he wore to church on his bed for the authorities to find, (8) appellant did not tell the 911 dispatcher or the first-responders, that someone, who presumably was then on the loose, had brutally murdered his wife in her bedroom despite that her bedroom was in complete disarray, her bloody body was face down on the floor, and there was blood everywhere, (9) appellant's claim that he had been home for 30 minutes without noticing his wife's dead body and before calling 911 was belied by the fact that the house reeked of bleach which he would have noticed if he been at home as long as he said he had, (10) some of the blood in the bedroom was dried by the time the first-responders arrived, and the victim's body was cold, which were both inconsistent with the killing occurring while appellant recently attended church, and (11)

the pillowcase that was found in the victim's mouth was a different color than the sheets on the victim's bed and more closely matched another pillowcase from appellant's bed.

Further facts will be supplied below as they become germane to our discussion.

DISCUSSION

I.

Prior to trial, appellant sought to suppress the evidence extracted from his cell phones on the bases: (A) that the cell phone warrants were not executed within 15 calendar days as required by §1-203 of the Criminal Procedure Article of the Maryland Code;[3] and (B) the warrants did not satisfy the Fourth Amendment's particularity requirement.

Standard of Review

An appellate court's review of the denial of a motion to suppress evidence under the Fourth Amendment is limited to the information contained in the record of the suppression hearing. We consider the facts developed in that record in the light most favorable to the prevailing party on the motion. We will not disturb any factual findings unless they are clearly erroneous. We review legal questions *de novo*, and we make an independent appraisal of constitutional questions. *Grant v. State*, 449 Md. 1, 14–15 (2016) (citing *State v. Wallace*, 372 Md. 137, 144 (2002)).

[3] Criminal Procedure Article, §1-203, was amended, effective October 1, 2021 (after the warrants were sought, obtained, and executed in this case), to, *inter alia*, reduce the 15-day period to 10 days. Criminal Procedure Article, §1-203(a)(5)(i) & (ii). See, 2021 Md. Laws, Ch. 62.

Background

The police recovered two cell phones belonging to appellant, a Samsung Galaxy Note 8, and a Samsung Galaxy Note 10.[4] The police seized the Note 10 from appellant the day he was arrested, March 7, 2021, obtained a warrant to search it two days later on March 9, 2021, and then sent the phone to the Montgomery County Police Department Electronic Crimes Unit (ECU) for the purpose of extracting data from that phone. Because the ECU was initially unable to perform a data extraction, the police obtained a second warrant on July 21, 2021, and sent the phone to Cellebrite for assistance. The second warrant was identical to the first one except for the new date. The ECU shipped the phone to Cellebrite on August 11, 2021, and Cellebrite returned the phone to ECU on September 3, 2021.[5]

The Note 8 was seized from the victim's house on April 6, 2021, the warrant to search it was obtained on April 9, 2021, and the data extraction on it occurred on June 10, 2021.

A.

Appellant contends that the "execution" of the search warrants on his cell phones

[4] Appellant has directed our attention to no evidence recovered from the Note 8 that was used at trial. As a result, any error in failing to suppress any evidence from that phone is self-evidently harmless. As explained earlier, regarding the Note 10, the State used evidence from that phone to show its location at applicable times and its power state. The State also derived the Note 10's location from cell tower evidence that did not come from the phone itself.

[5] During the hearing, seemingly conflicting testimony was offered concerning this timeline, as Detective Galladora testified that Cellebrite performed the data extraction on August 2, 2021, and Detective Zito testified that ECU did not ship the phone to Cellebrite until August 11, 2021. As will be seen, this apparent discrepancy is of no moment to our analysis of appellant's claims.

did not occur within the timeframe provided for in the then applicable version of §1-203(a)(4) of the Criminal Procedure Article of the Maryland Code.[6] Under that statutory provision, the execution of a warrant must occur within 15 days of its issuance. Appellant's argument is that the "execution" of the search warrant did not occur until the data extraction had been performed, which, in the case of both of his phones, occurred outside the 15-day statutory window.

In denying appellant's motion to suppress on this ground, the court, after noting that it was unaware of any Maryland case that had decided the issue, and after discussing various cases from out outside Maryland, found that the "execution" of the warrant occurred when the phones were seized by law enforcement.

The court explained:

> The purpose of the statute is to ensure that the probable cause for the search warrant is not stale, and to protect the rights of those individuals who are subject to the search warrant's execution. In this case, the execution occurred when the cell phone was seized by a warrant authorizing the seizure and the forensic examination of the cell phone. The later analysis of the cell phone does not violate the rule as the item is already in the police possession, and there is no change in either the items itself, okay, or the probable cause. To find otherwise would lead to absurd results, including multiple warrants that are unnecessary because nothing has changed. Nothing has changed, we would be getting a piece of paper for no purpose.

[6] Section 1-203(a)(4) provides:

(i) The search and seizure under the authority of a search warrant shall be made within 15 calendar days after the day that the search warrant is issued.

(ii) After the expiration of the 15-day period, the search warrant is void.

In the alternative, the court ruled that the police officers acted in good faith "based upon their straightforward requests with regards to what they were going to do with the phone." The court explained that the "mere fact that [the police] were unable to pass the encryption technology or a lock on the phone, does not lead me to believe that they were not relying on the [warrant] in a good faith basis."

As a result, because both phones were seized within 15 days of the issuance of the applicable corresponding search warrant, the court found that the warrants were not void and declined to suppress the evidence found as a result of those searches.

On appeal, appellant explains that Federal Rule 41, which explicitly applies to searches for electronic information, specifically provides that the "execution" of the warrant for such purposes occurs "'when the electronically stored information is seized and brought within the government's control, rather than when the information is analyzed by the government.'" (quoting *U.S. v. Carrington*, 700 Fed.Appx. 224, 232 (4th Circuit 2017)). Appellant argues that the conspicuous absence of any corresponding Maryland Rule means that the "execution" of the search warrants on his cell phones occurred when the data was extracted. Moreover, he explains that the warrants themselves only gave authority "to search the memory storage areas and any other associated storage devices of the electronic device" within 15 days of the issuance of the warrants.

The State, citing to *Thompson v. State*, 139 Md. App. 501 (2001), argues that, regardless of when the warrants were "executed," the remedy for a violation of the statute is not suppression of the evidence. On the merits, the State agrees with the suppression court's ruling that the statutory deadline is satisfied "when police seize the target device

within the deadline (or already have it when the warrant issues)." This, according to the State is in accord with the holdings of various out-of-state cases that have considered the issue.

We agree with the State. As an initial matter, as we explained in *Thompson*, when interpreting the predecessor statute to Crim. Proc. §1-203(a)(4), we said: "it is clear that suppression of the seized evidence was not a possible remedy for [a violation of the statute] …. [the statute] does not remotely involve, explicitly or implicitly, the Exclusionary Rule of evidence." 139 Md. App. at 527 (cleaned up). In *Pearson v. State*, 126 Md. App. 530 (1999), we noted: "There is no sanction of exclusion of evidence for a violation of [the statute] ... and such a sanction would be proper only when a violation of the statute coincidentally is also a violation of the Constitution." *Id*. at 544. The appellant has not established that these circumstances amounted to a constitutional violation. Thus, even if the police violated the statute, suppression of the evidence is not an applicable remedy.

