UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1202

September Term, 2014

WILLIAM R. BRUECKMANN

v.

STATE OF MARYLAND

**Zarnoch,
Wright,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: September 22, 2015

**Zarnoch, Robert A., J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

Appellant William R. Brueckmann was indicted in the Circuit Court for Carroll County on several charges stemming from the fatal shooting of Brittany Warfield. Following a nine-day trial, a jury convicted Brueckmann of second-degree depraved heart murder, first-degree assault, and use of a handgun in the commission of a felony or crime of violence. The trial judge imposed concurrent sentences totaling thirteen years of prison time, the first five of which were to be served without the possibility of parole. Brueckmann noted a timely appeal to this Court.

QUESTIONS PRESENTED

Brueckmann presents four issues for review, which we have rephrased and reordered as follows:

I. Did the trial court abuse its discretion when it admitted evidence that Brueckmann possessed six "long guns" in his home?

II. Did the trial court commit reversible error when it denied Brueckmann's request for a jury instruction on the meaning of the word "homicide"?

III. Did the trial court commit reversible error for denying Brueckmann's request for a jury instruction that suicide is not a crime in Maryland?

IV. In denying Brueckmann's motion for a new trial, did the trial court erroneously analyze the question of whether the weight of the evidence was not sufficient to support the jury's verdict convicting Brueckmann of second-degree depraved heart murder, and did the court misinterpret a treatise on criminal law?[1]

[1] Brueckmann originally phrased his questions in the following manner:

I. Was it error to refuse to give a jury instruction on the meaning of the word "homicide"?

(continued…)

For the reasons that follow, we answer each question in the negative and affirm Brueckmann's convictions.

FACTUAL BACKGROUND

It was undisputed at trial that Brueckmann shot Ms. Warfield with a handgun on November 18, 2012, outside his residence in Woodbine, Maryland. When a law enforcement officer arrived at the scene, Brueckmann, who was kneeling and holding Ms. Warfield's head in his hands, admitted that he had shot her.

In vigorous dispute were the circumstances surrounding the shooting -- specifically, whether Brueckmann shot Ms. Warfield intentionally or accidentally. The State's principal theory was that the shooting was an act of premeditated murder, which occurred after Ms. Warfield told Brueckmann that she planned to move out of his apartment. The defense, in turn, contended that the shooting was the unintentional result of Brueckmann's attempt to commit suicide and that the handgun went off only when Ms. Warfield attempted to intervene to prevent Brueckmann from ending his life.

II. Was it prejudicial error to allow into evidence that Appellant possessed "six" rifles in an "unsecured" case, where the possession of "weapons" other than the pistol that fired the fatal shot was irrelevant, and any minimal probative value it might have had did not outweigh the likely prejudice?

III. Was it error to refuse to instruct the jury that "suicide" is not a "crime," in Maryland?

IV. On motion for new trial, did the trial court erroneously apply the elements of the lesser offense of involuntary manslaughter to the question of whether or not the weight of the evidence was sufficient to support the verdict of second degree depraved heart murder, and did the court misinterpret a treatise on criminal law?

As one of the State's many witnesses, Ms. Danielle Powell, a close friend to Ms. Warfield, testified that she and Ms. Warfield had been considering moving in together. She stated that on November 17, 2012, the day before the shooting, the two women signed a lease for a new apartment. They planned to move into the new residence the following day. Ms. Warfield was reluctant to tell Brueckmann about her moving plans, but she went to see him at his apartment that evening after dinner. Ms. Warfield stayed the night with Brueckmann.

The State also called witnesses who testified that they overheard the couple engaged in argument shortly before the shooting.

Brian Meadows, the resident of the apartment above Brueckmann's, testified that, although he could not make out much of the content, he clearly heard Brueckmann and Ms. Warfield arguing, both on the night before and on the morning of the shooting.

Deborah Pauling Jones, who lived on a neighboring property, was outside feeding her horses at 9:20 a.m. on the morning of the shooting when she overheard portions of a contentious dispute between Brueckmann and Ms. Warfield. Ms. Jones said that she had heard the two argue before, and so she decided to go about her business, but that as she moved closer to Brueckmann's apartment she heard the argument escalate. She could not see the couple from her location, but as she listened she heard Ms. Warfield begin to sound "hysterical." She "was crying and repeatedly asking 'Why did you break my stuff, why did you break my stuff?'" The argument intensified to the point that Ms. Jones took her cell phone out of her pocket in case she needed to call 911. She then heard Ms. Warfield say something that ended in "over," to which Brueckmann replied, "You are

right it is fucking over." She heard a door slam, she heard Ms. Warfield shout "No, no," she heard a gunshot, and then, once again, she heard the words, "No, no." Ms. Jones immediately called 911.

