Circuit Court for Prince George's County
Case No.: CT191290X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1333

September Term, 2022

RICOH LAMAR McCLAINE

v.

STATE OF MARYLAND

Nazarian,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: March 5, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On the evening of 4 November 2019, Ricoh Lamar McClaine, Appellant, fought with Kevin Tyrell Davis in the parking lot of a Popeyes restaurant in Oxon Hill following a dispute that arose between the two after Davis cut into a line of people (Appellant among them) awaiting their turn to order food. Ultimately, Davis died from a single stab wound to the abdomen. Appellant claimed that he acted in self-defense and defense of others, and asserted also that, although he fought with Davis, he did not stab him.

On 15 April 2022, following a trial in the Circuit Court for Prince George's County, a jury found Appellant guilty of second-degree murder in relation to that killing.[1] On 19 September 2022, the court sentenced him to twenty-two years of imprisonment.

Appellant appealed timely to this Court, raising the following questions for our consideration, which we have re-phrased.[2]

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[1] The court granted a defense motion for judgment of acquittal on a weapons charge. The jury acquitted Appellant of first-degree murder.

[2] Appellant's questions were phrased as follows:

> 1. Should Appellant's repeated assertions of dissatisfaction with counsel have triggered the application of Md. Rule 4-215?
>
> 2. Did the trial court err or abuse its discretion in refusing to instruct the jury upon mutual combat or mutual affray, potentially reducing the level of the offense to manslaughter?
>
> 3. Did the trial court err in excluding evidence that Appellant was mistreated by police officers prior to being interrogated?
>
> 4. Did the trial court err or abuse its discretion in permitting Detective John Paddy to narrate a video recording introduced as State's Exhibit 44, and to otherwise provide prejudicial lay opinion testimony?
>
> 5. Did the trial court err or abuse its discretion in instructing the jury upon

(continued…)

I. Did Appellant's assertions of dissatisfaction with trial counsel implicate Maryland Rule 4-215(e)?

II. Did the trial court err or abuse its discretion in: (A) refusing to instruct the jury on the mitigating defense of hot-blooded response to legally adequate provocation; and/or (B) instructing the jury on concealment as evidence of consciousness of guilt.

III. Did the trial court err in excluding evidence that Appellant was mistreated by police officers prior to being interviewed by them?

IV. Did the trial court err or abuse its discretion in permitting a police detective to narrate a surveillance video recording, and to otherwise provide prejudicial lay opinion testimony?

V. Did the trial court err in permitting the State to overstate the probative force of a handwriting comparison?

For the reasons stated below, we answer all of these questions in the negative and, therefore, affirm the judgment of the circuit court.

BACKGROUND

On 4 November 2019, Appellant, his wife, and their two young children, went for dinner to a Popeyes restaurant in Oxon Hill, Maryland. They stood in a long line of people waiting to order food. As they stood in line, Davis entered the store and cut the line. Appellant's wife and another woman confronted Davis about his behavior. Eventually, Appellant approached Davis about his behavior, and the two left the restaurant to take their dispute outside where they fought.[3]

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the State's theory of concealment?

6. Did the trial court err in permitting the State to overstate the probative force of a handwriting comparison?

[3] That much was uncontested, as captured by video surveillance footage, albeit sans audio.

State's Exhibit #44, introduced into evidence at trial, contains surveillance video footage from inside the Popeyes restaurant.[4] It depicts, *inter alia*, the scenario described above. More specifically, the videos show Davis entering the restaurant, cutting the line, first speaking with the two women in line, and speaking subsequently with Appellant. It shows Davis next making a hand gesture toward the door before Appellant and Davis leave the line and walk quickly in the direction of the indicated door. As he walks through the restaurant on his way outside, McClaine appears to have something in his right hand.

McClaine opens the door with his left hand, exits the restaurant first, walks to his right, and then turns quickly to his left to face Davis, who followed him closely. Appellant's wife followed the pair out of the restaurant. As the two men come together in combat, Appellant raises his left hand toward Davis's right shoulder and appears to make a low thrusting motion with his right hand toward Davis's left abdomen. Davis falls backwards onto the hood of a parked car with Appellant on top of him. The two then roll off the hood of the car and out of frame. Shortly, Appellant is observed coming back into the restaurant, collecting his children, and leaving. It was determined later that Davis sustained a fatal stab wound to his left abdomen.