Nevertheless, we hold that the police executed the search and seizure warrants, within the meaning of Crim. Proc. § 1-203(a)(4), when they obtained appellant's cell phones. We agree with the suppression court that it would put form over substance and lead to absurd results to require the police to get a new warrant every fifteen days when attempting to extract cell phone data where nothing has changed and as a result, "we would be getting a piece of paper for no purpose."

B.

As noted earlier, appellant also argued that the evidence obtained from the cell phones should be suppressed on the theory that the warrants lacked the particularity

required of them by the Fourth Amendment.

The Fourth Amendment provides that the government shall not violate "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures…" and that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and *particularly* describing the place to be searched, and the persons or things to be seized." (emphasis added). Ordinarily, the appropriate remedy for a Fourth Amendment violation is exclusion of the evidence at trial. *Myers v. State*, 395 Md. 261, 278 (2006).

In *Riley v. California*, 573 U.S. 373 (2014), the Supreme Court of the United States in determining that, ordinarily, the so-called search incident to a lawful arrest exception to the warrant requirement was not applicable to a cell phone recovered from an arrestee, found that a warrant is necessary to search the contents of a cell phone, absent some other exception to the warrant requirement. *Id*. at 388.

In *Richardson v. State*, 481 Md. 423 (2022), our Supreme Court addressed the scope of a warrant to search a cell phone. In that case, a detective obtained a warrant for Richardson's phone as part of a robbery investigation. *Id*. at 438. The warrant, and its incorporated affidavit, contained "catch-all" language that allowed a search of the entire phone. *Id*. at 462-63. Specifically, the warrant permitted the police to search for:

> All information, text messages, emails, phone calls (incoming and outgoing), pictures, videos, cellular site locations for phone calls, data and/or applications, geo-tagging metadata, contacts, emails, voicemails, oral and/or written communication and any other data stored or maintained inside of T-Mobile Space Gray iPhone[.]

Id.

The Court determined that "[w]ith respect to most cell phone search warrants, given the privacy interests at stake as explained in *Riley*, the particularity requirement is not satisfied by authorizing officers to search for any and all items that are evidence of a particular crime or crimes." *Id*. at 461. Further, the Court explained that "it is not reasonable for an issuing judge to approve a warrant that simply authorizes police officers to search everything on a cell phone." *Id*. at 468.

The Court went on to consider whether the good-faith exception to the exclusionary rule applied in Richardson's case. "Under the good faith exception, evidence will not be suppressed under the exclusionary rule if the officers who obtained it acted in objectively reasonable reliance on a search warrant." *Id*. at 446 (citation omitted). The Court explained that the supporting affidavit for Richardson's warrant application, "which was incorporated in the warrant, provided the executing officers with detailed information about the robbery under investigation[.]" *Id*. at 470-71. Because of this case-specific information, "an officer reading the affidavit reasonably could have interpreted it as limiting the search for evidence of the crime under investigation[.]" *Id*. at 471. After noting that courts outside Maryland had reached different conclusions about whether "a cell phone search warrant that allows officers to search an entire phone for evidence of a particular crime satisfies the particularity requirement[,]" the Court could not "fault the officers who executed this search warrant for thinking that the answer was 'yes.'" *Id*. As a result, the Court found the good faith exception to the exclusionary rule applicable because the "warrant – as supplemented by the incorporated affidavit – was not so facially deficient that the executing officers acted unreasonably in relying on it." *Id*.

Appellant asserts, and the State agrees, that the search warrants in this case are not particularized enough under the holding of *Richardson*. We agree. The catch-all warrant language disapproved of in *Richardson* is analytically indistinct from the language in the warrants in this case.[7] Nevertheless, at the time the warrants were sought, obtained, and executed in this case, *Richardson* had not yet been decided.[8] Moreover, as in *Richardson*, the warrant applications contained affidavits providing detailed information about the crime under investigation. As a result, in our view, the warrant in this case "– as supplemented by the incorporated affidavit – was not so facially deficient that the executing officers acted unreasonably in relying on it." *Richardson,* 481 Md. at 471. Therefore, the good faith exception to the exclusionary rule applies and the suppression court made no error in not applying the exclusionary rule.

II.

Appellant argues that the trial court: (A) violated his rights under the Confrontation

[7] The warrants in this case contained the following language:

> TO BE SEARCHED: The memory storage areas and any other associated storage devices of the electronic device described as: one cellphone…
>
> This evidence being, electronic data stored in the form of magnetic or electronic coding on digital capture/storage devices or on media capable of being read by a computer or cell phone. This includes all associated memory cards and SIM cards. This data includes but is not limited to: ownership information, text messages, address books, recent calls, missed calls, photographs, videos, cell sites visited, emails, internet search history, and deleted information.

[8] The Supreme Court of Maryland issued *Richardson* on August 29, 2022 which was after appellant filed his motion(s) to suppress evidence but before the hearing on it.

Clause of the Sixth Amendment by permitting Detective Zito to testify as a "proxy witness" when he testified about a forensic cell phone report created by Corporal Webster, who was not called as a witness at trial; and (B) erred in permitting Detective Zito to testify to an opinion beyond his expertise when he testified that appellant's phone was likely turned on while not connected to the wi-fi network the morning of the murder.

Background

As noted earlier, Detective Michael Zito, from the Montgomery County Police Electronic Crimes Unit, was admitted as an expert in digital forensics examination. He conducted a "technical review" of the report for the extraction of data from appellant's Samsung Galaxy Note 10 cell phone. The report he reviewed was performed by another member of the Electronic Crimes Unit, Corporal Webster, who had retired by the time of appellant's trial and did not testify. Corporal Webster's report showed that he sent the phone to an outside vendor (Cellebrite) to bypass the phone's security before he extracted the full file system data from appellant's phone.[9]

Corporal Webster's report was admitted into evidence at trial as State's Exhibit 302, and with respect to appellant's Note 10 phone, among other things, it stated:

> Images of the device and SIM Card are included in the Job 1 report.
>
> Executed search warrant 8/2/2021. On 8/10/2021 materials received from CAS[10] for shipment of device. 8/11/2021 examiner packaged the device for

[9] This data included call logs, chats, contacts, device locations, e-mail, audio, images, video, and additional data.

[10] CAS appears to refer to Cellebrite Advanced Services.

> shipment to CAS on 8/12/2021. The assigned Cellebrite Advanced Services Case Number is: 00538516.
>
> 09/03/2021 – The examiner received the device from CAS along with a USB thumb drive. The passcode for the USB is 85168516. The examiner copied the contents of the USB drive to the evidence server. The device passcode was determined by CAS: 42779.
>
> A Full File System extraction was acquired as well as an extraction of the Secure Folder.
>
> The extractions were processed with Physical Analyzer.
>
> The examiner generated a UFED Reader Report for the investigating officer to review and determine relevance.

With respect to the victim's iPhone, Corporal Webster's report essentially revealed that he mailed the device to Cellebrite, which still had the phone "pending brute force password recovery."

In the last section of the report, titled, Examiner Summary / Conclusion, the report stated that:

> Examination of the above-referenced devices yielded the recovery of the aforementioned data. The examiner included all data in the report. All recovered data was retained on the ECU server should additional analysis become necessary.
>
> The results of the examination will be provided digitally to Det. S. Rule. This examination was completed on 9/4/2021.