The State submitted evidence indicating that immediately after the shooting, Brueckmann telephoned Ms. Warfield's mother, but that the call did not go through; that he then called his own mother, Nancy Brueckmann, on a call that lasted about 20 seconds; and that he called his mother again two minutes later. Brueckmann then dialed 911, over three and a half minutes after he had shot his girlfriend. On that call Brueckmann can be overheard saying to his upstairs neighbor, Ms. Barbara Barr, the first to arrive at the scene: "911 is on their way. I am in a little trouble, Ms. Barr. She was wrestling the gun away from me." Brueckmann's mother, Nancy, and his younger sister, Amy, were the next to arrive, and parts of their conversations with Brueckmann can also be overheard on the 911 recording. At no point in that recording did Brueckmann clearly state that the shooting was the result of an attempted suicide.

The State called Maryland State Trooper Jeffrey Partridge. He was the first member of law enforcement to arrive at the scene, approximately 15 minutes after Ms. Jones called 911. There, in the backyard of Brueckmann's residence, the trooper came across Brueckmann, Brueckmann's sister Amy, Brueckmann's mother Nancy, and Ms. Warfield. Brueckmann was kneeling on the ground, and Ms. Warfield was "lying face up with her head in the Defendant's lap, bleeding from her head[,]" and apparently unconscious as Brueckmann was "cradling" her head. Amy and Nancy, a retired EMT, were attempting to render aid to Ms. Warfield.

Trooper Partridge testified that he asked Brueckmann what had happened. Brueckmann, who visibly had been crying, replied that he had attempted to commit suicide and that the gun had gone off when Ms. Warfield attempted to intervene. The Trooper handcuffed Brueckmann and left him and the victim in that position until EMTs and backup law enforcement officers had arrived.

The State also called Assistant Medical Examiner Carol H. Allen, M.D. As we shall discuss in greater detail below, Dr. Allen testified that the cause of Ms. Warfield's death was a gunshot wound to the back of the head and that the bullet moved upward and exited the front of her skull. Dr. Allen testified that the "manner of death" was "homicide," and not "accident," "suicide," or "natural causes." Because of the absence of stippling (or abrasions caused by unburned gunpowder and debris) around the site of the wound in the back of the head, Dr. Allen opined that Ms. Warfield was several feet away from the handgun when it was fired.

Brueckmann testified at length in his own defense, insisting that he did not intend to shoot his girlfriend and that he loved her deeply. He testified that he had been becoming increasingly depressed and had been having suicidal thoughts. Four of his close friends had committed suicide in the preceding two years, and on previous occasions, he said, Ms. Warfield had prevented him from doing the same.

According to Brueckmann, Ms. Warfield had told him the night before her death that she planned to move out, and they both agreed that she would move out the next day. Brueckmann stated that he "was planning to end [his] life that day."

When Ms. Warfield prepared to leave on the morning of November 18, Brueckmann "told her that if you're leaving, I'm leaving," and headed toward his truck. Ms. Warfield tried to prevent him by pleading with him to stay. When she asked Brueckmann whether he wanted to remove some of his belongings from her truck so that she could start loading furniture, Brueckmann walked to her truck and slammed the tailgate door, apparently to shut it. This action prompted Ms. Warfield to shout, "Please don't break my stuff! Why are you trying to break my stuff?" Brueckmann testified that he responded that Ms. Warfield could leave and return later that night.

When Ms. Warfield did not leave, Brueckmann testified that he grew "frustrated" and "told her, . . . fine, if you don't want to leave, I'll just do it in front of you." At that point, he told the jury, he pulled out his gun, chambered a bullet, and walked over to one of his trucks. According to Brueckmann, he then "laid the left side of [his] head down on the hood, so [he] was facing Brittany[,] and [he] used [his] right hand to put the gun to [his] right temple." He testified that Ms. Warfield slammed her door shut and yelled "no, no, no" while she ran towards him.

In Brueckmann's account, he responded by backing away from the truck and walking quickly down to the yard at the side of his residence. He told the jury that he placed the gun to his head again, "and Brittany came running from behind [him] . . . ." He stated: "She grabbed my right arm and the gun went off and she fell face first down the hill. It happened so fast, I mean that's . . . the best of my recollection at the time. I know she grabbed my arm, and I reacted, and I heard the gun go off, and then she was lying face down in front of me, down the hill." He testified that he panicked, not

knowing how badly she was hurt, and instinctively called his mother, a retired EMT. His mother told him to call 911 immediately, which he did.