Homicide Detective John Paddy, the lead investigator on this case, testified on direct examination about the video. He described that the video showed that Appellant "jammed" his right hand into his right jacket pocket around the time he began to engage with Davis

[4] State's Exhibit #44 contains various video clips captured from three different camera angles inside the restaurant.

inside the Popeyes. The following exchange occurred between the prosecutor and Detective Paddy:

> Q What happened after [Appellant] has words with [Davis], what, if anything, do you notice about his hands after that?
>
> A After that, as [Davis] is beginning to turn and walk out of the restaurant, [Appellant] is now following behind him. I can see him withdraw his right hand from the jacket pocket and now his hand appears to be holding a knife.
>
> Q Were you also able to see [Davis's] hands at this time?
>
> A Yes.
>
> Q What, if anything, did you see in [Davis's] hands?
>
> A Nothing.
>
> Q And as the two men exit the Popeyes when they get outside what, if anything, do you see in [Davis's] hands?
>
> A Nothing in [Davis's] hand.
>
> Q What, if anything, do you see in [Appellant's] . . . hands?
>
> A An object appearing to be a knife.

Detective Paddy testified also that, just as the two men began to leave the line to walk outside, Appellant's wife grabbed him by the arm. Appellant pulled away from her. The detective said also that, prior to when Appellant thrust his right hand toward Davis, the video does not depict Davis ever striking Appellant.

Detective Paddy continued that, after viewing the surveillance video from Popeyes, the police were able to determine that Appellant was the person seen fighting with Davis. The day after the stabbing, the police interviewed Appellant's wife who identified Appellant as the person seen in the surveillance videos. On 5 November 2019, the police

sought and obtained an arrest warrant for Appellant, which was not served until eight days later on November 13th.

After the police arrested Appellant, they interviewed him at the police station. A video recording of that interview was entered into evidence and discussed also by Detective Paddy on direct examination. During that interview, Appellant said, among other things, that, although he may have seen Davis before, he did not know him. After Detective Paddy showed Appellant still photographs from the surveillance video from inside Popeyes, Appellant denied holding a knife in his right hand. Appellant said also that Davis threatened him, that he was afraid of persons standing outside the Popeyes, and that one of those persons may have been involved in the stabbing. McClaine denied stabbing Davis. According to Detective Paddy, Appellant maintained consistently that he was attacked by Davis, but never said that Davis had a weapon.

At trial, the various statements Appellant made before trial were admitted into evidence. Those statements came from letters sent to the trial judge, statements to police, and recorded telephone calls from jail.[5] From the letters, the State produced evidence that

[5] The letters to the trial judge were retrieved from the court file by Detective Paddy. Appellant denied writing some of the letters. Maryland State Police Document Examiner Diane Lawder compared three letters to documents seized from Appellant's jail cell, concluding that one was definitely written by Appellant and the others probably were. Lawder said that her caveat was due to the fact that she had been provided photocopies of the letters, which cannot be compared with the same certainty that is possible with originals. In addition, in one of the jail calls, Appellant admitted to his wife that he had written at least one of the letters.

The documents were seized from Appellant's jail cell by Detective Paddy because Appellant refused to provide a handwriting exemplar. Appellant testified that he refused to

(continued…)

Appellant admitted to having a knife, that he pulled it out while still inside Popeyes while Davis's back was turned, that he got "the jump" on him, and stabbed him once. Also, in the letters, Appellant expressed his fear of Davis and his confederates who, according to Appellant, were waiting outside.

Appellant testified in his defense. He said that, before he even entered into the restaurant, Davis and his ten to twelve confederates threatened him harm. He said that, on his way into the restaurant, he stopped to smoke a cigarette while his wife and children went inside to stand in line. While doing so, Davis asked him for a cigarette. Appellant ignored him, prompting Davis's threats.[6]

Once inside, he said it came to his attention that his wife and a woman standing in line near them interacted with Davis about him cutting the line. He said that when Davis was confronted about his line cutting, he said "[f]uck y'all. This my way." Appellant testified that, at first, he chose to take no action because of the presence of his children. Appellant said that he eventually confronted Davis stating "you ain't got to butt in front of us. You know what I mean, we have been patiently waiting." Appellant said that, at that point, Davis, who "reeked of alcohol[,]" "just went off."

Appellant claimed that he thought Davis was armed with a "weapon or gun, a knife, something." He said he thought that because of the way Davis kept "messing with his

give a writing example because "I don't have to . . . it's my right. I don't have to write nothing."

[6] Detective Paddy testified that, in the surveillance video taken from inside Popeyes, Appellant can be seen standing outside the Popeyes smoking a cigarette and using his phone. He stated further that the video does not depict him interacting with anyone present.

pocket" and because of the way he was acting. He said also that he saw "the top of a blade in his pocket."[7] Appellant said that Davis then said "I'll blow all of y'all ass up" and that he was "going to knock [his] head off." The two men agreed then to take the matter outside. Appellant told his family to wait inside. As they walked outside, according to Appellant, Davis said "[w]e going to fuck you up[,]" which Appellant took to mean that Davis and his friends would "fuck [him] up." Appellant claimed that he agreed to go outside with Davis in order to draw Davis and his group of friends away from his wife and young children. He claimed that, on the way outside, Davis grabbed him.