The front cover of Corporal Webster's report lists Detective Zito as the reviewer of the report and it bears his initials. Detective Zito explained that, once Cellebrite was able to "exploit" the iPhone, they sent it back with a file containing all of the data on the phone and a "reader program" that allows the police to create reports and otherwise analyze the phone's data.

Detective Zito testified that he performed his own supplemental analysis of the data recovered from appellant's phone and created his own report. That report was admitted into evidence as State's Exhibit 303. Detective Zito's report showed selected GPS coordinates from appellant's phone. The report captured times that data showed the phone connecting to a wi-fi network at the victim's and appellant's home on March 6-7, 2021. He explained that the phone did not connect to wi-fi between about "1:43 a.m. to 8:00 a.m. on the 7th." He also explained that the phone was exhibiting "background activity" during that gap, suggesting that it was turned on.

With respect to the victim's iPhone, he testified that Cellebrite returned it to the police lab after Corporal Webster had retired. He said that, after receiving the phone, he performed a full data extraction on the phone, conducted "supplemental analysis" of the data from it, and prepared several reports based on that analysis. Those reports concerned an email sent from the phone containing the victim's proposed separation agreement (State's Exh. 318); a timeline of device activity for March 6-7, 2021 (State's Exh. 319); the phone's battery power (State's Exh. 320); and a "report for Apple Health Steps" (State's Exh. 321), all of which were admitted at trial and testified to by Detective Zito.

A.

Appellant contends that any and all of Detective Zito's testimony and reports that were based on the work of Corporal Webster were admitted into evidence in violation of his rights under the Confrontation Clause of the Sixth Amendment and Maryland's Declaration of Rights because Corporal Webster did not testify at trial and his report was testimonial in nature.

Both the Confrontation Clause of the Sixth Amendment to the United States Constitution, and Article 21 of the Maryland Declaration of Rights provide a criminal defendant with the right to be confronted with the witnesses against him or her. In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court held that an out-of-court "testimonial" statement of a witness who does not testify at trial is inadmissible under the Confrontation Clause unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine them. *Id*. at 59.

In *Leidig v. State*, 475 Md. 181 (2021), after explaining that the Supreme Court of the United States had offered no clear test to determine when a forensic test report is "testimonial" *vel non*, Maryland's Supreme Court, held that, under Article 21, a scientific report is "testimonial" if the author of the report reasonably would have understood that the primary purpose for the creation of the report was to establish or prove past events potentially relevant to later criminal prosecution. *Id*. at 185-86.

In *Leidig*, Molly Rollo, a forensic scientist with the Maryland State Police, conducted DNA analysis of a suspected burglar's blood found at a crime scene and created a report that contained a DNA profile for it. At trial, the State did not call Rollo as a witness. Rather, the State called a different forensic scientist, Tiffany Keener.

Keener had analyzed a reference sample collected from Leidig after he became a suspect in the burglary, and then had compared the DNA profile she generated from that known sample to the DNA profile that Rollo had generated from the forensic samples. The trial court allowed the State to introduce Rollo's report into evidence, and to elicit Keener's opinion that Leidig's known DNA profile matched the DNA profile that had been

generated from the samples taken at the scene of the crime. *Id*. Notably, Keener had served as an "administrative" reviewer and initialed Rollo's report indicating that she agreed with Rollo's results and conclusions. *Id*. at 193.

On appeal, Leidig asserted that the trial court violated his confrontation rights under the Sixth Amendment and Article 21 by admitting Rollo's report into evidence and further by allowing Keener to convey Rollo's results and conclusions to the jury, all without subjecting Rollo to cross-examination. *Id*. at 228.

The Court explained that, if a trial court concludes that a scientific report is testimonial under the standard outlined earlier, the report and testimony about it is inadmissible unless (1) the report's author is unavailable to testify and the defendant previously had the opportunity to cross-examine them, or (2) the testifying expert conducted a technical review of the report prior to its issuance. *Id*. at 247.

The Court held that Rollo's report was testimonial in nature, and that because Keener was merely Rollo's "administrative reviewer" and not her "technical reviewer," the introduction of Rollo's report without calling her as a witness violated Leidig's right to confrontation under Article 21. *Id*. at 247-48.[11]

After appellant had filed his initial brief, the United States Supreme Court issued a decision in *Smith v. Arizona*, 602 U. S. 779, 144 S. Ct. 1785, 219 L. Ed. 2d 420 (2024). In his Reply Brief, appellant urged that, when considered under the holding in *Smith*, Detective Zito's testimony violated appellant's right of confrontation. Thus, appellant

[11] The State does not dispute that State's Exhibit 302 was testimonial under *Leidig*.

implicitly argues that the holding in *Miller* concerning technical reviewers is no longer good law. We disagree.

In *Smith* the Supreme Court addressed whether testimony by an expert witness would violate the confrontation clause, if that testimony were based on an absent witness's report. 602 U. S. at 783. The critical evidence in *Smith* was a lab report regarding controlled dangerous substances. *Id.* at 790. Elizabeth Rast had performed an analysis of certain substances and issued a report with a "'[d]escription" of the item; the weight of the item and how the weight was measured; the test(s) she performed on the item, including whether she first ran a '[b]lank' on the testing equipment; the results of those tests; and a '[c]onclusion' about the item's identity . . . The signed report then distilled the notes into two pages of ultimate findings, denoted 'results/interpretations.' *Id.* At the time of trial, Rast no longer worked at the lab. *Id.* The State elected not to use Rast as a witness and, instead, called Greggory Longoni, a forensic scientist, as a substitute expert. *Id*. Longoni prepared for trial by using Rast's reports and notes. *Id.* at 791. Longoni referred to specific items in Rast's materials and testified as to the methods that Rast had used. *Id.* He testified that Rast had adhered to the lab's policies and practices. *Id.* He then offered his own independent opinion as to the identity of the substances that Rast had examined. *Id.*

Noting the distinction between a hearsay statement and a testimonial statement, the Supreme Court held that Rast's report was hearsay because it was offered for the truth of the matter asserted. *Id.* at 798. The Supreme Court, however, did not reach the question as to whether Rast's statements were testimonial, and therefore subject to the confrontation clause. *Id.* at 800. To be consistent with the Confrontation Clause, the prosecution may

not introduce testimonial out of court statements, unless the declarant is unavailable, and the defendant has had a prior chance to cross-examine the witness. *Id.* at 802-03, citing *Crawford v. Washington*, 541 U. S. 36, 68 (2004).

Nothing in *Smith* undermines the analysis of the Maryland Supreme Court in *Miller* concerning the nature of testimony of a "technical reviewer" of a forensic report. As the Court in *Miller* explained in some detail, a technical reviewer's analysis "is not hearsay, but rather the reviewer's independent opinion based on the reviewer's thorough, substantive review of the report and adoption of its results and conclusions…" 475 Md. at 284. Unlike Ms. Rast in *Smith*, but like the forensic witness in *Miller*, Detective Zito was "the functional equivalent of a second author of the [Webster] report," *id*. at 293, and therefore his testimony was not hearsay.

