Circuit Court for Baltimore City
Case Nos. 113029036

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1244

September Term, 2017

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EDWARD ELLIS

v.

STATE OF MARYLAND

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Wright,
Alpert, Paul E.
(Senior Judge, Specially Assigned),
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Alpert, J.

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Filed: November 15, 2018

Edward Ellis, appellant, was convicted by a jury sitting in the Circuit Court for Baltimore City of second-degree murder; use of a handgun in the commission of a crime of violence; and wearing, carrying, or transporting a handgun.[1] Appellant raises five questions on appeal, which we have rephrased slightly for clarity:

I. Did the trial court err when it reinstructed the jury on the law regarding testimony of a single eyewitness and in allegedly "denigrating defense counsel" during the reinstruction?

II. Did the trial court err in refusing to propound defense counsel's voir dire question -- whether any juror was inclined to give more weight to the arguments of the prosecutor over those of defense counsel?

III. Did the trial court err in denying appellant's motion for severance because his co-defendant was charged with possession of a firearm by a prohibited person and admission of his co-defendant's criminal record to prove that charge had the potential for carry-over prejudice?

IV. Did the trial court abuse its discretion or alternately fail to exercise its discretion when it precluded defense counsel from retaining the list of prospective jurors after the jury was impaneled?

V. Did the trial court abuse its discretion when it admitted into evidence the report prepared by the firearms examiner?

For the following reasons, we shall affirm the judgments.

[1] Appellant was sentenced by the court to 30 years of imprisonment for murder and a concurrent 20 years for use of a handgun, the first five years to be served without the possibility of parole. The court merged appellant's remaining handgun conviction.

This is appellant's second trial. In 2013, appellant, Zebary Pearson, and Antoine Dorsey were tried together and convicted of killing Jermaine Blue. All three appealed and we reversed appellant's and Pearson's convictions. *See Dorsey v. State*, Nos. 173, 398, 400, Sept. Term. 2014 (filed October 7, 2015). Appellant and Pearson were re-tried together in 2016. Each was convicted of the same offenses, as related above, but Pearson was convicted of the additional offense of possession of a regulated firearm by a prohibited person. Appellant and Pearson have appealed their convictions separately.

## FACTS

The State's theory of prosecution was that around 2:30 a.m. on July 28, 2012, appellant, Antoine Dorsey, and Zebary Pearson shot Jermaine Blue a total of 22 times in front of a residence at 1418 Poplar Grove Street in Baltimore. Testifying for the State, among others, was an eyewitness to the shooting, James King; King's aunt, Shirley Omisore; the medical examiner; a firearms examiner; and several police officers. The theory of defense was mistaken identification. The defense presented no witnesses. The facts presented at trial are as follows.

On July 28, 2012, King and Omisore lived with other family members at 1418 Poplar Grove Street. That evening, several of King's friends gathered at his house, including Blue, appellant, Dorsey, and Pearson. King had known Blue for about eight years; appellant and Dorsey for more than ten years, and Pearson was someone he had seen around the neighborhood.

King testified that he mingled with his friends on the front porch of his house until about 2:00 a.m., when he walked to a friend's house, which was across the street and three houses up from his. About half an hour later, as he opened the door to leave his friend's house, he looked toward his house and saw Dorsey hit Blue at the top of the front steps. Blue then ran down the steps to the sidewalk where he was confronted by appellant and Pearson. Dorsey ran after Blue, and all three started hitting Blue on the sidewalk. According to King, when Blue fell to the ground, all three started shooting him and then fled. King called 911 but told the operator that he did not see the shooters. He then left the area because he "was scared."

Omisore testified that about five minutes before the shooting she heard an argument outside the front of her house between Blue and Dorsey over Blue's dog. She told them to quiet down, which they did. After the shooting, she looked outside and saw Blue lying at the bottom of her front stairs. No one else was in sight.

The police responded to the scene. They canvassed the area and spoke with several people who might have seen the shooting but no one wanted to speak to the police. An autopsy was performed and determined that Blue was shot 22 times. He also had lacerations above his lip and abrasions on his arm. The crime lab recovered nine cartridge cases and a bullet fragment from the crime scene and 12 bullets from the medical examiner. A firearms examiner testified that based on her examination of the cartridge cases, fragment, and bullets, the projectiles recovered were fired from three different handguns.