Defense counsel also elicited supporting testimony from Brueckmann's upstairs neighbor, Ms. Barr, who had observed and heard parts of the argument. Ms. Barr asserted that Brueckmann was "going to leave and she kept begging him not to go[,]" and that "[n]ext thing I know, he went down around the corner of the house, I couldn't see where exactly he went and I heard her screaming, No, no, no, no, no and I looked out the side window and she was running . . . [t]owards him."

Other witnesses testified that after the shooting Brueckmann was, variously, weeping, pleading to God, and asking "How is she?" and that, while being driven to the police station, he repeatedly stated, "It should have been me, it should have been me."

On February 7, 2014, the jury acquitted Brueckmann of first- and second-degree intentional murder, but convicted him of second-degree depraved heart murder, first-degree assault, and use of a firearm in the commission of a felony or crime of violence. We shall introduce additional facts as they become pertinent to the questions presented.

DISCUSSION

I. "Long Guns" Evidence

Brueckmann first challenges the trial court's admission of evidence, in the form of police testimony and a photograph, that Brueckmann possessed six unloaded "long guns" in an "unsecured" case in his home.

On the third day of trial, defense counsel moved to exclude any reference to these weapons. Counsel argued that the evidence was prejudicial and had no relevance to any

of the pending charges. The State responded that it was relevant to premeditation in that, unlike the handgun that killed Ms. Warfield, the other weapons had been left unloaded. The trial court denied Brueckmann's motion, stating, "I think the guns are relevant."

When trial resumed, the State called Corporal Edward Witanowski of the Maryland State Police. In the trial transcript, eight pages after the denial of Brueckmann's motion, Cpl. Witanowski stated that upon arriving at the crime scene, he proceeded to "clear" Brueckmann's residence to "make sure there is no other threat . . . ," while looking for "[w]eapons, anything that might be detrimental to anybody."

The following exchange then took place:

Q: Okay. Can you tell us about that?

A: We cleared the residence. And the bottom half – we – there was one room where I noticed an unsecured cabinet with some long guns.

Q: Do you know how many long guns?

A: Six.

Q: And then what did you do?

A: We resumed, to clear the rest of the residence so we went around front, which is separated from that back apartment. And myself and other deputies cleared that . . . portion of the residence.

Brueckmann did not object to this testimony.

The following day, the State sought to introduce a number of photographs. One such photograph came from inside Brueckmann's residence and showed a "shelf/gun case" containing the six "long guns." The guns appeared to be unloaded, with what appeared to be magazines, or clips, of bullets alongside them. Defense counsel objected to the photograph's admission, citing a lack of relevance and referring to the prior

objection. The prosecutor reiterated that "[t]he officers were searching for weapons that could have been used in the crime[,]" and that "whether they are loaded or unloaded is an important part of this case as far as premeditation can be concerned." The next day, over Brueckmann's objection, the trial court admitted the photograph into evidence.

A. Preservation

Brueckmann argues that the trial court abused its discretion in admitting the testimonial and photographic evidence of these "long guns," because, he says, the guns were both irrelevant to the crimes charged and unduly prejudicial to him. Brueckmann, however, has failed to preserve that argument for appeal. Even if he had preserved the argument, we would find no abuse of discretion.

When a trial court denies a motion *in limine* to exclude evidence, the moving party typically must renew the objection when the opponent offers the evidence at trial. *Klauenberg v. State*, 355 Md. 528, 539 (1999); *Reed v. State*, 353 Md. 628, 639-40 (1999); *Prout v. State*, 311 Md. 348, 356-57 (1988). "[T]he issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg*, 355 Md. at 539.[2]

The Court of Appeals has recognized an exceedingly narrow exception where the court has "reiterated" its earlier ruling "immediately prior" to the introduction of the

[2] Rule 4-323(a) provides that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for the objection become apparent. Otherwise, the objection is waived."

objectionable evidence. *Watson v. State*, 311 Md. 370, 372-73 n.1 (1988). The Court, however, has since stated that "*Watson* was limited to its specific circumstances." *Reed*, 353 Md. at 636 n.4.

This case is unlike *Watson*. The court did not reiterate its ruling "immediately prior" to the testimony about the long guns. Rather, some eight pages of transcript, comprising several minutes of testimony, separated the ruling from the testimony. Consequently, Brueckmann failed to preserve his objection to that testimony. *See Reed*, 353 Md. at 639-40; Rule 4-323(a).

Brueckmann did object, twice, to the *photograph* of the long guns: first, when it was offered for identification purposes and, again, when the State offered it into evidence. Yet, in light of our recognition of his failure to preserve his appeal on the same substantive evidence – in the form of Cpl. Witanowski's testimony – he has also waived this challenge for appellate purposes. *See Benton v. State*, ___ Md. App. ___, ___, 2015 WL 5104212, at *7 (Aug. 31, 2015) (quoting *DeLeon v. State*, 407 Md. 16, 31 (2008)) ("'[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection'").

