

Circuit Court for Baltimore City
Case No.: 122159002

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1191

September Term, 2023

JOSEPH MOULDEN

v.

STATE OF MARYLAND

Friedman,
Kehoe, S.,
Kenney, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: April 25, 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 Md. Rule 1-104(a)(2)(B).

On April 30, 2022, an altercation among customers at a gas station escalated into a gunfight. After reviewing videos and still photos of the incident, a jury in the Circuit Court for Baltimore City convicted Joseph Moulden, appellant, on two counts of attempted first degree murder relating to two individuals, one count of first degree assault against a third victim, reckless endangerment, and related handgun offenses.¹ The jury acquitted Moulden of attempted murder and other charges relating to a fourth person.

Moulden, challenging his convictions, presents two questions to this Court:

1. Was the evidence sufficient to sustain [Moulden]’s convictions including but not limited to convictions for attempted first degree murder and use of a handgun during the commission of the attempted murder(s)?
2. Whether the trial court abused its discretion in limiting cross-examination of Detective Geo[r]ge Githara as to suspected illegal activity, specifically, drug dealing, occurring at the BP Gas Station located at 5100 block of Reisterstown [R]oad?

For reasons that follow, we conclude the evidence is sufficient to support Moulden’s convictions and that the trial court did not violate Moulden’s constitutional right to confrontation or otherwise abuse its discretion in restricting Detective Githara’s cross-examination. We will therefore affirm his convictions.

¹ The jury also convicted Moulden on three counts of using a handgun during commission of those crimes of violence; possessing a regulated firearm after a disqualification; wearing, carrying, or transporting a handgun on his person; transporting a handgun in a vehicle; discharging a firearm; and possessing ammunition after disqualification. He was sentenced to an aggregated term of sixty-one years.

BACKGROUND

The State charged Moulden with first and second degree assault against an unidentified woman; attempted first degree murder of both an unidentified male gunman and a bystander, Adrian Guzman, who was shot on the premises of the gas station; and attempted second degree murder of James Artis, another gunshot victim who was hit while at a location nearby the gas station premises. During the five-day trial, the prosecution did not present testimony from any of the alleged victims or any other witnesses to what happened. The State relied on police witnesses who recounted their investigation and authenticated four videos (without audio) recorded by security cameras mounted outside the gas station, another video (with audio) from a body camera worn by a responding police officer, “screen shot” photos made from those videos, a recording of Moulden’s police interview, and crime scene photos taken by a police technician. These videos were not objected to. In addition, the State introduced evidence of spent cartridges from two different weapons, two of which were recovered by police in the area where the gunman fired, two in the area where Moulden fired at the gunman, and six in the area where Moulden fired at Mr. Guzman.

Collectively, the gas station security camera images show events from four angles. Pointing toward Reisterstown Road, video footage from three of the cameras covers the four gas pumps. A fourth camera shows the front of the brick building with a glassed-in kiosk adjacent to the gas pumps. As the officer walks around the building, enters it to initiate recovery of the security camera footage, and encounters Mr. Guzman, body camera footage expands these views.

The four videos show that on April 30, 2022, at 4 a.m.,² the unidentified woman and her male companion parked their white sedan at a pump, then stood with the unknown gunman in front of one end of the building, while Mr. Guzman stood alone at the other end, facing toward them. When Moulden drove up to a pump in a dark gray Jeep Cherokee, got out of the vehicle, and approached the building, he and the woman exchanged words.

Moulden moved toward her and struck her in the head. As he did, she swiped at his hand, then retreated several steps. Moulden, pulling a handgun from his waist area, struck her in the neck area with it. As she continued toward her vehicle, Moulden followed her.

Meanwhile, when this altercation began, the unidentified man wearing dark clothing labeled “Calvin” retreated out of camera view, around the side of the building. While Moulden pursued the woman toward her vehicle, the unidentified man reappeared with a handgun and fired twice. He then ran out of view around the side of the building.

In response, Moulden took cover briefly behind a gas pump, then advanced in the direction the gunman fled. Raising his gun to shoulder-height in a two-handed shooter’s stance, he fired twice toward where the gunman retreated.