The same day it decided *Leidig*, Maryland's Supreme Court decided *State v. Miller*, 475 Md. 263 (2021), which addressed the admissibility of testimony from a "technical reviewer" of a forensic laboratory report created by a non-testifying witness. In *Miller*, in the context of DNA reports, the Court held that a "technical reviewer" can testify for the primary author when they: (1) thoroughly review the primary author's data, methods, results, and conclusions; (2) reach an independent conclusion about the correctness of those results and conclusions; and (3) sign off on the report prior to issuance. Under those circumstances, the reviewer effectively is "the functional equivalent of a second author of the report," and is "convey[ing] [their own] independent expert opinions to the jury." *Id*. at 290-93.

In this case, appellant asserts that *Leidig* controls the admissibility of Detective

Zito's testimony and report, and the State asserts that *Miller* controls. We agree with the State.

At trial, Detective Zito testified that he conducted a "technical review" of Corporal Webster's report. Thereafter, the following occurred on direct examination of Detective Zito by the State:

> Q. Detective Zito, can you explain to us a little more what goes into a technical review?
>
> A. The technical review is a review of another examiner's report, methodology and findings.
>
> Q. Okay. And so did you have access to Corporal Webster's report of [appellant's Samsung Galaxy Note 10 cell phone]?
>
> A. I did.
>
> Q. Okay. And you were able to review Corporal Webster's methodology as to the extraction of [appellant's Samsung Galaxy Note 10 cell phone]?
>
> A. Yes.
>
> Q. Okay. And you were able to review his work basically on this case?
>
> A. Correct.
>
> Q. Okay. And as part of your technical review, did you find there to be anything wrong with his extraction of this phone?
>
> A. I did not.

In addition, when asked, Detective Zito agreed that he signed off on Corporal Webster's report because he agreed with all details in the report as the technical reviewer. As can be seen from Detective Zito's description of his review of Corporal Webster's report, his review amounted to a technical review within the contemplation of *Miller* because he testified that he reviewed Corporal Webster's methodology and findings, he

concluded that there was nothing wrong with those findings, and he signed off on the report. We perceive no error or abuse of discretion in admitting Detective Zito's report and testimony into evidence at trial. Accordingly, we conclude that Cpl. Webster's report was not testimonial in nature.

Moreover, it should be noted that Corporal Webster's report was of minor importance at trial as it contained no conclusions germane to appellant's guilt or innocence. His report was more or less a link in the chain of custody of appellant's Note 10 phone and its data because all it showed was when and where he sent the phone, when he extracted its data, and where he stored it. Moreover, the report said nothing about appellant's other phone, and merely indicated that the victim's iPhone was, at the time, still at Cellebrite.

B.

Appellant contends that the trial court erred by permitting Detective Zito to testify beyond his area of expertise. Appellant's complete argument on this subject is as follows:

> Separately, Zito's objected to opinion that the cell phone was likely turned on while not connected to the Wi-Fi network was beyond the area of his expertise as a "digital forensic examiner" of the contents of the cell phones. Md. Rules 5-701 & 702.
>
> Again, these errors were not harmless because the State used the evidence from the cell phones to argue its theory that Mr. Dunlap was present when the murder occurred and sought to obscure that by trying to disconnect his phone during critical periods, and to show the relative activity on Ms. Charles's iPhone during that period as well.

"'[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute ground for reversal.'" *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020) (quoting *Roy*

v. Dackman, 445 Md. 23, 38–39 (2015)).

At trial, the following occurred on direct examination of Detective Zito by the State:

> Q. Alright. And during that time period where [appellant's Note 10 cell phone is] not connecting to the Wi-Fi, is there any background activity happening on that cell phone, like log files and file system activity?
>
> A. There was, yes.
>
> Q. Okay. So is that consistent with the phone being on?
>
> A. Yes.

Defense counsel objected on the basis that "[t]hat particular conclusion or opinion was not in the expert disclosure." After a brief bench conference, the trial court overruled appellant's objection and the following occurred:

> Q. So when any cell phone is left on whether or not an individual is manipulating it or using it, do cell phones run background data?
>
> A. They do.
>
> Q. Okay. Is that similar to most computers or electronics?
>
> A. Yes.
>
> Q. Okay. And if a device is turned off, would you expect to see any sort of background data happening?
>
> A. No.
>
> Q. Okay. And during this time period, those eight hours where this phone is not connected to the Wi-Fi, do you see that sort of background activity happening on the phone still?
>
> ***
>
> A Yes.

We discern no abuse of discretion on the part of the trial court when permitting Detective Zito, who was admitted as an expert in "digital forensic examination" to testify

to the fact that appellant's phone, while not connected to the wi-fi, exhibited conduct consistent with it being switched on.

III.

Appellant argues that the trial court erred when it permitted Detective Galladora to testify about "geofence" evidence. Appellant asserts that the trial court was wrong to treat "geofence" as common knowledge because "geofencing is a technical matter that requires some foundational expertise to understand, explain, and interpret."

At trial, Detective Sherry Galladora testified on direct examination by the State about, among other things, her retrieval of the victim's social media records, the victim's Gmail accounts, appellant's email accounts, the victim's iCloud information, and appellant's Sprint/T-Mobile phone records. Detective Galladora also testified that she had obtained certain geofence records from Google, as follows:

Q. Okay. Did you conduct or did you subpoena geofence records?

A. Yes.

Q. Okay. What is geofence, by the way?

A. That's through Google. They keep information --

[DEFENSE COUNSEL]: Objection.

THE COURT: Basis?

[DEFENSE COUNSEL]: May we approach?

THE COURT: Sure.

(Bench conference follows:)

****

[DEFENSE COUNSEL]: [Detective Galladora is] not an expert.

THE COURT: Okay. But she can testify with geofences. I could testify what a geofence is. First, I don't think you need an expert to testify to geofencing. You might need an expert to tell you what devices are in the geofence. But as to what a geofence is, you know, we've talked about iCloud. And I guess everybody can tell you what an iCloud is. So, as to geofence, I'll allow it.

(Bench conference concluded.)

Q. All right, so Detective Galladora, what is geofence?

A. Geofence is through Google requests to see if they have any records that recognize any phones in specific area. And we specify the area in a search warrant.

Q. Okay, and did you receive those records back?

A. I did.

Q. And did you go through them?

A. Yes.

****

Q. Okay, so are you, do you know how to read geofence records?

A. Yes.

****

Q. Okay. Have you – when you receive these geofence records, okay, was there information provided in there?

A. Yes.

Q. Okay, what kind of information is in there?

A. They provide information on cell phones that they have recorded in that, in the area.

Q. Okay. And do you, do you specify the area that you're looking around?

A. Yes.

Q. Do you obtain search warrants?

A. I obtained a search warrant for the geofence, yes.

Q. Okay.

A. Yes.

Q. And then when you got those records back, you went through them?

A. Yes.

****

Q. Okay. You got geofence records, okay?

A. Yes.

Q. Did you, have you looked through geofence records before?

A. Yes.

Q. Okay. And how many times have you dealt with geofence records?

A. Approximately five times or so.

****

Q. How do you know how to read geofence records?

A. They're in plain English and just tell you what cell phones are located in that specific area.

Q. Okay. Did you find any, did you see any cell phones that were not expected to be in that area?

[DEFENSE COUNSEL]: Objection.

THE COURT: I'll allow it.