B. <u>The Merits</u>

Even if Brueckmann had preserved his objections, we would reject his contention, as the trial court acted within its broad discretion in admitting all the evidence of the "long guns" found in Brueckmann's home.

In reviewing the trial court's decision, we first consider whether the evidence is legally relevant. *Smith v. State*, 218 Md. App. 689, 704 (2014); *Brethren Mut. Ins. Co. v.*

Suchoza, 212 Md. App. 43, 52 (2013). Evidence is relevant if it tends to "make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401; *Merzbacher v. State,* 346 Md. 391, 404 (1997). Relevant evidence is admissible, but the trial court has no discretion to admit irrelevant evidence. *State v. Simms*, 420 Md. 705, 724 (2011).

Trial courts have discretion to exclude evidence, even where it is relevant, "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *See* Rule 5-403. Evidence may be unfairly prejudicial to a criminal defendant "if it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which he is being charged." *Odum v. State*, 412 Md. 593, 615 (2010) (citation and quotation marks omitted).

Appellate courts grant wide latitude to trial judges' weighing of these considerations. *See*, *e.g.*, *Merzbacher*, 346 Md. at 413-14. Where evidence is relevant, "we are generally loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion." *Id.* at 404-05. Abuse of discretion occurs where "'no reasonable person would take the view adopted by the [trial] court[]'. . . or when the court acts 'without reference to any guiding rules or principles.'" *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)) (citations omitted).

Citing *Smith v. State*, 218 Md. App. 689 (2014), Brueckmann insists that the trial court erred in admitting the "long guns" evidence. In *Smith*, the main issue at trial was whether Smith had shot the decedent or whether the decedent had committed suicide with Smith's handgun. *Id.* at 697. The circuit court admitted evidence that Smith owned eight other firearms and ammunition (*id.* at 703), and the jury convicted him of involuntary manslaughter and a handgun offense. *Id.* at 697-98. After reversing the convictions because of an error in *voir dire*, this Court provided guidance on remand by discussing the admissibility of evidence concerning the other weapons and ammunition:

> Although there was nothing illegal about Mr. Smith owning guns and ammunition, the evidence the court admitted regarding Mr. Smith's ownership of unrelated firearms and ammunition was minimally relevant, at best, and highly prejudicial, and should have been excluded from the trial of these charges. Neither the State nor the trial judge articulated how this evidence was relevant to whether Mr. Smith committed the alleged crimes. The fact that Mr. Smith legally possessed guns and ammunition does not make the weapons relevant to the victim's death, and we cannot see from this record how the inclusion of this evidence would help prove the offense charged. Without a more direct or tangible connection to the events surrounding *this shooting*, the evidence of the other weapons and ammunition owned by Mr. Smith failed the probativity/prejudice balancing test, and the trial court erred by admitting it.

Id. at 705-06 (emphasis in original).

Smith is distinguishable on several grounds.

First, in *Smith*, "[n]either the State nor the trial judge articulated how [the evidence of other firearms and ammunition] was relevant to whether Mr. Smith committed the alleged crimes." *Id.* at 705. Here, by contrast, the existence of the unloaded long guns was relevant to the question of premeditation, because it tended to demonstrate that Brueckmann planned ahead and took the time to load the handgun that he used to shoot

Ms. Warfield. That evidence is certainly not conclusive of the element of premeditation, because the loading of the handgun could have also indicated Brueckmann's premeditation to end his own life. To be relevant, however, the evidence need not be conclusive, so long as it was consistent with the State's theory of premeditation and gave it at least some weight.

Second, in *Smith*, the pivotal issue was whether Smith had shot the decedent or whether the decedent had killed himself. In those circumstances, it was highly prejudicial to introduce irrelevant evidence of other firearms and ammunition, because it suggested that Smith had a criminal propensity for violence (*see id*. at 705) or was disposed to use weapons. Here, by contrast, there was no question that Brueckmann killed Ms. Warfield: the only question was whether he acted intentionally, recklessly, or accidentally. Consequently, in this case, the admission of relevant evidence of other weapons did not pose anywhere near the same degree of prejudice as did the irrelevant evidence of other weapons in *Smith*.

Finally, although the *Smith* opinion does not discuss the other weapons that Smith possessed, one of his briefs reveals that they included military-style weapons, such as "a Romanian AK-47 assault rifle, a Romanian Draganoff sniper rifle, a Kel-Tech [nine millimeter] subrifle (with stock and gunsight), and [a] H&K .45 USP tactical handgun." Brief of Appellant, *Gary Smith v. State*, 2013 WL 6004017, at *49. Here, by contrast, Brueckmann's "long guns" consisted of the kinds of ordinary rifles and shotguns that are common in rural and exurban communities such as Carroll County.