Next, Moulden turned and took steps toward his parked vehicle. Instead of getting in, he stopped and faced toward the opposite side of the building, where Mr. Guzman had retreated after the altercation began. Moulden again raised his gun in a shooting stance,

² Although the security camera videos show 3 a.m. timestamps, it was undisputed that the correct time, accounting for daylight savings adjustment, was one hour later than shown.

then fired six shots in Mr. Guzman’s direction. He then got into his vehicle and drove out of the gas station onto Reisterstown Road.

The body camera video footage from responding Baltimore City Police Officer Norman Rogers shows the areas on the side of the brick building that cannot be seen in the mounted camera videos. Along the side with a locked door into the building, where the gunman fled before Moulden fired two shots in that direction, there is no fence or other obstacle to leave the premises. Along the other side of the building, where Mr. Guzman was shot, a tall chain link fence runs perpendicular to the building, creates a small niche, then turns ninety degrees and runs along the boundary of the property toward Reisterstown Road. In the body camera video, Mr. Guzman, while lying in the niche, tells the officer, “He punched that woman, and he pulled out his gun. . . . And I was trying to get away and he started shooting at me.”

In his police interview on May 9, 2022, Moulden acknowledged that he was at the gas station but initially denied any involvement. He eventually admitted firing a handgun which he characterized as “warning shots.” He also denied being aware that he had been shot until after he left the gas station.

Police were not able to identify the woman whom Moulden struck, her male companion, or the gunman who exchanged shots with Moulden.

The defense presented no evidence. After conceding that Moulden fired his weapon, which he was prohibited from possessing, defense counsel argued to the jury that Moulden’s altercation with the woman fell far short of the “pistol-whipping” described by the State, that Moulden fired his gun in self-defense after he was shot from behind by the

gunman, and that there was no evidence the bullets that struck Mr. Guzman and Mr. Artis came from his gun.

DISCUSSION

I. Sufficiency of the Evidence

Moulden contends that the evidence is insufficient to convict him of attempted murder and related handgun offenses because it does not establish that he intended to kill either the gunman, who fired at him first,³ or Mr. Guzman, the bystander. Acknowledging that “he started shooting[,]” he contends that “he was merely firing randomly, with no intended target, only after being shot himself” in circumstances that warranted a self-defense jury instruction. Moulden insists that because he only fired in self-defense after he was shot from behind, the evidence does not establish beyond a reasonable doubt that he intended to kill the gunman or Mr. Guzman. Nor does it support convictions under the alternative doctrine of concurrent intent, which applies “[w]here the means employed to commit the crime against a primary victim create a zone of harm around that victim,” from which “the factfinder can reasonably infer that the defendant intended that harm to all who are in the anticipated zone.” *Harrison v. State*, 382 Md. 477, 492 (2004) (cleaned up).

³ Although appellate counsel for Moulden asserted during oral argument that there was some confusion as to whether the attempted murder charges related to the unidentified male who shot him, *i.e.*, the gunman described as “Calvin,” or instead to the unknown male companion of the unidentified woman whom Moulden assaulted, Moulden did not raise that identity issue at trial, either before or after the jury rendered its verdicts. Moreover, we note that Moulden was only charged with attempting to murder one “unknown” male, who was specifically identified by defense counsel in opening argument as the gunman.

The State counters that “[t]he evidence was sufficient to support a finding that Moulden intended to kill ‘Calvin’ and Guzman with premeditation.” In the State’s view, “[t]he surveillance videos, alone, are sufficient to support Moulden’s convictions” because they show that he had sufficient time and opportunity to premeditate his intent to kill and that he deliberately “aimed his first several shots at ‘Calvin’ and specifically aimed his latter six shots at Guzman.”