A. Not that were not expected, no.

Q. Okay. And is that based on the neighbors that lived around there?

A. That's correct.

Ordinarily, we review evidentiary rulings for abuse of discretion. *State v. Galicia*, 479 Md. 341, 389 (2022). "'If a court admits evidence through a lay witness in circumstances where the foundation for such evidence must satisfy the requirements for

expert testimony[,] … the court commits legal error and abuses its discretion.'" *Id*. (quoting *Johnson v. State*, 457 Md. 513, 530 (2018)). Maryland Rule 5-701 provides that 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." On the other hand, "'when the subject of the inference ... is so particularly related to some science or profession that is beyond the ken of the average layman,' it may be introduced only through the testimony of an expert witness properly qualified under Maryland Rule 5-702." *Galicia*, 479 Md at 389 (quoting *Johnson*, 457 Md. at 530). "When a court considers whether testimony is beyond the 'ken' of the average layman, the question is not whether the average person is already knowledgeable about a given subject, but whether it is within the range of perception and understanding." *Id*. at 394.

In *Galicia*, a lay witness testified about records kept by Google that included location data. The witness testified that there was a "gap" in the location data records on the day of the offense in that case. He also testified that cell phone users have the ability to turn on and off location data tracking. *Id*. at 387-88.

The Supreme Court of Maryland determined that an expert witness was not needed to testify that a Google accountholder has the option of opting out of location tracking history on their smartphone even though they may not personally have experience in toggling their location tracking on and off because it is common knowledge in modern society that a mobile electronic device allows its users to customize the data they share with the manufacturer, the cell phone service provider, and various apps. *Id*. at 394-95.

As a result, the "inference that this testimony was intended to help the jury draw – that Mr. Galicia could have manually disabled location tracking around the time of the murders – was well within the understanding of the average lay person." *Id* at 395.

In addition, with respect to the witness's testimony concerning the location tracking data, the Court determined that no expert witness was needed for that testimony because the "location tracking records … were the data generated by Google's standard recordkeeping practices; it is evident that he used no specialized skill to reformat or translate any of the raw data." *Id*. at 393.

In arriving at those conclusions, the Court observed that, even though not many people could explain the technology used by cell phones and their network of towers and satellites, "the fact that they collect data about users' habits, including location, is widely understood[.]" *Id*. at 393. "'A cell phone's identification of its location is one of its essential virtues. A cell phone must be found by a service provider for it to be used as a phone.'" *Id*. (quoting *State v. Copes*, 454 Md. 581, 587 (2017)).

In this case, the trial court did not err or abuse its discretion in permitting the geofence testimony. Detective Galladora explained that geofence records show what phones are within a specified area at a specified time. She testified that she obtained them from Google, that they were written in plain English. Based on those records, she was able to draw the conclusion that, based on who she knew lived near the victim's house, no unexpected phones were captured by the geofence records. Her testimony was based on the "widely understood" fact that cell phone providers collect location data. As a result, none of the geofence testimony was beyond the comprehension of an average juror, and

Detective Galladora did not need to testify as an expert.

IV.

Appellant argues that the trial court erred in admitting irrelevant evidence and/or impermissible character evidence in three separate categories. According to appellant, the State presented inadmissible evidence through various witnesses as part of its endeavor to bolster its case by presenting appellant as "a cheating, deadbeat loner[.]" Alternatively, the State sought to present the victim as "loving" and "generous." We shall address each category of evidence seriatim.

Legal Background and Standard of Review

Maryland Rule 5-401 defines "relevant evidence" as "evidence having 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." Irrelevant evidence is inadmissible. Md. Rule 5-402. A trial court's exclusion of relevant evidence is reviewed for abuse of discretion; a trial court has no discretion to admit irrelevant evidence. *Ruffin Hotel Corp. v. Gasper*, 418 Md. 594, 619-20 (2011).

Maryland Rule 5-404(a)(1) provides, with certain exceptions, that "evidence of a person's character or character trait is not admissible to prove that the person acted in accordance with the character or trait on a particular occasion." If otherwise relevant, the decision to admit or exclude character evidence is reviewed for abuse of discretion. *Vigna v. State*, 470 Md. 418, 437 (2020).

A.

At trial, several witnesses called by the State testified that they had attended

appellant's and the victim's wedding in May of 2019 and that they did not believe that any of appellant's friends or family were in attendance. Those witnesses included the victim's father (John Charles), and the victim's friends (Besrat Gebrewold, Kristen Barr Hill, and Anya Dobrowolski).

Appellant asserts that the testimony concerning the attendees of the wedding is irrelevant because it had "no tendency to prove any fact of consequence." Moreover, he asserts that, even if it were relevant, it was unfairly prejudicial because the State used the testimony to show that appellant was a "loner." According to appellant, this evidence represented the beginning of the State's "smear campaign" against appellant.

The State argues that the court made no error in admitting the testimony because it was relevant to its theory that appellant relied on the victim financially, that he lacked other support beyond the victim, and that it demonstrated his motive to kill her because she intended to divorce him. In admitting the evidence, the trial court observed that evidence of appellant's lack of family and friend support was relevant to motive because after the divorce appellant "was going to be out of home, out of places."

Given that the standard for whether evidence is relevant is "a low bar[,]" *State v. Simms*, 420 Md. 705, 727 (2011), and given that evidence of an accused's "financial situation is admissible [to] show a nexus between the accused's financial status and the motive for a particular crime," *Morrison v. State*, 98 Md. App. 444, 450 (1993), we agree with the State and discern no error or abuse of discretion in the trial court's decision to admit the evidence.

B.

At trial, Pearl Loftlin testified that she met appellant in 2005, and that their relationship ended before their child was born in 2012. She said that their child lived with appellant every other month and that appellant owed her $5,000 in back child support. In addition, as noted earlier, Enid Hopkins and Kayena Pierre-Louis both testified they had relationships with appellant while he was married and reported that fact to the victim once they discovered it.

Appellant asserts that the evidence of appellant's child support arrearage and his marital infidelity painted appellant as a "deadbeat and a cheater." As such, according to appellant, the evidence was irrelevant, but even if marginally relevant, it constituted impermissible "bad acts" evidence.

When considering the admissibility of "bad acts" evidence, the court undertakes a three-step analysis under Maryland Rule 5-404(b). First, the evidence must have special relevance to some contested issue in the case, which this Court reviews *de novo*. *Browne v. State*, 486 Md. 169, 190-94 (2023). Second, the trial court analyzes whether the accused's involvement in the other bad acts is established by clear and convincing evidence, with its finding reviewed for sufficiency of the evidence. *Id*. at 193-94. Third, the trial court weighs the necessity for, and probative value of, the evidence against the danger of unfair prejudice with its assessment reviewed for abuse of discretion. *Id*. An abuse of discretion occurs only when a trial court's decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable, and/or when a trial judge acts in an arbitrary or capricious

manner. *Katz, Abosch, Windesheim, Gershman & Freedman, P.A. v. Parkway Neuroscience & Spine Inst., LLC*, 485 Md. 335, 361 (2023).

The State argues that the evidence of appellant's child support arrearage was especially relevant to motive because it helped show appellant's poor financial condition. In addition, the State argues that the evidence of appellant's marital infidelity was probative of the irreconcilable deterioration of appellant's marriage and because it gave context to some of the victim's text messages about ending it. As to both lines of evidence, the State argues that the trial court acted within its discretion in admitting the evidence under Rule 5-404(b) because it had special relevance, it was proved sufficiently, and it was not unfairly prejudicial.[12] We agree with the State. We discern no error in finding the evidence especially relevant, under the circumstances presented. We conclude that the evidence was sufficient to support a finding by clear and convincing evidence that the acts occurred. Lastly, we discern no abuse of discretion in a finding that appellant suffered no unfair prejudice from the evidence.