In summary, the evidence of the "long guns" had some relevance, and it was not unduly prejudicial. Consequently, even if Brueckmann had preserved his objection to that evidence, we would hold that the circuit court did not commit an abuse of discretion in admitting it.

II. Jury Instruction on Meaning of "Homicide"

Brueckmann argues that the trial court erred in denying defense counsel's request that it instruct the jury on the meaning of "homicide." We disagree.

A. Factual Background

It was undisputed that Brueckmann shot Ms. Warfield and that she died as a result. Squarely at issue was whether Brueckmann accidentally shot her when she tried to prevent him from committing suicide or whether he shot her intentionally or with reckless and wanton disregard for her life.

The State called Dr. Carol Allen, the Assistant Medical Examiner, as an expert witness. Dr. Allen, who supervised Ms. Warfield's autopsy, testified that the cause of death was a gunshot wound to the back of the head and that the "wound path direction" was from back to front, left to right, and upward. She also had conducted an inquiry into Ms. Warfield's "manner of death." When the State asked Dr. Allen to expand on that topic, she explained:

> There are five manners of death in Maryland. There is natural . . ., if somebody died of a heart attack due to clogged arteries [, it] is considered a natural death. There is accident, which is an unforeseen event. There is suicide, which is death at one's own hand. Homicide, which is death at – or through the actions of another person. And then there is an undetermined category, which after an [*sic*] complete investigation and a complete

> autopsy a medical examiner cannot separate out between one or the other cause – manners of death.

Dr. Allen concluded, to a reasonable degree of certainty, that "the manner of death was certified as homicide" at Brueckmann's hands. In reaching this conclusion, she eliminated the other possible manners of death. In particular, she emphasized that Ms. Warfield's head was facing away from the handgun when it went off (as evidenced by the wound in the back of her head), that she was some distance from the weapon when it was fired (as evidenced by the lack of stipling), and that her arms were not long enough to allow her to reach behind herself and fire the gun into the back of her own head.

In Dr. Allen's description of the manners of death, "accident" differs from "homicide": a homicide occurs as the result another person's act or omission, while an accident does not. Nonetheless, Dr. Allen generally recognized the possibility of homicides that result from human error. In her explanation, the term "homicide" covers any death that results from another's act or omission, regardless of the actor's state of mind or culpability.

For example, when asked to explain her medical definition of "homicide," Dr. Allen drew a distinction between "homicide" and "murder": "Murder is actually something that gets decided in court. And so homicide to a medical examiner does not imply intent. It is death at the hands or through the actions of another."

Similarly, on at least two occasions, Dr. Allen testified that "homicide" means "death at the hands or through the actions of another," adding that "homicide" "does not

imply intent." On one of those occasions, she stressed that intent is "what you," the jurors, "deduce."

On another occasion, when asked to confirm that she did not have any opinions regarding Brueckmann's intent or state of mind, Dr. Allen responded, "That is precisely correct." A page later, she repeated that intent "is not part of" homicide, that homicide means "death at the hands or through the actions of another," and that "[i]ntent is what you," the jurors, "get to decide."

On the other hand, at one point, when she was explaining the definition of "accident," Dr. Allen stated: "[A]s I gave the definition [accident] is an unforeseen event. If a gun goes off, the gun is designed to injure. So, if a gun goes off it is not an unforeseen event. . . . That somebody is injured and dies, so that is not an accident." Dr. Allen's statement arguably implied that a homicide could not be accidental.

At the close of his case Brueckmann requested the court to instruct the jury on the meaning of the word "homicide." His proposed instruction quotes the Court of Appeals' opinion in *Sippio v. State*, 350 Md. 633, 654 (1988), which held that a medical examiner may testify about the manner of death, The proposed instruction read:

> Homicide is defined as the killing of one human by another. Homicide is not necessarily a crime. It is a necessary ingredient of the crime of murder and manslaughter but there are other cases in which homicide may be committed without criminal intent and without criminal consequences. The term 'homicide' is neutral while it describes the act it pronounces no judgment or its moral or legal quality.

When the trial court declined to read this instruction, Brueckmann made a timely objection on the record. Brueckmann now argues that the trial court committed reversible error.

B. Legal Standards

Maryland Rule 4-325(c) provides:

> The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding . . . . The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

See also Janey v. State, 166 Md. App. 645, 654 (2006) (quoting *Gunning v. State*, 347 Md. 332, 347 (1997)) ("The general rule regarding jury instructions is that the trial judge 'has a duty, upon request in a criminal case, to instruct the jury on the applicable law'").