Once outside, Appellant maintained that, out of fear that Davis was going to shoot or stab him, he threw a punch at him and the two started fighting. He said that, after the two fell onto the hood of the car, they continued "tussling" as they made their way to the rear of that car. He said that Davis's friends then arrived, presumably to help Davis. He said he then fought with Davis and some of Davis's associates who came to Davis's aid and joined the fracas. He postulated that perhaps one of the persons that came to Davis's aid accidentally stabbed Davis while trying to stab Appellant.[8]

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[7] Body-worn camera video captured from a police officer who rendered first aid to Davis showed that he found a short fixed-blade knife inside Davis's right front pants pocket.

[8] In addition, in one of the recorded jail calls, Appellant told an unknown person that he had medical records showing that the hospital killed Davis by sending him into cardiac arrest and cutting open his heart. Alternatively, Appellant claimed that COVID might have killed him. He repeated these theories at trial. We note that Davis died in November 2019, and take judicial notice that the COVID global pandemic was not recognized formally in the United States until March 2020.

Appellant said he was able to break free, at which point he collected his children and his wife, they got into their car, and left. As Appellant and his family left, Davis's associates were yelling and screaming "we going to get you. We going to catch you . . . we going to fuck you up." He denied ever seeing Davis on the ground.

Appellant admitted that he had a small "instrument" knife "like a can opener, a beer opener or a cork screw with a little blade on it" attached to his key chain. He said he took it out of his pocket as he walked outside of Popeyes to "get me a bat or something out of my car to get my family up out of there."[9] He said he never opened the knife on his key ring and he, repeatedly and unequivocally, denied stabbing Davis.

We shall relate additional facts as they become germane to our Discussion.

DISCUSSION

I.

Appellant contends that his "repeated assertions" to the trial court concerning his dissatisfaction with his lawyer "should have triggered the application of Maryland Rule 4-215."

Maryland Rule 4-215(e) requires an inquiry by the trial court when "a defendant requests permission to discharge an attorney whose appearance has been entered[.]"[10]

[9] Appellant admitted, however, that he neither told the police about the knife on his key ring nor that he took his keys out of his pocket in the Popeyes.

[10] Maryland Rule 4-215(e), titled **Discharge of Counsel — Waiver**, provides as follows:

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain

(continued…)

"[O]nce a defendant makes an apparent request to discharge his or her attorney, the trial judge's duty is to provide the defendant with a forum in which to explain the reasons for his or her request." *State v. Taylor*, 431 Md. 615, 631 (2013). Rule 4-215(e) becomes implicated even when a defendant's "communication with the trial court does not express explicitly a request to discharge [their] attorney, but rather manifests reasonably a sign that he or she is considering the possibility of doing so." *Id.* at 634.

In *Taylor*, 431 Md. at 633, Maryland's Supreme Court explained:

> Pre-trial statements indicating reasonably the defendant's present dissatisfaction with his or her attorney or the defendant's present desire to substitute counsel are "red flags" for a trial court. Such assertions invite a trial court to clarify whether the defendant is making a request to discharge counsel and, if so, the defendant must be provided then with a forum in which he or she (and/or counsel) may explain the underlying reasons for the purported request to discharge counsel.

Appellant directs our attention to several exchanges that took place during courtroom proceedings that, according to him, amounted to a request to discharge counsel, thereby triggering Rule 4-215(e). From that standpoint, he asserts that the trial court erred by not complying with the requirements of the Rule.

> the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

We review, without deference, whether an inquiry under the Rule was necessary and whether the trial court's inquiry satisfied the rule. *State v. Graves*, 447 Md. 230, 240 (2016). We shall examine, in order, each of the exchanges Appellant directs us to in order to discern whether error occurred on the part of the trial court.

Pre-trial hearing – 13 January 2022

On 13 January 2022, the trial court held (or rather attempted to hold) a pre-trial hearing on a defense motion to compel discovery, and a motion filed by the State seeking to restrict the dissemination of contact information for certain people associated with the case.[11] The trial court aborted ultimately the hearing because of Appellant's repeated interruptions, and rescheduled it as an in-person hearing. The entire "hearing" spans 22 pages of typewritten transcript.