C.

At trial, several witnesses, including John Charles, Besrat Gebrewold, Katrina King,

[12] With regard to the child support arrearage, Appellant asserts that "The trial court erroneously failed to engage in the complete [prior bad acts] analysis, here, and place its determinations on the record, which itself was error." Appellant notes that "The trial court ostensibly admitted the evidence of Mr. Dunlap's infidelity under Rule 5-404(b) as "motive," but did not articulate why or how it was motive for this crime."

Appellant never complained at trial about the trial court's alleged failure to perform a complete Rule 5-404(b) analysis. In any event, because trial judges are rebuttably presumed to know and correctly apply the law, not every step in their thought process needs to be explicitly spelled out. *Zorich v. Zorich*, 63 Md. App. 710, 717 (1985).

and Melissa Call, all testified generally that the victim was a "loving" and "generous" person. For example, during the direct examination of the victim's father by the State, the following occurred:

> Q. Mr. Charles, and I know this may be difficult. Can you describe your daughter, sort of her demeanor, her assets? Like what would you say about your daughter?
>
> [DEFENSE COUNSEL]: Your Honor, objection. May we approach?
>
> THE COURT: Sure.
>
> [DEFENSE COUNSEL]: Thank you.
>
> (Bench conference follows:)
>
> [DEFENSE COUNSEL]: Relevance.
>
> THE COURT: Okay. So I, it is permissible to allow, under the good of the victim's personality or whatever, and it may go to whether or not how she acted, how she didn't act, what she normally did, what she didn't do, why she did certain things. So I'll allow it as to that. We're not going to go on and on.
>
> [THE STATE]: I am not going to go on and on.
>
> THE COURT: Okay. All right.
>
> [THE STATE]: Thank you, Your Honor.
>
> THE COURT: Okay.
>
> (Bench conference concluded.)
>
> [THE STATE]: Thank you, Your Honor.
>
> BY [THE STATE]:
>
> Q. So the question that I had posed that you can now answer is, can you tell us a little bit about Lauren? Her personality, her affect, just briefly.
>
> A. I thought she was just a loving girl. A loving lady. She, she was a reader. She had a ability to – loyal. She had a lot of friends and she,

> she, she was very, I can say loyal to her friends. She would visit them all over the place. She was courageous.
>
> She, she would leave; she wanted to visit Germany so she couldn't find a partner so she went by herself. She, she was a, an academician. She had care for others is, is one of the reasons why she entered the law, law practice.

Appellant asserts that the trial court abused its discretion in admitting testimony regarding the victim's loving and generous character because it was inadmissible general character evidence, and was otherwise irrelevant. The State agrees that the evidence was inadmissible, but suggests that its admission was harmless given its relative unimportance considered with the weight of the other evidence of appellant's guilt.

Maryland Rule 5-404(a) provides that, subject to certain exceptions not here applicable, "evidence of a person's character or character trait is not admissible to prove that the person acted in accordance with the character or trait on a particular occasion." Given that Rule's mandate, and given that the victim's generous and loving nature seems irrelevant to any fact of consequence to appellant's trial, the evidence was inadmissible. Thus, we agree with appellant and the State that the evidence was inadmissible.

In arguing that the error in admitting the evidence is harmless, the State points to the substantial circumstantial evidence of appellant's guilt to include: (1) appellant's motive to kill given the impending collapse of his marriage and his sole financial support; (2) that appellant had the opportunity to kill the victim based on the evidence retrieved from her iPhone coupled with the time that the evidence showed her smart watch had likely been destroyed; (3) that appellant's claim that the victim was killed while he was at church was belied by the smart watch and iPhone evidence; (4) that there was no sign of an

unknown person committing the murder; and (5) that the crime scene had been "staged" after the killing.

In his Reply Brief, appellant argues that the evidence was not harmless and accuses the State of "equat[ing] motive with intent, weaving a tale of acrimony, deceit, and maliciousness on the part of [appellant] based on nothing other than mere assumptions." Also in his Reply Brief, without citation to the record, appellant asserts the following "indisputable" evidence was adduced at trial:

> It is *indisputable,* however: 1) that Mr. Dunlap was examined by the Montgomery County Police Department and there were no signs of him being involved in committing the crime; 2) that MCPD Forensic Division witnesses testified that another person's fingerprints and shoeprints were found in the blood at the scene; 3) that unknown male DNA was found on the supposed murder weapon, a light switch, and the master suite bathroom faucet and the bleach bottle; and 4) that the Medical Examiner's report debunks the State's theory that the crime occurred at some time around 5:00 a.m. on March 7, because it placed the crime closer to noon, when it was universally acknowledged that Mr. Dunlap was away from the residence from 10:45 a.m. to 1:30 p.m. on March 7.

(Emphasis added).

As noted, appellant fails to tell us where in the record we might find information to support his conclusions about the state of the evidence. "[A]ppellate courts cannot be expected to … search the record on appeal for facts that appear to support a party's position[.]" *Ruffin Hotel Corp.*, 418 Md. at 618. Nevertheless, nowhere in the voluminous record of this appeal do we find "indisputable" support for any of appellant's assertions. These so-called "indisputable" facts seem to have been sourced, in part, from appellant's statement to the court during his sentencing proceeding wherein, among other things, he said:

> Lauren's death was a catastrophe for all of us. It has been said the first necessity after a disaster is a scapegoat. It's an immense relief to find someone upon whom can be fastened all the sins and who can be sent into the wilderness to be heard no more. The entire case against me was inconsistent. It was driven by a detective who fueled it with misrepresentations and blatant lies. The truth is that I was the most convenient person to charge. She then turned it over to the State's Attorney's Office, who *even after receiving overwhelming evidence of my innocence, actual bloody handprints, bloody footprints, and another male's DNA in our bedroom*, decided to move forward and convict me based on old, out-of-context messages and feelings Lauren no longer felt.

(Emphasis added).

We briefly address each of appellant's claims in turn.

Appellant claims that he "was examined by the Montgomery County Police Department and there were no signs of him being involved in committing the crime[.]" This claim is self-evidently not indisputable because appellant had the victim's blood on his hand.

Appellant claims that the "MCPD Forensic Division witnesses testified that another person's fingerprints and shoeprints were found in the blood at the scene[.]" Our review of the record does not reveal any testimony concerning shoe prints. With respect to fingerprints, we were unable to find anywhere where any fingerprints were analyzed. The record does not reveal why there was no testimony regarding an analysis of fingerprints. Various witnesses testified to seeing bloody handprints on the walls of the bedroom. For example, Mark Dabney, a firefighter/medic, testified that he saw a handprint on the wall in dried blood. Justin Longhi, a forensic specialist, testified on cross-examination that he collected a latent print from the bleach bottle. A bloodstain pattern analyst testified that she saw bloody handprints on the wall. The State argued in closing that "When [the victim] is

trying to escape, trying to get away and those bloody handprints of hers are put on the wall, blood is then spattered onto the back of that door, meaning it was closed when she was being murdered." From all of that, it does not seem "indisputable" that "another person's fingerprints and shoeprints were found in the blood at the scene."