The standard governing appellate review of whether a conviction is supported by sufficient evidence is whether, after examining the record in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Williams v. State*, 478 Md. 99, 144 (2022) (cleaned up). We do “not retry the case” because “[i]t is simply not the province of the appellate court to determine whether it could have drawn other inferences from the evidence.” *Koushall v. State*, 479 Md. 124, 148 (2022) (cleaned up). Whether considering direct or circumstantial evidence, we recognize that the jury “is entrusted with making credibility determinations, resolving conflicting evidence, and drawing inferences from the evidence[.]” *Id.* at 149. For those reasons, we defer to the jury’s choice “among differing inferences that might possibly be made from a factual situation.” *Id.* (cleaned up).

“The crime of attempt consists of a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes beyond mere preparation.” *State v. Earp*, 319 Md. 156, 162 (1990). *See Spencer v. State*, 450 Md. 530, 567 (2016). Because “[m]ere knowledge that a result is substantially certain to follow from one’s actions is not the same as the specific intent or desire to achieve that result[.]” there

must be evidence of “some intent other than to do the *actus reus* thereof which is specifically required for guilt.” *Thornton v. State*, 397 Md. 704, 738 (2007) (cleaned up). In other words, “[a] specific intent crime requires not simply the general intent to do the immediate act with no particular, clear or undifferentiated end in mind, but the additional deliberate and conscious purpose or design of accomplishing a very specific and more remote result.” *Spencer*, 450 Md. at 567 (cleaned up).

First degree murder occurs when a killing is willful, deliberate, and premeditated. Md. Code, § 2-201(a)(1) of the Criminal Law Article. The Supreme Court has defined each of these terms:

For a killing to be “wilful” there must be a specific purpose and intent to kill; to be “deliberate” there must be a full and conscious knowledge of the purpose to kill; and to be “premeditated” the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate.

Tichnell v. State, 287 Md. 695, 717 (1980).

Because “intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven,” we have recognized that “[t]he required [*mens rea* of] intent to kill may . . . be proved by circumstantial evidence” consisting of “facts which permit a proper inference of its existence.” *Earp*, 319 Md. at 167 (cleaned up). *See State v. Raines*, 326 Md. 582, 591 (1992). More specifically, a jury may infer the required intent from surrounding circumstances, including the accused’s acts, conduct, and words. *See Earp*, 319 Md. at 167.

In particular, “an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body.” *Raines*, 326 Md. at 591. That is so because,

when a defendant’s actions are “likely to bring about death, they speak for themselves with regard to willfulness.” *Anderson v. State*, 227 Md. App. 329, 348 (2016). Likewise, “the firing of two or more shots separated by an interval of time may be viewed as evidence of” both deliberation and premeditation. *Id.* (cleaned up). These two elements of first degree murder are “often treated as a single endeavor[.]” *Pinkney v. State*, 151 Md. App. 311, 335 (2003), because any “killing [that] results from a choice made as the consequence of thought . . . is characterized as deliberate and premeditated[.]” *Raines*, 326 Md. at 590. *See, e.g., id.* at 592-93 (holding that defendant’s actions in firing a gun multiple times at driver’s window of a tractor-trailer traveling on highway, knowing driver was on the other side, permitted inference of specific intent to kill because death was the natural and probable consequence of such actions).

To establish two counts of attempted first degree murder, the State had to present evidence from which the jury could find beyond a reasonable doubt that Moulden (1) intended to kill both the unidentified gunman and Mr. Guzman; (2) committed an overt act in furtherance of that intent; and (3) “under circumstances that would not legally justify or excuse the killing or mitigate it to manslaughter.” *Earp*, 319 Md. at 167. *See Prince v. State*, 255 Md. App. 640, 656 (2022).

We agree with the State that the evidence in this case is sufficient to support Moulden’s two convictions for attempted first degree murder, and by extension, his convictions for using a handgun in those crimes of violence. At trial, prosecutors presented video and still photos showing a number of people gathered outside the kiosk building when Moulden arrived at the gas station, including the woman he assaulted, her male

companion, the gunman wearing a “Calvin” shirt, and Mr. Guzman. The video unequivocally shows Moulden initiating a physical altercation with the woman, pulling a handgun from his waist area, and following her as she retreated to her vehicle. As Moulden pursued the woman with his gun drawn, the unidentified gunman stepped into camera view, fired two shots at Moulden, then retreated along the side of the building.