About six weeks after the shooting, on September 12, King spoke to the police and made a recorded statement. King's statement mirrored his trial testimony, except that in King's recorded statement he told the police he only saw Dorsey shoot the victim.

## DISCUSSION

### I.

Appellant argues on appeal that the trial court erred when it reinstructed the jury on the law regarding the testimony of a single eyewitness and in allegedly "denigrating defense counsel" during that reinstruction. Appellant recognizes that he did not object below but asks us to invoke our discretion under the doctrine of plain error and reverse. The State responds that appellant has failed to preserve his argument for our review

because he did not object below, but even if preserved, there was no error, let alone plain error. We agree with the State.

Following the close of evidence, the trial court instructed the jury, among other things, on the law regarding the sufficiency of eyewitness identification, stating:

> [I]dentification by a single eyewitness identifying a Defendant as the person who committed a crime, if believed beyond a reasonable doubt, can be enough evidence to convict a Defendant. However, you should examine the identification with great care. And it is for you to determine the reliability of any identification and give it the weight you believe it deserves.

Following the court's instructions, the parties proceeded to closing argument. Despite the court's instruction, defendant Pearson's counsel argued during his closing argument:

> First of all, why aren't there more witnesses? Because Mr. King said most of the block saw what happened. And you heard different names, different people who were out there. You heard about Femme Amosori [sic], Ms. Shirley Amosori's [sic] son who was out there that night. You heard about Waters, about Darren Rick Roth. And you heard Ms. Amosori [sic] explain that when she heard the shots she went towards her door, and all of a sudden people were coming into her house to get away from the shooting.
>
> * * *
>
> So where are those people today? *Because in order to convict someone, in order to meet their burden, they have to bring those witnesses into Court*.

(Emphasis added). This was a clear misstatement of the law. Appellant's counsel gave his closing argument next, arguing, among other things:

> Keanna and Stasha are what I call staples. . . . They're watching the entire thing. . . . They're on the porch. They don't leave until gunshots are fired. They hear all the arguments. They see all the people. They can tell you everything. But the State doesn't want to produce them, saying that they can't in some way. . . . [The detective had m]ore than enough ability to get the people that can tell us the most to come in here. K.P. to come in here. *This is what we need*.

Appellant's counsel also argued:

> When the police arrive and everyone is in this house, Detective Young has the opportunity to go into this house and grab *the two people that we need the most* and say "I need to talk to you". He didn't do that – Stasha and Keanna.
>
> * * *
>
> And he doesn't talk to them when they're at the house and he doesn't talk to them down at Homicide, and he doesn't even talk to them after they're down at Homicide. *But these are the people that we need the most.*

(Emphasis added).

After defendants' counsels closing argument but before the State's rebuttal closing argument, the trial court *sua sponte* advised the jury:

> Ladies and gentlemen, before the Rebuttal, I need to at this point provide you with a curative instruction. Both during Defense (1) and Defense (2)'s Closing Argument, both Counsel made a misstatement of law, and I need to make sure that you understand that my statement as the law is what prevails in this case. You have it on my recording that I've given you. But the identification of the Defendant by a single eyewitness, as the person who committed the crime, if believed beyond a reasonable doubt, can be enough evidence to convict the Defendant. However you should examine the identification of the Defendant with great care. The law does not require that the identification be by more than one witness.
>
> Both [defense attorneys] made that statement to you, and it is a misstatement of the law. Please be mindful of that fact in assessing this case.

Neither defense counsel objected to the court's reinstruction. The State then proceeded to give its rebuttal closing argument.

Appellant argues on appeal that the trial court's reinstruction requires reversal for two reasons: the trial court's "repeated (and unfounded) accusation that both defense counsel ha[d] misstated the law" undermined counsel's credibility with the jury, and by

emphasizing the "single most prosecution-friendly instruction" in isolation the court improperly endorsed the State's case. Appellant acknowledges that he has failed to preserve his argument for our review because he did not object below, but asks us to review and reverse under the doctrine of plain error.