Next appellant claims that unknown male DNA was found on the supposed murder weapon, a light switch, and the master suite bathroom faucet and the bleach bottle. So far as we are able to discern, appellant arrives at this conclusion because of certain testimony from the DNA analyst in this case which, if not clarified, could be construed to mean that there was DNA, in addition to that of the victim, appellant and appellant's daughter, found on certain objects at the crime scene.[13] However, the DNA expert was asked to clarify when specifically asked "Okay[,] [a]nd does that mean that there was a fourth contributor to that internal door handle, in addition to [the victim, appellant, and appellant's daughter]?" To which she responded:

> No. So the DNA type was too limited to use for any comparisons. It was just one DNA type and I was not seeing enough foreign DNA or more DNA types that were different to the three of them to be able to say that it was a mixed profile of four contributors. If there was more information that was obtained, I would be able to report it as a mixed DNA profile of four contributors.

Under those circumstances, on this record, it hardly seems "indisputable" that an unknown male's DNA was determined to be at the crime scene as appellant asserts given that the DNA expert flatly denied it.

Finally, appellant claims that it is "indisputable" that the "Medical Examiner's

[13] Appellant's counsel made this very argument in closing.

report debunks the State's theory that the crime occurred at some time around 5:00 a.m. on March 7, because it placed the crime closer to noon, when it was universally acknowledged that Mr. Dunlap was away from the residence from 10:45 a.m. to 1:30 p.m. on March 7." As with the other assertions appellant makes, he does not tell us anything about how he arrives at this conclusion. On direct examination of the medical examiner, when asked "when you're conducting an autopsy, are you ever able to determine the time of someone's death?" he responded "No."

The Medical Examiner's report was admitted into evidence at State's Exhibit 357. It indicated that the autopsy was performed on March 8, 2021 at 9:00 a.m. The report states that "Rigor was present to an equal degree in all extremities. Lividity was present and fixed on the anterior surface of the body, except in areas exposed to pressure."

On cross-examination, the Medical Examiner testified that, while the amount of time for lividity to occur varies based on numerous factors, it generally can take eight to twelve hours. Additionally, he testified that rigor mortis is a process where a corpse stiffens and then relaxes, and that it takes about twelve hours for it to stiffen and another twelve hours to relax. He testified that, similar to lividity, the amount of time for rigor mortis to occur varies based on numerous factors.

After discussing the factors that can vary the time of incidence for both processes, including temperature, and after confirming that the Medical Examiner had not measured any of those variables, defense counsel asked the Medical Examiner "All right. And because you don't have those measurements and all the other factors, you're not able to come up, to form an opinion as to the time of death?" The Medical Examiner responded

"Correct. I'm not able to."

From that evidence, we do not find that the Medical Examiner's report "indisputably" debunked the State's asserted time of death or established a time of death that corroborated appellant's statement to police.

An error will be considered harmless if we are satisfied that there is no reasonable possibility that the evidence complained of may have contributed to the rendition of the guilty verdict. *Dionas v. State*, 436 Md. 97, 108 (2013). Based on our independent review of the record in this case, we are satisfied, beyond a reasonable doubt, that the erroneously admitted evidence of the victim's generous and loving character in no way influenced the verdict. *Dorsey v. State*, 276 Md. 638, 649 (1976).

V.

As noted earlier, at trial, the State called a family law attorney, Katherine O'Rourke, as a witness. She testified that, in October 2020, she consulted with the victim concerning a divorce from appellant. When she was asked whether the victim had wanted "anything in particular with respect to her house?" she responded:

> Yes. So she mentioned in the consultation that she had a home in North Kensington, and she wanted to stay in her home. And she wanted her husband to vacate the home because she did not feel safe in the home with him.

Appellant's counsel immediately objected and moved to strike the comment, to which the court acquiesced and struck it. At that point, appellant's counsel asked to approach and asked for a mistrial because the comment was "so inflammatory." The court declined to grant the request for a mistrial and instead explained that it would admonish the jury to disregard the comment, as follows:

> Okay. So I'll instruct them that it's stricken and not to consider it. I think jurors can not consider it. We've been very careful with regards to that. She's also said that she's feeling lousy, so say her home could have other impact. It doesn't necessarily mean domestic violence. So I will instruct the jury, and I will allow counsel to lead, so we don't get back in that area.

Later, the court instructed the jury: "So with regards to her last statement about vacating the home and the reason why, stricken. Okay. And … when I strike testimony, you're not to consider it for any purpose."

On appeal, appellant argues that the family attorney's comment about the victim not feeling safe with appellant in the home could only mean that the victim feared for her physical safety because of appellant's presence in the home. According to appellant, this testimony was extraordinarily prejudicial and therefore the trial court erred in not granting a mistrial.

The State argues that this isolated comment, which came into evidence through the State's twenty-fifth witness in a multi-day trial with hundreds of pieces of evidence, was not so prejudicial that the court's prompt curative measures were incapable of curing the prejudice.

We review a decision to deny a mistrial for an abuse of discretion. *Vaise v. State*, 246 Md. App. 188, 239 (2020). This is so because the "trial judge is in the best position to decide whether the motion for a mistrial should be granted." *Wilson v. State*, 148 Md. App. 601, 666 (2002).

> The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able to ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters. That is to say, the judge has his finger on the pulse of the trial.

State v. Hawkins, 326 Md. 270, 278 (1992).

"[A] mistrial is an extreme remedy not to be ordered lightly." *Nash v. State*, 439 Md. 53, 69 (2014). Notably, "the range of a trial judge's discretion when assessing the merits of a mistrial motion ... is very broad," and such a ruling "will rarely be reversed." *Id*. at 68-69 (cleaned up).

In this case, the family law attorney's gratuitous comment about the victim not feeling safe was clearly inadmissible and the trial court rightly struck it and instructed the jury to disregard it. Moreover, "[a] jury is presumed to understand and follow the court's instructions." *Whittington v. State*, 147 Md. App. 496, 534 (2002) (citation omitted). In fact, "our legal system necessarily proceeds upon the assumption that jurors will follow the trial judge's instructions[.]" *State v. Moulden*, 292 Md. 666, 678 (1982).

We discern no abuse of discretion on the part of the trial court in determining that, under the circumstances of this case, striking the testimony and admonishing the jury to disregard it was sufficient to protect appellant's rights.

VI.

At trial, several statements of the victim indicating her unhappiness with her marriage were offered through emails and text messages and were admitted into evidence through various witnesses. Appellant contends that the evidence was collectively inadmissible hearsay, and that, in any event, it was needlessly cumulative and should have not been admitted.

The State claims that the evidence was admissible under the so-called "state of mind" exception to the rule against hearsay because the victim's state of mind, *i.e.* that she

was unhappy with appellant, wanted a divorce, and wanted him to leave the house, met the criteria for the hearsay exception and was relevant to appellant's motive.[14]

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Maryland Rule 5-801(c). Absent an exception, hearsay is not admissible. Maryland Rule 5-802. Maryland Rule 5-803(b)(3), styled "Then Existing Mental, Emotional, or Physical Condition," provides a hearsay exception for "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action[.]"