Appellant directs our attention to three exchanges that occurred during the hearing that he contends amounted to a request to discharge counsel. After defense counsel attempted politely to dissuade Appellant from persisting in interrupting the hearing, Appellant said: "I ain't talking to you. You ain't seen me, you ain't come to see me, I been – I keep reaching out to you. I mean, what am I supposed to do? Just be quiet?" Appellant points also to an exchange which he describes as a situation where "lawyer and client sharply criticized each other's legal theories in arguing motions." Finally, at the very conclusion of the hearing, after Appellant interrupted again, this time to explain some

[11] Due to the global COVID pandemic, the hearing was held remotely *via* video conference.

aspect of the procedural history of the case, and after his trial counsel moved to strike Appellant's statement, Appellant responded, "Yeah, I bet you will." **[T. 1/13/22: 21-22].**

In our view, a broader reading of the entire transcript of that hearing demonstrates that, although Appellant was critical of nearly everyone associated with his case (including trial counsel), Appellant neither asked directly to discharge trial counsel nor made any comments which could be interpreted that way. The following expanded quotations from the germane portions of the 13 January 2022 hearing demonstrate this:

> [DEFENSE COUNSEL]: Your Honor, if it please the [c]ourt – and we will incorporate by reference and adopt the written argument. The Defense filed on October 20, 2021, a motion to compel discovery, request for sanctions, pursuant to Maryland Rule 4-263.
>
> In addition to that –
>
> THE DEFENDANT: Excuse me, Your Honor, excuse me, Your Honor. I object to the 4-263. 4-263 is a 2021 rule, it does not apply to my 2019 case. I have another thing I need to address today.
>
> [DEFENSE COUNSEL]: Mr. McClaine, what we'll do is, [we're] going to address this written motion first, we will then – I'm not trying to railroad the [c]ourt's proceeding. But we filed this motion to compel discovery, since the [c]ourt is going to hear us on that, we're going to be heard on that. If we have other matters that we have time to address today and the [c]ourt permits us, then we can definitely address that.
>
> But I certainly don't want to interfere with proper representation by derailing what we are prepared [to] argue here today.
>
> THE DEFENDANT: Okay, I'm going to let everybody speak, but, Your Honor, I need to speak today. I have another thing that I need to correct. This is the third case number (inaudible) in my case, there's a –
>
> [DEFENSE COUNSEL]: Mr. McClaine, we can talk in a break-out room. And I don't want to cut you off, but let's – let's address this first. If we have issues with the actual charging document itself, you know, we have filed the proper motions and the [c]ourt is willing to hear us, we will address that.

> But again, because you and I should be having a conversation about this in a private –
>
> THE DEFENDANT: I ain't talking to you. You ain't seen me, you ain't come to see me, I been – I keep reaching out to you. I mean, what am I supposed to do? Just be quiet?
>
> [DEFENSE COUNSEL]: You can wait for us to get in a break-out room to address these other matters.
>
> Do you want me to proceed with the motion to compel discovery or not?
>
> THE COURT: What do you want?
>
> THE DEFENDANT: I want you to proceed under the correct laws, not under no rules.
>
> [DEFENSE COUNSEL]: I got you. Okay.
>
> THE DEFENDANT: Under statute and written laws.
>
> [DEFENSE COUNSEL]: I got you.
>
> THE DEFENDANT: (Inaudible) and the laws of the United States –
>
> [DEFENSE COUNSEL]: Mr. McClaine, listen –
>
> THE DEFENDANT: (Inaudible) laws of the State of Maryland.
>
> [DEFENSE COUNSEL]: – honestly, I do not – I do not want you to say anything that will interfere with the ability to have an effective representation and effective hearing. All right? So I'm not here to quibble with you, I'm not here to argue with you. Let's get through the motion to compel, if there's anything you want me to add to that I will add to it. Is that fair?
>
> THE DEFENDANT: Yes.
>
> [DEFENSE COUNSEL]: Okay. Thank you, Mr. McClaine.

Later in the hearing, as defense counsel advanced an argument regarding matters related to the State's medical examiner, Appellant interrupted, and the following exchange ensued:

[DEFENSE COUNSEL:] As far as curriculum vitaes [sic] and resumes of any expert the State intends on calling or at least trying to qualify under Rule 5-207 – excuse me, 702 and 701 –

THE DEFENDANT: That's a new 2021 rule, came out October – I think October the 5th of 2021.

[DEFENSE COUNSEL]: Mr. McClaine, I'm addressing – and I appreciate that assistance, I'm addressing when a party would like to qualify an individual to testify as to opinion testimony, versus expert opinion testimony, or a fact witness.

Your Honor –

[THE DEFENDANT[12]]: Your Honor, this man was not even licensed in the State of Maryland to perform autopsies.

[DEFENSE COUNSEL]: Mr. McClaine. Mr. McClaine. We have addressed that, you and I. There are some things that you and I –

THE DEFENDANT: You can't talk to me.