**Preservation**

Md. Rule 4-325(e) governs objections to jury instructions and provides:

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

An appellate court should recognize unobjected to error when "compelling, extraordinary, exceptional or fundamental to assure the defendant of fair trial." *Rubin v. State*, 325 Md. 552, 588 (1992) (quotation marks and citation omitted). The standard is high: "Every error that, if preserved, might have led to a reversal does not thereby become extraordinary." *Perry v. State*, 150 Md. App. 403, 436 (2002), *cert. denied*, 376 Md. 545 (2003). "[A]ppellate invocation of the 'plain error doctrine' 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon." *Morris v. State*, 153 Md. App. 480, 507 (2003) (brackets added), *cert. denied*, 380 Md. 618 (2004).

The Court of Appeals has articulated the following four conditions, all of which must be met before an appellate court will reverse for plain error:

1. appellant did not intentionally relinquish or abandon the legal error;

> 2. the legal error is clear or obvious, and not subject to reasonable dispute;
>
> 3.the error affected the appellant's substantial rights, which means that it affected the outcome of the proceedings; and
>
> 4. the error seriously affects the fairness, integrity or reputation of judicial proceedings.

*Newton v. State*, 455 Md. 341, 364 (2017) (citing *State v. Rich*, 415 Md. 567, 578 (2010)) (further citation omitted), *cert. denied*, 138 S.Ct. 665 (2018). A plain error analysis "need not proceed sequentially through the four conditions; instead, the court may begin with any one of the four and may end its analysis if it concludes that that condition has not been met." *Winston v. State*, 235 Md. App. 540, 568, *cert. denied*, 458 Md. 593 (2018).

Appellant suggests that he did not object below to the court's reinstruction because "the circumstances were not conducive to an objection" – that any objection might have been viewed by the court as "pouring gasoline upon a fire." A review of the transcript does not support this suggestion in any way. We see no "hint of outrage" on the part of the trial court that might lead us to conclude that counsels rightfully feared that they would "incur the great wrath of the already outraged" if they had objected. *See Acquah v. State*, 113 Md. App. 29, 60 n.11 (1996) (discussing cases where, because of judicial conduct, a lack of objection did not waive issue raised on appeal). We also note that appellant's attorney could have objected to the instruction at the bench should he have wanted to avoid the possibility of "provoking" the court in front of the jury.

Applying the four conditions above, we conclude that we have no basis on which to exercise our discretion to engage in a plain error review for the simple reason appellant has failed to persuade us that the trial court erred – the trial court's instruction was legally

correct and was in response to defense counsels' misstatement of the law in closing that more than a single eyewitness was needed to convict. Accordingly, we decline to consider appellant's unpreserved argument.

**II.**

Appellant argues that the trial court erred because it failed to propound his requested voir dire question about whether any juror was inclined to give more weight to the arguments of the prosecutor over those of defense counsel. The State responds that appellant has again failed to preserve this argument for our review, but even if preserved, the trial court did not err.

**Preservation**

Md. Rule 4-323 governs objections generally. Subsection (c) specifically governs objections to rulings, other than rulings on evidence, and provides:

> For purposes of review . . . 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 otherwise or the court so directs.

"We have held that it is sufficient to preserve an objection during the *voir dire* stage of trial simply by making known to the circuit court what [is] wanted done." *Marquardt v. State*, 164 Md. App. 95, 143 (quotation marks and citation omitted), *cert. denied*, 390 Md. 91 (2005). *See Brice v. State*, 225 Md. App. 666, 679 (2015) ("An appellant preserves the issue of [an] omitted voir dire question . . . by telling the trial court that he . . . objects to his . . . proposed questions not being asked.") (quotation marks and citation omitted), *cert.*

*denied*, 447 Md. 298 (2016). We have stated that "[i]f a defendant does not object to the court's decision to not read a proposed question, he cannot complain about the court's refusal to ask the exact question he requested." *Id.* (quotation marks and citation omitted). However, "'accepting the jury that is ultimately selected after the circuit court has refused to propound requested voir dire questions does not constitute acquiescence to the previous adverse ruling.'" *Hayes v. State*, 217 Md. App. 159, 166 n.3 (2014) (quoting *Marquardt, supra*) (brackets omitted).