After taking cover behind a gas pump for a few seconds, Moulden emerged and stepped toward where the gunman retreated. He took aim in a two-handed shooter’s stance, holding his gun at chest height, and fired twice in the direction of the gunman. That evidence would support a reasonable inference by the jury that Moulden intended to kill the gunman.

Moulden then turned and moved toward his vehicle, but instead of getting in, he stepped toward the opposite side of the building, fired six shots in the direction of where Mr. Guzman previously had moved when Moulden initially assaulted the woman. The security camera and body camera videos show Mr. Guzman lying in that area, wounded by a bullet in his leg. Only then did Moulden get into his car and drive away. In short, the jury could reasonably find from that evidence that Moulden intended to kill Mr. Guzman.

Although the State did not present testimony by any of the individuals who witnessed the shootings, the security camera and body camera videos were authenticated and corroborated by evidence that ten spent cartridges (two from one weapon and eight from another) were recovered on the ground where the gunman and Moulden had fired their weapons. In addition, the State presented Moulden’s evolving account of the

altercation in his recorded interview and the body camera video in which Mr. Guzman states, “he started shooting at me.”

As previously stated, evaluating and weighing that evidence was the jury’s job. It “possesses the ability to choose among differing inferences that might possibly be made from a factual situation[,]” and, for that reason, appellate courts “give deference to all reasonable inferences the fact-finder draws[.]” *State v. Suddith*, 379 Md. 425, 430 (2004) (cleaned up).

The verdicts indicate that the jury rejected Moulden’s claim of merely firing random “warning shots.” It concluded instead that his conduct was willful and that aiming and firing multiple times at chest-height toward the gunman and Mr. Guzman could reasonably be expected to cause death. Taking cover before moving into position, aiming, and firing multiple shots at the gunman, and then repeating those steps before firing six more times at Mr. Guzman supports a reasonable inference that Moulden had acted with deliberation and premeditation. The evidence Moulden points to in support of his self-defense claim does not persuade us otherwise.

In sum, the jury could reasonably infer from the videos and corroborating evidence that Moulden intended to kill the two people at whom he was shooting. In turn, those findings were sufficient to support Moulden’s convictions for attempted murder and using a handgun to commit those crimes of violence.

To be sure, Maryland recognizes both perfect and imperfect self-defense. *Porter v. State*, 455 Md. 220, 234-35 (2017). Perfect self-defense results in acquittal when the defendant proves that (1) he had an objectively reasonable basis to believe he was in

“imminent or immediate danger of death or serious bodily harm,” (2) he “actually” believed he was in this type of danger, (3) *he was not the aggressor and did not provoke the conflict*, and (4) he used no more force against his attacker “than the exigency demanded.” *Id.* (cleaned up). When defending outside the home, a defendant “has a duty to retreat or avoid danger if such means were within his power and consistent with his safety.” *Id.* at 235 (cleaned up). Imperfect self-defense differs from perfect self-defense in that the defendant must prove only that he subjectively believed that he was in imminent danger, that the force he used was reasonable, and that retreat was not safe. *Id.* Imperfect self-defense “does not completely exonerate the defendant,” but it will “mitigate[] murder to voluntary manslaughter[,]” which would be enough to preclude a finding of specific intent to kill in an attempted murder case. *State v. Faulkner*, 301 Md. 482, 486 (1984). *See Prince*, 255 Md. App. at 656.

Even if Moulden feared for his safety after the gunman fired at him, the jury could reasonably conclude from the evidence that he was the aggressor and could not invoke either perfect or imperfect self-defense. The evidence clearly indicates that Moulden initiated the physical altercation when he advanced on the woman, brandished a handgun and struck her with it, and followed her as she retreated. It further indicates that what he did provoked the gunman to intervene on her behalf and to shoot at Moulden. *See Porter*, 455 Md. at 234.