[DEFENSE COUNSEL]: Sir, there are some things that you and I will keep close to the chest. It is not appropriate in this hearing to bring that type of issue up. Please, I am begging you in the interest of your case, do not raise issues. Do not raise issues that will hurt your case.

THE DEFENDANT: My case is in the Juvenile Court. We in the Juvenile Court right now arguing my case. I'm a 32 year old man. Come on, man. You're arguing my case on some *Hicks* violation –

[DEFENSE COUNSEL]: Your Honor, I apologize. Your Honor, for the record I would just move to strike any testimony of Mr. McClaine. He's not being called as a witness in this hearing at this time.

THE DEFENDANT: And today I'll be moving for a non-jurisdiction motion, because this [c]ourt has no jurisdiction over me, nor the charges or anything in this case.

[DEFENSE COUNSEL]: Your Honor, for the record, the Defense moves to strike any statement of Mr. McClaine. He is not being called as a witness in this hearing. Any statement made by Mr. McClaine that may be considered

[12] In context, it is clear that Appellant spoke here, and not "THE WITNESS," as reflected in the transcript.

> something other than a response to Counsel's question, we're asking that be stricken from the record.
>
> Your Honor, with regard to the reports –
>
> THE COURT: Without objection. Go ahead.

Finally, at the conclusion of the hearing, after the trial court indicated a need to speak with the administrative judge about scheduling an in-person hearing during the COVID pandemic, Appellant interrupted the court to say: "She – she – she ordered that there was no Grand Jury on January 20th, 2020." After defense counsel moved to strike Appellant's comment, Appellant said: "Yeah, I bet you will." After confirming the time and date of the rescheduled hearing, the proceeding concluded.

Pre-trial hearing – 17 February 2022

Once again, Appellant summarizes briefly what occurred during the hearing and quotes selectively from it in support of his position. Once again, we are persuaded that a broader review of the record demonstrates that Appellant's level of dissatisfaction with his counsel's conduct never rose to the level of implicating Rule 4-215. Rather, when asked directly and repeatedly by the court whether he sought to discharge his counsel, Appellant never responded affirmatively. At the outset of the hearing, the following occurred:

> THE COURT: All right. All right. As far as I know, we're here for two things. We're here on the continuing motion of the Defendant's to compel discovery and request for sanctions, and we're here for something relating to the documents. We can get to that later – the documents relating to – the documents that were taken from Mr. McClaine's cell.
>
> Is that correct?
>
> [DEFENSE COUNSEL]: Yes, Your Honor.
>
> THE COURT: All right. Okay. I need – all right.

THE DEFENDANT: (Inaudible).

THE COURT: So, Mr – we have a lot to cover today, Mr. McClaine.

THE DEFENDANT: Okay. (Inaudible).

THE COURT: No, I cannot. You have a lawyer here. We have a lot to cover. So we're going to do –

THE DEFENDANT: (Inaudible) – defendant. I (inaudible) I have a right to put it on the record. She hasn't done nothing what I asked her to do. She took all my money and has done nothing. I mean, come on, man. The State didn't do (inaudible). In January she had evidence. I mean, it was unacceptable.

[DEFENSE COUNSEL]: Mr. McClaine, Mr. McClaine. Are you asking –

THE DEFENDANT: I'm not going to be (inaudible) – talk to me like (inaudible) problem. I was just saying (inaudible) I did not pay you. That's all. I'm just asking (inaudible) trial. This is (inaudible) of due process, right? That's all. Nobody didn't break the law. (Inaudible).

THE COURT: All right. All right.

THE DEFENDANT: It's unacceptable.

THE COURT: Mr. McClaine, I don't know what you're asking me to do. You have an attorney. The way this is supposed to work –

THE DEFENDANT: She's doing nothing. She (inaudible) she's working on the State (inaudible).

THE COURT: All right. Mr. McClaine, I just muted you because I am not going to hear from you while I'm trying to – you're not going to overspeak – you're not going to overtalk me. So I'm going to ask you, you have an attorney. This is the third attorney you've had in this case so far. You have an attorney.

Are you asking the Court that you – you no longer want to be represented by [Defense counsel]? Is that what you're requesting the [c]ourt? Can you – who's with you? Can somebody unmute him, or you can unmute yourself now. I muted you because – somebody needs to unmute you.

[Defense counsel] – do you understand that – there you go. Are you asking – are you asking – are you asking the [c]ourt that you want to proceed without an attorney and do you want to excuse [Defense counsel]?

THE DEFENDANT: I just want [Defense counsel] to (inaudible) my case. She's (inaudible) put a motion in for me to (inaudible). (Inaudible). It's unacceptable. It's unacceptable, Your Honor. We can't even get back on the (inaudible).