Prior to trial, appellant's counsel asked the trial court to propound the following voir dire question: "Would any juror be inclined to give more weight and consideration to the arguments of the Assistant State's Attorney than to those of Defense Counsel, merely because he/she is employed to represent the State of Maryland?" The trial court refused to give the requested voir dire, and both the court and appellant's counsel engaged in a discussion regarding the necessity (or not) of propounding the requested question. The court finally stated that it would not give the requested instruction because the jury will be instructed that "nothing you all say is evidence" and counsel will not be taking the stand. At the close of voir dire, appellant's counsel accepted the jury as empaneled. Although appellant's counsel did not formally state, "I object" when the trial court refused to give the instruction, and did not object to the jury ultimately impaneled, it is clear from appellant's counsel's request and subsequent discussion with the court that he disagreed with the court's decision to not ask the question proposed. Applying the above law to the facts before us, we are persuaded that appellant has preserved his question for our review.

Voir dire protects a defendant's right to a fair and impartial jury and is guaranteed through the Sixth Amendment of the United States Constitution, made applicable to the States through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights. *State v. Logan*, 394 Md. 378, 395-96 (2006) (citations omitted). Maryland adheres to limited voir dire. *Washington v. State*, 425 Md. 306, 313 (2012) (citation omitted). "In Maryland, the sole purpose of voir dire is to ensure a fair and impartial jury by determining the existence of cause for disqualification, and not as in many other states, to include the intelligent exercise of peremptory challenges." *Id*. at 312-13 (citations omitted). "It is [] well settled that the trial court has broad discretion in the conduct of voir dire, most especially with regard to the scope and the form of the questions propounded, and that it need not make any particular inquiry of the prospective jurors unless that inquiry is directed toward revealing cause for disqualification." *Id*. at 313 (quotation marks and citation omitted). "On review of the voir dire, an appellate court looks at the record as a whole to determine whether the matter has been fairly covered." *Id*. at 313-14 (citations omitted).

There are two broad areas of inquiry that may reveal a juror's disqualification: (1) whether a prospective juror meets the statutory qualifications for jury service, and (2) whether a prospective juror holds biases or prejudices that would cause the juror to be unable to perform their duty fairly and impartially. *Id*. at 313 (citation omitted). As to the latter, a trial court should focus on questions that would uncover biases "related to the crime, the witnesses, or the defendant[.]" *Id*. (quotation marks and citation omitted). The Court of Appeals has held that in certain circumstances, a trial court abuses its discretion when it refuses to propound a question asking whether a prospective juror would afford

more weight to the testimony of a police officer than to a civilian witness, *see Langley v. State*, 281 Md. 337, 349 (1977), or view more favorably a witness called by the State than a witness called by the defense, merely because the witness is called by the defense, *see Moore v. State*, 412 Md. 635, 665-66 (2010) (discussing *Bowie v. State*, 324 Md. 1 (1991)).

Appellant argues that the trial court erred in declining to give his proposed voir dire question because it was designed to uncover biases that a prospective juror might have that would favor one party over the other, and that if a juror gives more credence to a prosecutor's argument over those of defense counsel, that juror will view the evidence in a "skewed fashion which negates the State's burden and the reasonable doubt standard." Appellant's argument has already been rejected by the Court of Appeals in *Stewart v. State*, 399 Md. 146 (2007).

In *Stewart*, defense counsel had asked for a voir dire question that is nearly identical to that raised by appellant here: "Would any member of the jury panel be inclined to give more weight and consideration to the arguments of the assistant state's attorney than to those of defense counsel, merely because he or she is employed as an assistant state's attorney?" *Stewart*, 399 Md. at 153. The Court of Appeals held that the trial court did not err in declining to give the requested instruction, reasoning:

> Question no. 10 inquires as to whether a prospective juror would give greater weight and consideration to the arguments of the assistant state's attorney than to those of defense counsel. While seemingly similar to the mandatory question regarding whether a potential juror would give greater weight to the testimony of a witness due to his or her official status, *see Langley v. State*, 281 Md. 337, 348–49 (1977), it differs in that question no. 10 does not involve the juror's role as factfinder. In *Langley*, we stated that "where a principal part of the State's evidence is testimony of a police officer diametrically opposed to that of a defendant, it is prejudicial error to fail to