Rule 4-325(c) requires the court to give a requested instruction when a three-part test is met: (1) the requested instruction is a correct statement of the law; (2) the instruction is applicable under the facts of the case (*i.e.,* is generated by some evidence); and (3) the content of the instruction was not fairly covered elsewhere in the jury instructions actually given. *See Atkins v. State*, 421 Md. 434, 444 (2011); *Thompson v. State,* 393 Md. 291, 302-03 (2006). "The rule reflects our view that the main purpose of a jury instruction is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict." *Atkins*, 421 Md. at 444 (citations and quotation marks omitted).

In contrast to the trial court's duty to instruct on the applicable law, a court does not have a duty to instruct about "facts and inferences." *Atkins*, 421 Md. at 445-46

(citing *Patterson v. State*, 356 Md. 677, 684 (1999)). The Court has explained that "emphasis of one possible inference out of all the rest by a trial judge can be devastatingly influential upon a jury although unintentionally so." *Patterson*, 356 Md. at 684; *see also id.* (stating, "when 'the inference is communicated to the jury as part of the judge's binding jury instructions, [it] creat[es] the danger that the jury may give the inference undue weight'") (quoting *Davis. v. State*, 333 Md. 27, 52 (1993)).

C. Analysis

Brueckmann argues that the trial court was required to read his instruction on the meaning of "homicide" to clarify for the jury that it should not conflate that term with the specific-intent crime of "murder." Brueckmann cites a number of authorities for the uncontroversial propositions that homicide is merely "the killing of one human being by another" (*Sippio v. State*, 350 Md. at 655) and that, although it is an element of murder and manslaughter, "'homicide' is neutral" and "pronounces no judgment on its moral or legal quality." *Id.* at 654 (citations and quotation marks omitted). Brueckmann suggests that, because Dr. Allen distinguished between "accident" and "homicide" when categorizing possible 'manners of death,' there was a great risk that her conclusion of homicide in this case may have persuaded the jury that Ms. Warfield's death was not "accidental," but rather a result of an intentional act of murder.

Brueckmann correctly explicates the distinction between homicide and murder. Yet, under the three-part test of Rule 4-325, the trial court was not required to relay this distinction to the jury (and Brueckmann directs us to no decision that requires a trial court to do so in circumstances such as these). The court correctly instructed the jury on the

substance of the offenses with which Brueckmann was charged, and "homicide" was not one of those offenses. In the guise of a jury instruction on the law, Brueckmann was really asking the court instruct the jury about how to evaluate the medical examiner's testimony. The court correctly declined to do so.

In upholding the admissibility of a medical examiner's testimony about the meaning of "homicide" in *Sippio*, the Court of Appeals stated, "It is conceivable that, without explanation, the term homicide suggests to the average layperson a degree of culpability greater than accident." *Sippio*, 350 Md. at 652. Without the medical examiner's testimony, therefore, "the jurors may have concluded that the word homicide . . . connoted a degree of culpability greater than its definition allows." *Id.* As in *Sippio*, however, the medical examiner's testimony "neutralized" the potential for that erroneous conclusion (*id.*) through her repeated insistence that a finding of "homicide" "does not imply intent" and that the jurors must make the requisite finding concerning the defendant's state of mind.

Moreover, "[b]efore the jury could assess criminal culpability," "it had to decide whether a homicide had even occurred." *Id.* at 655. Dr. Allen "did not testify to [Brueckmann's] intent, but rather merely testified that [Ms. Warfield's] death occurred as a result of a homicide." "In fact," Dr. Allen "clearly testified that intent was not a factor in [her] determination of manner of death." *Id.*

It is true that, on one of the many occasions in which she discussed the definition of "homicide," Dr. Allen suggested that a handgun death could not be accidental, because "if a gun goes off it is not an unforeseen event." Nonetheless, given the prevalence

accidental handgun deaths (*see*, *e.g.*, *Halliday v. Sturm, Ruger & Co., Inc.*, 368 Md. 186 (2002)), it is doubtful that Dr. Allen's comment would have misled the jury, much less necessitated an instruction on the definition of "homicide." To the contrary, Dr. Allen's apparent misstatement would appear to provide ammunition for cross-examination about her competence and credibility.

In closing argument, defense counsel exercised his prerogative to clarify any remaining ambiguity of terms, stating: "Homicide is defined as the killing of one human being by another, it is not necessarily a crime. Medical definition of homicide is completely different than [when] we say murder. . . . Homicide can be committed without any criminal intent." This, rather than a jury instruction, was the appropriate place for comment on the definition of "homicide" and the possibility of an accidental "homicide."