[DEFENSE COUNSEL]: Your Honor, at this time I move to strike – I move to strike the statements of Mr. McClaine.

THE COURT: Granted. Look – look –

THE DEFENDANT: (Inaudible).

[DEFENSE COUNSEL[13]]: Mr. McClaine, are you asking that I be discharged, or [co-counsel] to be discharged from your case?

THE DEFENDANT: I'm asking (inaudible) case. (Inaudible). That's what I'm asking you to do.

THE COURT: All right. Mr. McClaine, this is the way this is going to work. You're either asking the [c]ourt to discharge your attorney, which I will take under advisement after I have looked at some things, in which case I will consider your request, and am probably inclined to grant it, or if you do not wish to discharge [Defense counsel] at this time then you need to be silent and speak with your attorney. I'm not going to – I'm not going to –

THE DEFENDANT: (Inaudible).

THE COURT: Huh, what's that?

THE DEFENDANT: (Inaudible). She's not talking to my family. She's not talking to me. I mean, what do you – you want –

THE COURT: What are you – are you asking – Mr. McClaine, I'm going to ask you one more time. Are you asking to discharge your attorney?

THE DEFENDANT: I'm asking her to apply the law to my case.

THE COURT: And that's – that's something that you need to discuss with her on her time. This is my time now – this is my time now. This is my time, Mr. McClaine. We're here – we're here with a motion that your lawyer has filed. All right? I'll ask you for the third and final time. Are you going to sit

[13] Although the transcript attributes this question to the trial court, it seems clear from the context that defense counsel asked the question.

there and allow your attorney – allow your attorney to represent you, or are you going to yet again disrupt these proceedings?

THE DEFENDANT: If she'll work (inaudible) with the law, yes, I will sit here and be quiet, yes.

THE COURT: I don't know what that means.

THE DEFENDANT: Yes, yes, I will.

THE COURT: All right. Well, we'll see how – we'll see how it goes.

THE DEFENDANT: I'm asking for (inaudible) my rights. I'm asking for my (inaudible).

* * *

THE DEFENDANT: It don't make no sense to me.

THE COURT: Your client is making it extremely difficult for me to proceed with this hearing. So I don't know – we have a lot to cover today, and I don't have – I'm not on Mr. McClaine's schedule. So either we – either he participates in this hearing by allowing the lawyers to do their work or he just – I can either remove him if he disrupts again, which I'm at that point where I will remove him if he disrupts again, or if he wishes to discharge you, [Defense counsel], then I'll guess I'll take that – if he tells me that, then I'll take that matter under advisement.

THE DEFENDANT: And what, you going to give me all my money back?

THE COURT: There will be no – as far as I know, there – I can say pretty confidently there's going to be no delay in this trial of April of 2022.

THE DEFENDANT: (Inaudible).

THE COURT: I trust you won't. So are you going to – are you going to let [Defense counsel] do her job?

THE DEFENDANT: (Inaudible).

THE COURT: Well, there's no – well, she's here – she's here to litigate the motion right now. Are you going to let her litigate this motion, Mr. McClaine?

THE DEFENDANT: (Inaudible).

THE COURT: I don't know what that means. We'll (inaudible) the case.

The trial court then proceeded to conduct the hearing which spanned approximately 85 typewritten pages.

First day of trial – 11 April 2022

Finally, Appellant directs our attention to an exchange that took place on the first day of trial after the jury had been selected and the court was entertaining any open motions. During defense counsel's argument on a motion filed in proper person by McClaine seeking the recusal of the trial judge, Appellant interrupted the proceedings. After that, defense counsel moved to withdraw from the case. The following transpired:

> [DEFENSE COUNSEL]: The defense is arguing that the [c]ourt cannot be fair and unbias[ed] in it's rulings on the matters of law.
>
> THE COURT: I got you.
>
> [DEFENSE COUNSEL]: For those reasons the defense is asking His Honor to recuse himself.
>
> THE COURT: State.
>
> [THE STATE]: I have not seen this motion, so I'm –
>
> THE COURT: – I haven't seen it either.
>
> [THE STATE]: I'm at a disadvantage.
>
> THE COURT: Hold on a second. Has it been filed?
>
> THE DEFENDANT: She knows it was filed. Moonlighting. She knows it was filed.
>
> THE COURT: There is a motion for me to recuse myself that's been filed?
>
> [DEFENSE COUNSEL]: So that we can be clear.
>
> THE DEFENDANT: Yes, it was file[d].

[DEFENSE COUNSEL]: Yes, Your Honor. It was my understanding it was filed.

THE COURT: Where is it?

[DEFENSE COUNSEL]: I do not have a copy.