> propound a question . . . whether any juror would tend to give either more *or less* credence merely because of the occupation or category of the prospective witness." *Id.* at 349 (internal quotations and citations omitted) (emphasis in original). If the potential juror would be inclined to give greater weight to the testimony of a police officer, then the juror "has prejudged an issue of credibility in the case." *Id.* at 348. Whether a juror would be more inclined to give the prosecutor's argument more weight than defense counsel's does not involve judging the credibility of a witness as the factfinder in the case. Arguments of counsel are not evidence, and the court ordinarily instructs the jury to that effect. It was not prejudicial error to fail to propound this question.

*Id*. at 165–66 (some citations omitted).

Moreover, here the trial court asked the prospective jurors the following questions, among others: whether they believed in the "principle of [the] presumption of innocence"; whether they knew the two State prosecutors; whether they had a bias "against the police or in favor of the police"; whether they could follow the law as instructed by the court; whether they had any strong feelings about the criminal charges against the defendants; and whether any panel member or family member was trained or employed in the law or law enforcement. Additionally, after the jury was empaneled but prior to the parties' opening statements, the trial court advised the jury, among other things:

> In just a moment you're going to hear from the prosecutor and the defense attorneys. They're going to provide to you opening statements. Opening statements [are] not evidence. In fact, nothing that the lawyers say is evidence. At no time during the trial will you see [the two State's Attorneys, the two attorneys for Mr. Pearson, or the attorney for appellant] raise their hands and get up on the witness stand. They are not witnesses. So anything that they say in the furtherance of the position of their parties is just an attempt to overview, help you understand the case, or in the end closing argument, convince you to see the case the way that you do. But nothing that they say is in evidence.

Again, after the parties had presented their evidence and rested, the trial court instructed the jury, among other things:

> At the beginning of the case I told you that the lawyers were not witnesses. And now at the Closing, you'll find that I'm telling you the same thing. The difference between Opening Statements and Closing Argument, is a statement is an overview of the case. But this time, the attorneys are going to argue. They're going to try to convince you to see the case the way they believe you should. And their arguments to you, again are not evidence, but it's their view of the case. And their statements are intended to help you understand the evidence and also to apply the law.
>
> However, if they mention evidence or they say something about a fact that differs from your collective memory of what is evidence or what you find to be facts in this case, you are to rely on your collective memory and your determination of facts in this case. And I'm going to emphasize, sometimes lawyers, in their Closing Argument, they get excited and as I like to say, they go off the ranch. I'm going to let them make their arguments to you, but it's your duty and responsibility to determine what is evidence and what the facts are, and what you determine has been proven or not proven in this case.

Given the clear holding in *Stewart*, given the voir dire questions the trial court did ask to uncover jury bias in favor of the State and against the defendants, and given the court's instructions to the jury prior to opening statements and closing arguments, we are persuaded that the trial court did not err in refusing to ask in voir dire whether any juror would be inclined to give more weight to the arguments of the prosecutor over those of defense counsel.

**III.**

Appellant argues that the trial court erred when it denied his motion to sever his case from his co-defendant, Pearson. Appellant argues, as he did below, that because Pearson was charged with the additional crime of possession of a firearm by a prohibited person,

admission of Pearson's criminal record to prove that additional charge created the possibility of carry-over prejudice. The State argues that the trial court did not err. We agree with the State.

Md. Rule 4-253 governs joinder of defendants at trial and provides that a court may permit joinder of multiple defendants where the defendants are "alleged to have participated in the same act or transaction[.]" Md. Rule 4-253(a). The Rule further provides: "If it appears that any party will be prejudiced by the joinder for trial . . ., the court may, on its own initiative or on motion of any party, order separate trials of . . . defendants, or grant any other relief as justice requires." Rule 4-253(c).