Finally, the trial court carefully instructed the jury on the precise, and often subtle, distinctions in state of mind that they were required to consider before they could convict Brueckmann any of the various crimes (premeditated murder, depraved heart murder, and involuntary manslaughter) that the State had actually charged him with committing. The instructions adequately informed the jurors of their task (*see Atkins*, 421 Md. at 444), and their understanding of the applicable law was not put in jeopardy simply because Dr. Allen, on one occasion, employed a medical definition of "accident" that was at slight odds with Brueckmann's theory of "accidental" shooting. Accordingly, we hold that the circuit court did not err in refusing to give the proposed instruction on the meaning of "homicide."

III. Jury Instruction on "Suicide"

As the last of its jury instructions, the trial court told the jury that, "[I]n Maryland, attempted suicide is not in and of itself a crime." When the trial court asked counsel to approach the bench for any objections to the jury instructions, defense counsel stated:

> And although the Court gave a modified suicide instruction which mine would have been asking and still asking, suicide the legality, it is not a law [*sic*] in Maryland to attempt to commit suicide or intentionally take one's own life. I think that is how it should be because right now it is confusing and it says just attempt. But you actually have the ability to take your own life in addition and for that, that would be the exceptions.

Although counsel did not specifically state which instruction the court had refused to give, or appear to direct the court to the specific language of the instruction he wished to have read, the trial judge denied the request.

Brueckmann argues that the court committed reversible error by declining to instruct the jury that *completed* suicide, and not just its *attempt*, is not a crime under Maryland law. As Brueckmann puts it, "the jury could have concluded that, although 'attempted' suicide is 'not in and of itself' a crime, a completed suicide is, in the eyes of the law, a form of 'murder.'" He continues, quoting portions of *DeBettencourt v. State*, 48 Md. App. 522, 530 (1981): "If the suicidal defendant's 'intent' to 'murder' himself was 'criminal,' jurors in this case, without appropriate instructions, could have believed that attempted suicide, necessarily, involves a murderous 'state of mind' that is 'just as blameworthy, just as anti-social and, therefore, just as truly murderous.'" Brueckmann assumes the jury possesses highly imaginative powers of inference.

There was no need for the trial court to instruct the jury on whether suicide is a crime in this State. Suicide was not one of the crimes with which Brueckmann was charged, nor was suicide one of the elements that the jury was required to find beyond a reasonable doubt in order to convict him of any of the charges against him. Indeed, it does not appear that the State, which principally argued that Brueckmann was not trying to kill himself at all, rested any fraction of its argument on the notion that committing suicide is an unlawful act, let alone a "murderous" one.

Brueckmann, moreover, cites no authority finding error in a court's failure to read a "completed" suicide instruction where an "attempted" suicide instruction was given. One strains to imagine what extraordinary facts could give rise to instructions that a defendant's "completed" suicide is a lawful act. As the State aptly argues in its brief: "If the suicide were 'completed,' there would be nobody to prosecute (barring circumstances like the 'Cadaver Trial[,]' or *Synodus Horrenda*[3] – where a medieval pope had the previous pope's corpse removed from its tomb and put on 'trial'").

The State's theory of guilt was never remotely predicated on the idea that suicide is a criminal act, or even an immoral one, and Brueckmann gives us no reason why the trial court was required, as a matter of law, to give this instruction. Brueckmann had a more than adequate opportunity to address the topic in closing argument, when he told the jury, somewhat inaccurately, that *"[t]he judge has instructed* you trying to kill yourself or *killing yourself is not a crime in the State of Maryland*." (Emphasis added.)

[3] *Available at* https://en.wikipedia.org/wiki/Cadaver_Synod. (Last visited Sept. 11, 2015).

IV. Motion for New Trial

Brueckmann challenges the trial court's denial of his motion for a new trial. In that motion, Brueckmann principally argued that the evidence was insufficient for the jury to convict him of his alleged crimes. He also argued that the guilty verdict for depraved heart murder was inconsistent with the assault verdicts and that "the jury was confused by the ambiguous differences between depraved heart murder and involuntary manslaughter."

The trial court denied the motion. It conceded that the "line between involuntary manslaughter and depraved heart murder is not easy to define[,]" but it nevertheless ruled that the evidence was not so deficient that the convictions for depraved heart murder and first-degree assault could not stand.