In addition, the security footage could support equally disqualifying inferences of Moulden’s opportunities to retreat to his nearby vehicle, rather than repeatedly repositioning himself, first to return fire toward the fleeing gunman and then to take shots

at an unarmed witness. In other words, the jury could reasonably conclude that Moulden had an option “within his power and consistent with his safety” to avoid the perceived danger. *Id.* at 235 (cleaned up). Therefore, even crediting Moulden’s claim that he fired his gun to defend himself after he was shot, the jury could still reasonably find that he fired with the intent to kill under circumstances that do not serve to mitigate his actions. That is because “the availability of other permitted inferences does not in any way negate or compromise the . . . legal sufficiency of the permitted inference of the intent to kill.” *Chisum v. State*, 227 Md. App. 118, 136 (2016). It follows that there are no grounds for appellate relief for the jury’s rejection of Moulden’s claim of self-defense.⁴

II. Cross-Examination

Moulden contends that the trial court erred in foreclosing based on relevance his cross-examination of Baltimore City Police Detective George Githara regarding alleged

⁴ As counsel for Moulden and the State agreed at oral argument, a conclusion that the evidence is sufficient to support the attempted murder convictions for both the gunman and Mr. Guzman eliminates the need to address the State’s alternative theory that Moulden is guilty under a concurrent intent theory. *See Harrison v. State*, 382 Md. 477, 496-97 (2004).

Likewise, we do not address Moulden’s reliance on this Court’s unpublished opinion in *Carter v. State*, Nos. 1360, 1362, 1363, 1364, Sept. Term, 2019, 2021 WL 2366881 (filed June 9, 2021). *See* Md. Rule 1-104(a)(2)(A) (“An unreported opinion of the . . . Appellate Court may not be cited as precedent within the rule of stare decisis or, except as provided in subsection (a)(2)(B) of this Rule, as persuasive authority.”). This case, which resulted in a five day trial record, does not present the limited circumstances under which “an unreported opinion issued on or after July 1, 2023 may be cited for its persuasive value.” *See* Md. Rule 1-104(a)(2)(B) (“Unless designated as a *per curiam* opinion, an unreported opinion issued on or after July 1, 2023 may be cited for its persuasive value only if no reported authority adequately addresses an issue before the court.”). It materially differs from the limited agreed statement of facts reviewed in *Carter*.

drug distribution activity at the BP gas station before Moulden arrived. In Moulden’s view, this restriction on cross-examination violated his Sixth Amendment right of confrontation. More particularly, he argues it prevented defense counsel from arguing to the jury that Moulden’s knowledge of that drug dealing, and that it is inherently dangerous, affected his behavior toward the woman he assaulted and the two men he shot at. The State responds that the trial court “properly limited the scope of cross-examination” in a manner that “sufficiently protected Moulden’s right to confrontation.” We agree.

In his opening statement, defense counsel, referring to the unidentified woman and her male companion, told the jury that “the State tells you that they don’t know who these other two people are,” but that “[t]hey should know who they are, they are on the video for at least 15 minutes that we can see dealing drugs earlier that night.” The State objected. At a bench conference, the following ensued:

THE COURT: What’s the nature of your objection?

[PROSECUTOR]: He doesn’t have any evidence that will be presented that they were dealing drugs. I don’t think anyone is going to say that they dealt drugs. I don’t think the video is indicative of them selling drugs.

[DEFENSE COUNSEL]: And I believe it is.

[PROSECUTOR]: I believe [it’s] pure speculation and it’s prejudicial to the State’s case.

THE COURT: So it’s opening.

[PROSECUTOR]: I understand, and I would –

THE COURT: Right, so just as you know, [defense counsel] understands – and if he’s not, he’s reminded that his opening is what he believes he can prove, not speculation.

[PROSECUTOR]: Okay.

THE COURT: So if he believes that he can prove – I’ve not seen the videos, so I mean I can’t opine as to what it shows, or what it doesn’t show. That’s not my role.

[PROSECUTOR]: Okay.

THE COURT: So if he believes that the Jury is going to see a piece of evidence which might suggest that then your objection is overruled.