In determining whether to grant a motion for severance of defendants, the Court of Appeals has stated that a trial court should engage in the following analysis:

> First, the judge must determine whether evidence that is non-mutually admissible as to multiple offenses or defendants will be introduced. Second, the trial judge must determine whether the admission of such evidence will cause unfair prejudice to the defendant who is requesting a severance. Finally, the judge must use his or her discretion to determine how to respond to any unfair prejudice caused by the admission of non-mutually admissible evidence. The Rule permits the judge to do so by severing the offenses or the co-defendants, or by granting other relief, such as, for example, giving a limiting instruction or redacting evidence to remove any reference to the defendant against whom it is inadmissible.

*State v. Hines*, 450 Md. 352, 369–70 (2016). As to how the first two factors intertwine, the Court has said:

> [I]t is foreseeable that in some instances, evidence that is non-mutually admissible may not unfairly prejudice the defendant against whom it is inadmissible because the evidence does not implicate or even pertain to that defendant. Due to this latter scenario, it is inappropriate to say that, as we have said in the context of offense joinder, non-mutuality equates with prejudice in the context of codefendant joinder. Instead, the defendant must

> show that non-mutually admissible evidence will be introduced *and* that the admission of such evidence will result in unfair prejudice.

*Id*. at 375–76 (citations omitted).

At trial, the court denied appellant's motion to sever his case from his co-defendant's, ruling:

> And the Court does not find an overwhelming taint that the defendant is a prohibited person. If I were to find that then in every case [where], let's say the defendant was under the age of 21 and not permitted to have a gun, [t]hat would require a severance. You could never have individuals that were of a different age, under 21 and above 21 involved in a case together if there was a gun involved and the State wanted to go after the prohibited person.
>
> In addition, I think far more serious a taint would be statements made inculpating or exculpating the clients or something that would tend to indicate the more serious, a relationship to the more serious charges, not the existence of a handgun.
>
> As counsel for the State points out, we don't even get to that count if the defendants are found not guilty of the more serious counts. You don't even reach it. So therefore, your motion is denied. I've weighed them in my mind and I don't believe the taint creates such a[n] objection and prejudice that would outweigh a fair trial for your client.

Near the end of the State's presentation of evidence, the State prosecutor read the following stipulation to the jury:

> The Defendant has been charged with the offense of possession of a regulated firearm as defined in Section 5-101P of the Public Safety Article of the Annotated Code of Maryland after having been disqualified by law to possess a regulated firearm.
>
> The parties hereby stipulate that the Defendant is disqualified from possessing a regulated firearm under the laws of this state and it [is] signed by all parties.

Prior to reading the above stipulation, the trial court instructed the jury: "Ladies and gentlemen this stipulation applie[s] only to the Defendant, Mr. Pearson, and it should be

accepted only as it relates to the Defendant, Mr. Pearson, and as such, it's signed only by Mr. Pearson's counsel and the State for this item of evidence applie[s] to only him." Additionally, the trial court instructed the jury at the close of all the evidence:

> And there is some evidence that was presented by way of a stipulation. *That evidence only applies to Mr. Pearson*. In that evidence, the State and Mr. Pearson's Counsel agree that those facts can come to you without the necessity of a live witness testifying and stating to those facts. Those facts are deemed proven in this case. You should consider this stipulation, together with all the other evidence in the case, and give it the weight and value you believe it deserves. *But in reference to that stipulation, keep in mind it only applies to Mr. Pearson.*

(Emphasis added).

For several reasons we find no abuse of discretion by the trial court in refusing to grant appellant's motion to sever his trial from Pearson. First, the allegedly "prejudicial" evidence did not "implicate or even pertain to" appellant. Second, the stipulation makes no mention of why Pearson was disqualified from possessing a firearm. Third, the trial court removed any taint or any unfair prejudice that the stipulation may have caused when it gave the jury not one, but two limiting instructions. *See Dillard v. State*, 415 Md. 445, 465 (2010) ("Jurors generally are presumed to follow [a trial] court's instructions[.]") (citation omitted). Appellant has not suggested any reason why the jury could not have followed the limiting instructions given by the court, and accordingly, we hold that the trial court did not err in declining to grant appellant's motion for severance.