Brueckmann again insists on a new trial, but now he fully abandons his previous arguments. Brief at 27 ("Here, the issue on appeal is not whether the evidence is sufficient to sustain the convictions"). In fact, he advances no argument that reversal and a new trial are warranted based on circumstances particular to the actual trial or its underlying facts. Instead, Brueckmann contends that the trial court, in the course of denying the motion, erred in the application of and citation to legal authority. We decline to reach the merits of this novel argument, as it was not preserved for appeal.

Maryland Rule 4-323(c) governs the manner of objections to non-evidentiary rulings such as this one. It states, in pertinent part:

> For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court

> to take or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide or the court so directs[.]

More generally, appellate courts ordinarily "will not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Fairness and the orderly administration of justice are advanced by requiring a party to bring its position to the court's attention so that it can pass upon, and possibly correct, any errors in the proceedings. *Robinson v. State*, 410 Md. 91, 103 (2009) (citing *State v. Bell*, 334 Md. 178, 189 (1994)). Failure to do so in a timely fashion thus bars the appellant from obtaining review of the claimed error as a matter of right. *Id*. at 103. Although the party generally need not advance specific grounds for objection, "when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg*, 355 Md. at 541.

Here, even assuming for argument's sake that Brueckmann's initial arguments, as first expressed in his written motion, were sufficiently clear to the trial court to be preserved, Brueckmann expressly jettisons those arguments in favor of assertions of trial-court error that he declined to raise at the time the errors are alleged to have been made. Brueckmann's arguments on appeal, in essence, are that the trial court, in denying the motion for a new trial, erroneously misapplied the law and incorrectly cited a leading treatise, *Perkins on Criminal Law*, on depraved heart murder. Yet, at no point during the hearing did defense counsel make these objections known to the court or inform the court of the corrective action he wished it to take. Moreover, he had ample time to do so,

including at any time during an extended period of argument on other matters – spanning approximately 40 pages of transcript – that followed soon after the trial court's ruling. As this Court succinctly put it in *Williams v. State*, 99 Md. App. 711, 716 (1994), *aff'd*, 344 Md. 358 (1996), "What was preserved is not being pursued; what is being pursued was not preserved."

Even were the issue preserved, however, we would still affirm. Under Rule 4-331(a), a trial judge has discretion, "in the interest of justice," to order a new trial or to deny the motion. As we reiterated in *Minger v. State*, 157 Md. App. 157 (2004), "'[t]he list of possible grounds for the granting of a new trial by the trial judge within ten days of verdict is virtually open-ended.'" *Id.* at 164-65 (quoting *Love v. State*, 95 Md. App. 420, 427 (1993); *see also Minger*, 157 Md. App. at 165 (citing *In re Petition for Writ of Prohibition*, 312 Md. 280, 326 (1988)) (stating that current authority empowers trial judges to grant a new trial "not simply when the evidence is legally insufficient as a matter of law but also when the verdict, in the judgment of the trial judge, is so against the weight of the evidence as to constitute a miscarriage of justice").

Yet notwithstanding the trial court's "virtually open-ended" discretion, Brueckmann's claims of error on appeal are simply not proper bases for the award of a new trial. Brueckmann charges the court with erroneously stating the required state of mind for depraved heart murder, because the court referred to a "reckless" (rather than "extreme") disregard for human life and did not state that depraved heart murder requires a finding of a "very high degree of risk" to the life of another. We fail to see how this recapitulation of the elements could have affected the legitimacy of the court's ruling.

Defense counsel himself made this same "error" at the new-trial hearing when he cited Judge Moylan's statement from *DeBettencourt*, 48 Md. App. at 530, which described depraved heart murder as "the wilful doing of a dangerous and *reckless* act with wanton indifference to the consequences and perils involved[.]" (Emphasis added.)

We do not reverse the denial of a motion for a new trial because the court's extemporaneous, oral statements may have lacked the precision of a written opinion or a law review article. To see whether the court understood the concepts that it was discussing, it would be preferable to look instead at the actual jury instructions read to the jury at the end of trial, or at the court's recitation of the law at the sentencing hearing. Brueckmann tacitly concedes that both were perfectly accurate statements of the applicable law.

We likewise fail to see how Brueckmann is entitled to a new trial because of the court's citation to the discussion of depraved heart murder in Professor Perkins's treatise on criminal law. The trial court chose that particular passage to illustrate key distinctions between the states of mind required for involuntary manslaughter and depraved heart murder. That Brueckmann takes issue with that passage, or with the aptness of the hypotheticals that it discusses, can hardly be reason either to reverse the discretionary denial of the new trial motion. Brueckmann, for his part, cites no authority finding reversible error because a trial court did not properly discuss a leading treatise or did not

discuss it in sufficient detail. We therefore hold that the trial court did not err in denying the motion for a new trial.

JUDGMENTS OF THE CIRCUIT COURT OF CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.