On the third day of trial, after the State presented the videos and testimony by the responding police officer, defense counsel returned to the prospect of drug dealing during his cross-examination of Detective Githara, who led the investigation. When defense counsel asked whether he reviewed the security camera videos during the fifteen minutes before Moulden arrived, the detective answered that he did not “remember the exact time[,]” prompting defense counsel to offer to “show you and see if that refreshes your recollection[.]” The prosecutor objected.

In response, the court noted that “[w]e have to do it out of the presence of the jury.” After excusing jurors, the court explained why it was not going to allow defense counsel to inquire about drug dealing at the gas station:

THE COURT: So, if the purpose of showing the video is to suggest that there might have been drug transactions happening at the gas station, it’s not relevant.

[DEFENSE COUNSEL]: Well, it’s going to show that plus it’s going to show faces, full faces of the person who shot Mr. –

THE COURT: Okay.

[DEFENSE COUNSEL]: And I think that’s very significant. He said he did it.

THE COURT: Excuse me. So, what I'm saying is, you can show him the video. He can be asked about what efforts he made to identify the people who were at the gas station. He may not be asked in front of this jury about any suspected illegal activity happening among those people prior to the incident.

[DEFENSE COUNSEL]: May I proffer the Court?

THE COURT: Yes.

[DEFENSE COUNSEL]: I'm just trying to understand why. If they're drug dealing and if you can see drug dealing, drug dealers carry guns.

THE COURT: Okay.

[DEFENSE COUNSEL]: And that would be – go to my client's –

THE COURT: There's no dispute that somebody else had a gun there. There is no dispute. . . . Mr. Moulden was shot. That's not in dispute. But whether or not there was drug activity happening is irrelevant to whether or not Mr. Moulden had a gun. It's irrelevant as to whether or not Mr. Moulden discharged his firearm. It's irrelevant as to whether Mr. Moulden committed an assault.

* * *

[DEFENSE COUNSEL]: . . . I understand that the Court's not going to allow me to do it. I just, for the record, I believe that I should have been allowed to go into what these people were doing because it also –

THE COURT: Before Mr. Moulden arrives has nothing to do with Mr. Moulden.

[DEFENSE COUNSEL]: No. But it has to do with the case, the victims. These are alleged victims, Judge. So, it's not just Mr. Moulden – it is significant. First of all, they sent it to me. Why would they send it to me?

THE COURT: Because they send you all sorts of thi[n]gs[.]

* * *

You get all sorts of things that are not necessarily admissible at trial .
...

[DEFENSE COUNSEL]: I understand. I would . . . still like to show it to him now, if I could.

THE COURT: I'm not going to allow you to ask him about it in front of the jury.

[DEFENSE COUNSEL]: Not the drugs. You would allow me to ask other things, wouldn't you?

THE COURT: I will, but not about the drugs. You could ask him about his efforts to identify –

[DEFENSE COUNSEL]: Yes. That's what I'm doing.

THE COURT: That's it. But if what they might have been doing before Mr. Moulden arrives is, not relevant as to this case, sir.

* * *

Because it's essentially arguing that certain people don't deserve to be treated as victims because they're drug dealers. That's essentially what you're arguing.

* * *

[DEFENSE COUNSEL]: No, Judge, you're wrong. Drug dealers are dangerous. That's what the point is. And that what they said or what [they] did before Mr. Moulden did what he did would be significant.

THE COURT: Not dangerous to Mr. Moulden. He's not on the scene, and I'm not allowing you to do it, sir.

Before proceeding to question the detective outside the jury's presence, defense counsel expanded his argument as to why restrictions against inquiring about possible drug dealing activity violated Moulden's right to confront witnesses against him:

[DEFENSE COUNSEL]: Judge, this is a very unique situation. We have four alleged victims, and I can't cross examine any of those people. So, it's really putting me in such a position that I'm trying to get in through the back door what I'm not allowed to ask because I can't cross-examine, and he can't face his accusers. I have nobody to ask anything about that. That's just not right. It's just not fair, I think, that they present no witnesses, but I can't

ask any questions about these people. If they were called into this courtroom to testify, I could ask them why they were out there at 3:00 in the morning.