**IV.**

After the jury was empaneled but before they were sworn at the beginning of the following day, appellant's counsel asked the court if they could retain the prospective jury

list, which included information about the selected jurors. The court refused and appellant's counsel returned the list to the court. Appellant argues on appeal that the trial court abused its discretion, or alternately failed to exercise its discretion, when it precluded defense counsel from retaining the list of prospective jurors. The State argues that the trial court did not abuse its discretion. We agree with the State.

Md. Rule 4-312, titled "**Jury selection**", provides for the dissemination of the jury list before jury selection, and states:

> (c) **Jury list**. (1) Contents. [*B*]*efore the examination of qualified jurors*, each party shall be provided with a list that includes each juror's name, city or town of residence, zipcode, age, gender, education, occupation and spouse's occupation. Unless the trial judge orders otherwise, the juror's street address or box number shall not be provided.
>
> (2) Dissemination. (A) Allowed. *A party may provide the jury list to any person employed by the party to assist in jury selection*. With permission of the trial judge, the list may be disseminated to other individuals such as the courtroom clerk or court reporter for use in carrying out official duties.
>
> (B) Prohibited. Unless the trial judge orders otherwise, a party and any other person to whom the jury list is provided in accordance with subsection (c) (2) (A) of this Rule may not disseminate the list or the information contained on the list to any other person.
>
> (3) Not part of the case record; exception. Unless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner. Unless marked for identification and offered in evidence pursuant to Rule 4-322, a jury list is not part of the case record.

Md. Rule 4-312(c) (emphasis added).

Appellant argues that the purpose of the rule is to provide juror information to the parties for their use *during* trial and to prevent dissemination of the information in the list to the public. Appellant's assertions are contrary to the plain language of the rule.

We review de novo a trial court's interpretation of the Maryland Rules. *State v. Taylor*, 431 Md. 615, 630 (2013) (citation and quotation marks omitted). The Court of Appeals has recently discussed the standard for interpreting the Maryland Rules:

> A court interprets a Maryland Rule by using the same canons of construction that the court uses to interpret a statute. First, the court considers the Rule's plain language in light of: (1) the scheme to which the Rule belongs; (2) the purpose, aim, or policy of this Court in adopting the Rule; and (3) the presumption that this Court intends the Rules and this Court's precedent to operate together as a consistent and harmonious body of law. If the Rule's plain language is unambiguous and clearly consistent with the Rule's apparent purpose, the court applies the Rule's plain language. Generally, if the Rule's plain language is ambiguous or not clearly consistent with the Rule's apparent purpose, the court searches for rulemaking intent in other indicia, including the history of the Rule or other relevant sources intrinsic and extrinsic to the rulemaking process, in light of: (1) the structure of the Rule; (2) how the Rule relates to other laws; (3) the Rule's general purpose; and (4) the relative rationality and legal effect of various competing constructions.

*Fuster v. State*, 437 Md. 653, 664–65 (2014) (brackets, citations, and internal quotation marks omitted). "Where a Rule's language is clear, a court neither adds nor deletes language so as to reflect an intent not evidenced in the plain and unambiguous language of the Rule." *Green v. State*, 456 Md. 97, 125 (2017) (brackets, quotation marks, and citation omitted). "Unambiguous language will be given its usual, ordinary meaning unless doing so creates an absurd result." *Id*. (quotation marks and citation omitted).

Rule 4-312 states that the list shall be disseminated "to assist in jury selection." The rule does not say that the list may be disseminated to "craft an opening statement or closing argument" or to inform a party's direct or cross-examination of the witnesses. Since the rule refers explicitly to the purpose of jury *selection*, but not to the purpose of use *during* trial as alleged by appellant, it is reasonable to infer that assisting in jury selection is the

rule's only purpose. *Cf. Himes Associates, Ltd. v. Anderson*, 178 Md. App. 504, 536 (referring to principle of *expressio unius est exclusio alterius*, meaning the expression of one thing is the exclusion of another) (citation omitted) , *cert. denied*, 405 Md. 291 (2008). Not only is our interpretation consistent with the specific language used in the rule but our interpretation is consistent with the timing of dissemination of the list as stated in the rule -- "before the examination of qualified jurors" -- and the title of the rule -- "**Jury selection.**" Thus, contrary to appellant's argument, the purpose of the rule is to help with jury selection.