In *Gray v. State*, 137 Md. App. 460 (2001), *rev'd on other grounds*, 368 Md. 529 (2002), the defendant was convicted of the first-degree murder of his wife. *Id*. at 468. His defense at trial was that someone else was responsible for his wife's killing. *Id*. Among other evidence adduced at Gray's trial, the State offered statements made by the wife the night before she disappeared, to the effect that "she wanted to end her marriage and was going to tell Gray that." *Id*. at 470. Under those circumstances, we stated: "Under Md. Rule 5-803(b)(3), [Gray's wife's] statements of her then-existing intention to tell Gray that she wanted a divorce were admissible to prove that she did so. That evidence, in turn, was probative of the issue of motive." *Id*. at 500.

[14] The State also asserts that appellant waived some of his hearsay challenges to the victim's statements by conceding during pre-trial proceedings the admissibility of some statements under the hearsay rules and then objecting "on the same basis" at trial. Given our resolution of this issue, we need not reach the State's preservation argument.

Thus, we agree with the State that the victim's statements were admissible under Maryland Rule 5-803(b)(3) because the victim's then-existing intention to divorce appellant was relevant to prove that she was pursuing divorce, which was probative of motive.

With regard to appellant's argument that the evidence was "needlessly cumulative," the State, citing to *Newman v. State*, 236 Md. App. 533, 554 (2018), argues that the State is not required to put on a "minimalist" case. Moreover, the State asserts that the statements came from different people over different times and some contained different information.

Maryland Rule 5-403 provides in pertinent part that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by … considerations of … needless presentation of cumulative evidence." In *Ford v. State*, 462 Md. 3, 59 (2018), the Court observed that the "mere fact that evidence may be cumulative does not mean that the evidence is unfairly prejudicial."

We agree with the State. In this case, although the evidence of the victim's dissatisfaction with her marriage was offered through several witnesses, and was therefore to some extent cumulative, it was entirely within the circuit court's discretion to conclude that it was not needlessly cumulative. We therefore discern no error or abuse of discretion in admitting the evidence.

VII.

At the conclusion of appellant's trial, both parties offered relatively lengthy and thorough closing arguments. The State's argument spanned approximately forty pages of transcript and appellant's counsel's argument spanned around 20 pages. Both arguments

dealt nearly exclusively with the evidence of appellant's criminal agency. The State then offered its rebuttal closing during which the State primarily argued how the facts showed that it was appellant, and not some unknown intruder, who killed the victim. Appellant directs our attention to several passages from the State's rebuttal closing argument that he believes were so impermissible to warrant a new trial.

Generally speaking, attorneys are afforded great leeway in presenting closing arguments to the jury. *Degren v. State*, 352 Md. 400, 429 (1999) (citation omitted). Maryland's Supreme Court has repeatedly noted:

> The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom. In this regard, generally, the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is accused's counsel to comment on the nature of the evidence and the character of witnesses which the prosecution produces.
>
> While arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined – no well-defined bounds beyond which the eloquence of an advocate shall not soar. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

Lee v. State, 405 Md. 148, 163 (2008) (cleaned up).

"Despite the wide latitude afforded attorneys in closing arguments, there are limits in place to protect a defendant's right to a fair trial." *Degren*, 352 Md. at 430. "Not every improper remark, however, necessitates reversal, and whether a prosecutor has exceeded the limits of permissible comment depends upon the facts in each case." *Lee,* 405 Md. at

164. "Reversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Degren*, 352 Md. at 431 (cleaned up). "This determination of whether the prosecutor's comments were prejudicial or simply rhetorical flourish lies within the sound discretion of the trial court." *Georges v. State*, 252 Md. App. 523, 534 (2021) (cleaned up). "On review, an appellate court should not reverse the trial court unless that court clearly abused the exercise of its discretion and prejudiced the accused." *Degren*, 352 Md. at 431 (citation omitted).

Appellant directs our attention to a point during the State's rebuttal argument where the State said: "the defense is trying to cloud your judgment[.]" He contends that the State sought to denigrate defense counsel by making this statement. When read, in context, however, it appears to us that the trial court did not abuse its discretion in permitting the argument. The comment came in response to an argument made by appellant's counsel in closing where he argued that the Buddha statute was not the murder weapon, and that it had mysteriously appeared in the room where it had not been before. The following occurred:

> [THE STATE]: The defense is trying to cloud your judgment by saying that–
>
> [DEFENSE COUNSEL]: Objection.
>
> [THE STATE]: – you know, this –
>
> THE COURT: Overruled.
>
> [THE STATE]: – Buddha statue was not present. And we don't know where it came from because they could have placed it there based on some of the photos he showed. There are hundreds of photos that the forensic specialists took while they were on scene prior to manipulating anything. You all have

> thumbnails. Before they touch anything, they take hundreds of photos. This Buddha statue is nowhere. And then once they move Ms. Charles' body and once they start manipulating things to look at blood spatter and seize evidence, that's when we finally see some photos of the Buddha.

It is clear enough to us that the State was not attacking defense counsel personally, but rather, attacking defense counsel's argument about the Buddha statue. In that regard, the State's argument was a fair comment on defense counsel's argument.

Appellant also directs our attention to the following passage from the State's rebuttal argument, to which he did not contemporaneously object:

> [THE STATE]: This case, yes, is based on circumstantial evidence. There is no direct evidence that this defendant completed the crime because he did his best to try to get rid of any direct evidence you would have. But guess what? You have enough evidence. Circumstantial evidence can carry the same exact weight as direct evidence. We have that jury instruction when you go back there. And you have plenty of evidence to convict this man beyond a reasonable doubt.

Next, appellant points to the following passage:

> [THE STATE]: It's the same standard to prove this case beyond a reasonable doubt and that's not an impossible standard. Circumstantial evidence is enough to find the defendant guilty beyond a reasonable doubt. *That standard is used every day in every criminal case and people are found guilty using this standard –*
>
> [DEFENSE COUNSEL]: Objection.
>
> [THE STATE]: *– all the time*.
>
> THE COURT: Overruled.
>
> [THE STATE]: It's not an impossible standard. It's a doubt that is founded upon reason. It's not reasonable to think that somebody else committed this crime. It's not reasonable to think that within this one-and-a-half-hour window when the defendant leaves for church that someone came in here, came into [the victim's] home, went directly to her bedroom, didn't track anything, didn't break anything, didn't throw anything in the house around, didn't steal anything.

(Emphasis added). Appellant claims that the State's italicized comments amounted to an impermissible "bandwagon" argument which improperly encouraged the jury to convict in a circumstantial case because other "people are found guilty using this standard all the time." He asserts that the comment, when coupled with the above-mentioned alleged denigration of defense counsel, "misled the jurors on their individual duty and on the reasonable doubt standard, and it was patently misleading and prejudicial."

To begin with, we have already disposed of appellant's claim that the State sought to denigrate defense counsel. But, more importantly, we find the State's comment to the effect that people are regularly convicted of crimes in criminal trials utilizing the beyond a reasonable doubt burden of persuasion, not misleading and not an impermissible "bandwagon" argument. The State correctly noted that the beyond a reasonable doubt burden of persuasion "is not an impossible standard" and that it can be satisfied by circumstantial evidence alone. From that standpoint, the State made the non-controversial statement that "people are found guilty using this standard . . . all the time[.]"

Given the record in this case, and the isolated nature of these comments, we find no abuse of discretion on the part of the trial court.

CONCLUSION

We affirm the judgment of the circuit court.

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