THE COURT: Which wouldn't be relevant.

* * *

[DEFENSE COUNSEL]: Okay. But I still could cross-examine them and ask them different questions and ask them what they said to him, what they did to him, what the other people said. . . .

He's allowed – the State is allowed to get hearsay out. She just asked him . . . “Where was Mr. Guzman found?” How does he know? He wasn't there. . . . I just think that . . . this is a very unique case. We have video that I can't cross-examine a video. I can't cross-examine any witnesses. I'm not allowed to ask certain questions. I have – my hands are tied.

THE COURT: Well, I'm conducting this trial according to the rules of evidence, and the law in the State of Maryland. The videos came in without your objection. So, you didn't ask me to determine whether or not they should or should not come in. You did not object.

* * *

[PROSECUTOR]: And your Honor, I would like to preserve the record and indicate to the Court that I specifically called in that witness that I located on every one of those videos to properly authenticate, according to the rules in Maryland, that video footage. . . . The State assumed defense would object and, therefore, used a witness that I knew was on every frame during that portion of each video in order to put it into evidence.

Defense counsel continued voir dire by asking the detective about his efforts to identify from the security camera videos the individual who shot Moulden. After the jury returned, defense counsel asked whether he had ever visited the gas station “at 4:00 in the morning to see if [he] could find the person who shot Mr. Moulden, or the lady” with whom he had an altercation. Detective Githara answered:

[DET. GITHARA]: Well, after that incident, it's been fairly quiet. So, nobody usually hangs there, and now they have a – they want a patrol unit sitting at the gas station. So, usually there's always a police car, 80 percent

of the time, sitting there when they’re not on call. So, nobody is going to hang there.

[DEFENSE COUNSEL]: So, there’s no drug dealing there?

[DET. GITHARA]: No.

[PROSECUTOR]: Objection.

THE COURT: Sustained.

Ladies and gentlemen, you should disregard the question and the answer.

Under Md. Rule 5-611(a),

[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

In exercising this discretion, courts are mindful that the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights protect a criminal defendant’s right to cross-examine witnesses against him. *See Manchame-Guerra v. State*, 457 Md. 300, 309, 311 (2018); *Peterson v. State*, 444 Md. 105, 124 (2015). Specifically, the Confrontation Clause guarantees a criminal defendant “the right . . . to be confronted with the witnesses against him[.]” U.S. Const. amend. VI; *see also* Md. Decl. Rts. art. 21. “When determining whether a defendant’s right to confrontation has been violated, this Court conducts its own independent constitutional appraisal, by reviewing the law and applying it to the peculiar facts of the particular case.” *Spinks v. State*, 252 Md. App. 604, 614 (2021) (cleaned up). When “doing so, we accept the trial court’s factual findings unless they are clearly erroneous.” *Id.* at 615.

“To comply with the Confrontation Clause, a trial court must allow a defendant a threshold level of inquiry that exposes to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.” *Peterson*, 444 Md. at 122 (cleaned up). “An undue restriction of the fundamental right of cross-examination may violate a defendant’s right to confrontation.” *Pantazes v. State*, 376 Md. 661, 681 (2003).

That said, however, cross-examination may still be curtailed without violating these constitutional constraints when the inquiry elicits matters that were not addressed on direct examination and are otherwise irrelevant or immaterial to the trial issues. *See Stanley v. State*, 248 Md. App. 539, 551-52 (2020); *Rowe v. State*, 62 Md. App. 486, 495 (1985). Evidence is relevant when it makes a fact in issue more or less probable. Md. Rule 5-401. “Evidence that is not relevant is not admissible.” Md. Rule 5-402. Although we review a relevance ruling *de novo*, *see State v. Robertson*, 463 Md. 342, 353 (2019), a trial court may exercise its discretion to restrict cross-examination in order to prevent “confusion of the issues” and when the questioning is “only marginally relevant.” *See* Md. Rule 5-403; *Pantazes*, 376 Md. at 680.