The rule provides that "[u]nless the court orders otherwise, copies of jury lists shall be returned to the jury commissioner." The rule does not specify when the lists must be returned but there is no language in the rule that requires the trial court to allow a defendant to keep the list throughout the entire trial, nor does appellant direct us to any rule history or case law that would support such a requirement. Indeed, the rule requires that the list be returned, unless the trial court orders otherwise. Since the rule is silent, and the trial court fully complied with what was required by the plain language of the rule, the determination of whether to allow a party to keep the jury list during trial, and the timing of returning the jury lists to the jury commissioner, are matters of trial court discretion and subject to the abuse of discretion standard of review. *Cf. Cooley v. State*, 385 Md. 165, 176 (2005) (the conduct of a trial lies within the control and discretion of the trial court) (citation omitted). Under the circumstances presented, we do not find that the trial court abused its discretion, or failed to exercise its discretion, in requesting the jury list be returned following the empaneling of the jury.

## V.

Lastly, appellant argues that the trial court abused its discretion when it admitted into evidence the report prepared by the firearms examiner because the report consisted of inadmissible hearsay that by its admission improperly bolstered the consistent testimony of the firearms expert. The State disagrees, as do we.

"'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." Md. Rule 5-801(c). A statement that "is not offered for the truth of the matter asserted . . . is not hearsay and it will not be excluded[.]" *Parker v. State*, 408 Md. 428, 436 (2009) (internal quotation marks and citation omitted). There are many exceptions to the hearsay rule, one of which is the admission of business records. Md. Rule 5-803(b)(6) allows for the admission of business records and provides:

> Records of regularly conducted business activity. A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness. In this paragraph, "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Whether evidence is hearsay is an issue of law that we review de novo. *Parker*, 408 Md. at 436 (citation omitted).

Karen Sullivan, a firearms and tool mark examiner with the Firearms Examination Unit of the Baltimore City Police Department, was accepted as a firearms expert without objection. She testified that she reviewed nine cartridge casings, a bullet fragment, and 12 bullets and she described the process for examining firearms evidence. She testified that after she examined the evidence, she concluded that the ballistics evidence was fired from at least three firearms. A second examiner reviewed the ballistics evidence and agreed with Sullivan's conclusions. Sullivan explained that she then submitted a written report, which both she and the second examiner signed, for technical review. The report was signed by Sullivan and the second examiner on August 9, 2012, less than two weeks after the murder occurred on July 28. Over defense counsels' general objections, the trial court admitted Sullivan's five-page report of her findings into evidence.

We need not determine whether the trial court could have admitted the report as a business record, finding that it was the regular practice of the Firearms Examination Unit to make and keep such reports in their ordinary course of business, because, even if the report was admitted in error, the error was harmless because it was cumulative of Sullivan's unobjected to trial testimony.

To prevail in a harmless error analysis, the State must satisfy us "that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976) (footnote omitted). *See also Bellamy v. State*, 403 Md. 308, 332 (2008) ("To say that an error did not contribute to the verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as

revealed by the record.") (internal quotation marks and citations omitted). Evidence may be harmless, if it is cumulative of evidence that is properly admitted or admitted at trial without objection. *See Yates v. State*, 429 Md. 112, 120 (2012) ("This Court has long approved the proposition that we will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury *without objection* through the prior testimony of other witnesses.") (internal quotation marks and citations omitted).

We are persuaded that the admission of the report was harmless because Sullivan testified in great detail about her examination of the ballistics evidence recovered and her conclusion regarding that evidence. We agree with the State's reasoning that "[t]here is simply no possibility that a juror, unpersuaded by Sullivan's oral testimony that she found evidence of three different firearms, would somehow be persuaded of that fact simply because a written report, authored by her and containing those same conclusions, was also admitted in evidence." Accordingly, we are persuaded that any error in admitting the firearms report was harmless beyond a reasonable doubt. *Cf. Yates*, 429 Md. at 124 ("We agree with the Court of Specials Appeals that the admission of the hearsay evidence did not ultimately affect the jury's verdict given the cumulative nature of the similar statements offered at trial.").

**JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED.**

**COSTS TO BE PAID BY APPELLANT.**