THE COURT: Do you see a motion to recuse myself because I'm unfair to Mr. McClaine?

When was this motion filed?

[DEFENSE COUNSEL]: Your Honor, I don't have that information at my finger tips. I don't know.

THE COURT: Can I see the file? Was it filed in 2022?

THE DEFENDANT: Twenty-one. It was filed in 2021.

THE COURT: Do you know when approximately when it was filed in 2021?

THE DEFENDANT: This how this whole case –

[DEFENSE COUNSEL]: This case is not going to go like this.

THE DEFENDANT: That's where it is at.

[DEFENSE COUNSEL]: Because I will make a motion to strike my appearance, if you think this case is going to go like this.

THE DEFENDANT: I will get my money back.

[DEFENSE COUNSEL]: Is that what you think this about?

Your Honor, at this time the defense makes a motion to strike [their] appearance . . . for the record. It is apparent that the [defendant] and defense counsel do not have a meeting of the minds on how to proceed procedurally and structurally. The defendant has, on multiple occasions, on the record, complained about the representation, complained about the competency of counsel and it is impossible for conduct an effective representation where an attorney has a client that is butting heads at every turn, procedurally and substantively.

At this point, I'm moving to strike my appearance. I'm asking to be withdrawn from the case[.]

The trial court asked the State to respond to Appellant's counsel's motion, which it did. The following then occurred:

> THE COURT: All right. Motion by motion when the attorney –
>
> There is certainly limitations to withdrawing at this late date. I need to – I could grant it, I also could deny it if it would cause undue delay, prejudice or injustice.
>
> I certainly have admonished Mr. McClaine on numerous occasions about decorum in the courtroom and taking these proceedings seriously. He is, generally, I agree with [the State], he is certainly demeaned his counsel, unwarranted I might add, throughout these proceedings.
>
> THE DEFENDANT: Can I ask a question?
>
> THE COURT: Not yet.
>
> Also, mindful this case has been on the docket for a long time and there might be another long period of time. I do know this issue came up before and Mr. McClaine did not want his attorney to withdraw.
>
> THE DEFENDANT: But I did tell you, she has not come to see me. And when she did she didn't have all of the discovery.
>
> [DEFENSE COUNSEL]: I have no problem with Mr. McClaine putting all of this on the record.
>
> THE DEFENDANT: I'm telling the truth. I'm telling the truth.
>
> THE COURT: I'm going to take this under advisement. Obviously, given the fact this is happening after voir dire and before we proceed with trial. I'm not saying I won't grant the motion but I need to take the matter under advisement.
>
> Let's move on to other areas, in case I decide not to.

The next day, at the outset of trial, after the trial court denied Appellant's *pro se* motion to recuse, the trial court asked defense counsel whether her motion to withdraw as counsel from the day before was "still on the table." The following transpired:

> [DEFENSE COUNSEL:] Your Honor, may it please the [c]ourt. After consultation last night and hearing from Mr. McClaine this morning, it's evident that Mr. McClaine's anxiety is revealing itself in a manner that is displeasing to counsel and not in line with the decorum of this [c]ourt. However, at this time defense counsel will be withdrawing the motion to withdrawn [sic]. We do believe that the [c]ourt will take whatever necessary steps are appropriate if anyone's conduct gets out of line or is disruptive to the proceeding. As a matter of law the defense is withdrawing it's motion to withdrawn [sic] as counsel in this case. It was also revealed to counsel that Mr. McClaine does not want defense counsel to step out of the case, so he objects to the withdrawn [sic].
>
> THE DEFENDANT: This is the third counsel on my case.
>
> [DEFENSE COUNSEL]: Thank you, Your Honor.
>
> THE COURT: Thank you.

After the trial court confirmed with the parties that there were no other outstanding matters, the jury was called into the courtroom and trial began.

What is obvious from the transcript of the proceedings in this case is that Appellant is a person who is unafraid to speak his mind in court. It is clear also that, at no point during any of the proceedings to which Appellant has directed our attention, did he ever request to discharge his counsel. In addition, based on our independent review of the record, we are unpersuaded that Appellant's words and conduct ever amounted to a constructive request to discharge counsel implicating the mandates of Rule 4-215(e). Significantly, during the 17 February 2022, hearing, Appellant declined repeatedly to discharge counsel when asked specifically if that was what he wanted to do.

Finally, on the first day of trial, 11 April 2022, it was defense counsel who sought to be discharged. Rule 4-215(e) does not contemplate that circumstance. But, even if that circumstance amounted to a request by Appellant to discharge counsel, he would fare no

better because Rule 4-215(e) does not apply to requests to discharge counsel made after *voir dire* begins. *State v. Hardy*, 415 Md. 612, 624-28 (2010).