Moulden presents three Sixth Amendment arguments. First, he contends that the dangerous nature of drug dealing was relevant because “knowledge of [that danger] contributed to [his] actions and decision making[.]” To be sure, it is not disputed that both the gunman and Moulden were armed. We agree, however, with the trial court that there also was no evidence, proffered or admitted, that Moulden was aware of any drug activity that may have occurred at the gas station before he arrived. Absent an evidentiary predicate

for the inquiry, we are not persuaded that the trial court erred or abused its discretion in limiting cross-examination about any drug activity at the gas station.

The record also refutes Moulden’s second contention that the trial court prejudicially restricted defense “counsel’s ability to elicit testimony as to the detective’s lack of investigation into those individuals” who were on the surveillance video. To the contrary, the transcript shows that defense counsel was permitted broad latitude to question the detective, both outside the presence of the jury and in front of the jury, about what measures were undertaken to identify individuals visible on the gas station videos.

Indeed, defense counsel was able to argue the significance of such “missing witness” evidence in closing:

Ladies and gentlemen, this is a very unique case. We have four live victims. And we heard from no one. Not one person named in the indictment is here. Why do you think that is? The State tried to infer that two of them are homeless. Okay. Police have had a year to find them, to get them. Where are they? Why aren’t any of those people here? One of the basic tenets of defending a case is cross-examination. The State said that I only asked questions of the first witness [Det. Githara]. . . . You know why? Because we had no other witnesses here to ask questions to. How do we know what happened, what was said? How do we know if there were ever threats made before Mr. Moulden did anything? How do we know? We had nobody here. Nobody telling us[.] [W]e know that Mr. Guzman, along with at least three other people were all in that area. And the State asked you to take this in a sterile courtroom instead of what happened within a . . . 40 second stand [sic] on April 30th.

Defense counsel then continued by narrating the video and raising specific questions that the security camera videos do not answer. For example, he pointed out the lack of answers about what the woman and others said Moulden, whether Mr. Guzman or “any of

these other people had guns[,]” “what happened to the shooter[,]” and “[w]hich bullet shot” Mr. Artis.

Although this case rests on the security camera videos that allowed the jury to watch what happened, the acquittals on charges relating to Mr. Artis indicates that Moulden was able to challenge successfully what the State’s evidence did or did not show. Based on this record, we are persuaded that the trial court did not improperly restrict cross-examination regarding the police investigation (or lack thereof) into witnesses at the scene of this shooting.

In his third Sixth Amendment challenge, Moulden argues generally that the State’s “failure to present any of the four alleged victims . . . adversely infring[ed] upon [his] right to cross-examine and confront his accusers.” Because the “ultimate goal” of those rights “is to ensure reliability of evidence,” the Sixth Amendment guarantee is limited to cross-examining and confronting witnesses “who bear testimony” against a defendant, either by actually testifying at trial or by making testimonial out-of-court statements that are admitted against the accused. *Crawford v. Washington*, 541 U.S. 36, 51-54, 61 (2004). *See State v. Robertson*, 463 Md. 342, 353 (2019). In other words, under *Crawford* and its progeny, the right of confrontation is implicated only when the State presents the testimonial witness, not when it fails to do so.⁵ *See Cooper v. State*, 434 Md. 209, 233

⁵ We note that, to the extent Mr. Guzman’s recorded remark to Officer Rogers that, when he tried to get away, Moulden started shooting at him, could qualify as a testamentary statement, it was admitted without objection and has not been cited by either defense or appellate counsel in regard to Moulden’s Confrontation Clause challenge. *Cf. Smith v. State*, 259 Md. App. 622, 649 (2023) (holding Confrontation Clause objection was not (continued...))

(2013). For these reasons, we hold that the trial court did not err or abuse its discretion in restricting cross-examination in a manner that violated his Sixth Amendment right of confrontation.

**JUDGMENTS OF CONVICTION IN THE
CIRCUIT COURT FOR BALTIMORE
CITY AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

preserved because defense counsel “never fairly apprised the trial court that he was objecting to the admission of the Blake Interview as a violation of his constitutional right to confront the witnesses against him”), *aff’d on other grounds*, 487 Md. 635 (2024).