II.

McClaine raises two contentions concerning the trial court's instructions to the jury. First, he claims that the trial court erred in refusing to instruct the jury on the mitigating defense of hot-blooded response to legally adequate provocation. Second, he asserts that the trial court erred in instructing the jury on concealment as evidence of consciousness of guilt.

We review, for abuse of discretion, a trial court's decision to give, or not give, a requested jury instruction. *Stabb v. State*, 423 Md. 454, 465 (2011). In evaluating whether an abuse of discretion occurred, we consider "'whether the instruction was generated by the evidence, whether it was a correct statement of law, and whether it otherwise was fairly covered by the instructions actually given.'" *Newman v. State*, 236 Md. App. 533, 563-64 (2018) (emphasis omitted) (quoting *Gimble v. State*, 198 Md. App. 610, 627 (2011)).

For both claims of alleged instructional error in this case, the parties do not dispute that the relevant instructions reflected a correct statement of the law and were not covered elsewhere in the trial court's instructions. The only question remaining is whether the instruction was applicable to the evidence admitted in this case.

"A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012). As the Supreme Court of Maryland explained in *Dykes v. State*, 319 Md. 206, 216-17 (1990), the threshold is low, as a defendant needs only to produce "some evidence" that supports the

requested instruction. "The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge." *Dishman v. State*, 352 Md. 279, 292 (1998).

A.

Appellant contends that the trial court erred or abused its discretion in refusing to instruct the jury on the mitigating defense of hot-blooded response to legally adequate provocation based on mutual combat.[14]

Hot-blooded response to legally adequate provocation, often referred to as the Rule of Provocation, is a legal defense which will mitigate what would have been murder to voluntary manslaughter. *State v. Faulkner*, 301 Md. 482, 486 (1984). The Rule of Provocation has four major components:

> (1) There must have been adequate provocation;
>
> (2) The killing must have been in the heat of passion;
>
> (3) It must have been a sudden heat of passion – that is, the killing must have followed the provocation before there had been a reasonable opportunity for the passion to cool;
>
> (4) There must have been a causal connection between the provocation, the passion, and the fatal act.

[14] The State contends that this contention is not preserved for appeal because Appellant did not comply strictly with Maryland Rule 4-325(f) because he lodged no objection to the trial court's failure to give his requested instruction after the trial court instructed the jury. Appellant contends that he complied substantially with Rule 4-325(f) as contemplated by *Bennett v. State*, 230 Md. 562, 568 (1963), *Gore v. State*, 309 Md. 203, 208 (1987), and their progeny, by making his position well known to the trial court before it instructed the jury. We agree with Appellant. He argued his position at length and provided a written proposed jury instruction, the combination of which amounted to substantial compliance with Rule 4-325(f).

Wilson v. State, 195 Md. App. 647, 680-81 (2010), *rev'd on other grounds*, 422 Md. 533 (2011). One form of legally adequate provocation is mutual combat:

> Mutual combat has been recognized as a possible source of adequate provocation. The rule of provocation will apply when persons enter into angry and unlawful combat with a mutual intent to fight and, as a result of the effect of the combat, the passion of one of the participants is suddenly elevated to the point where he resorts to the use of deadly force to kill the other solely because of an impulsive response to the passion and without time to consider the consequences of his actions.

Sims v. State, 319 Md. 540, 551-52 (1990) (internal citations omitted). "Insulting words or gestures, no matter how opprobrious, do not amount to an affray, and standing alone, do not constitute adequate provocation." *Id*. at 552.

In the present case, the trial court declined to give the requested instruction because it was not persuaded that McClaine and the victim were mutual combatants at the time Appellant stabbed Davis, and because there was no evidence that Appellant killed the victim in the heat of passion. The court explained its thinking in declining to give the instruction to the jury:

> Here, the parties had words because, based on the video, based on the evidence that I've seen, is because the victim cut in line. Things were said and the victim gestured to go outside. The defendant followed. There was some evidence about what happened when they got closer to the door.
>
> What was interesting – not interesting, but I think a fact that the jury can find is that as soon as the parties had words in the line in the Popeyes, the defendant surreptitiously brandished a knife while he was still in the Popeyes, went outside and he immediately stabbed a man whose hands were up and palms facing upward.
>
> There was no tussling prior to the right hand striking the victim, which a jury can find contained the knife. I don't recall any – the testimony, like in Carter where the defendant says he became engaged – enraged or lost control

> or he was in some kind of heat of passion, he said he acted to defend of himself and his family.
>
> And also unlike Carter, there was no history, I guess, between the defendant and Mr. Kevin Davis. There was no testimony that he knew of him or he saw him or around; and there's no evidence, again, unlike Carter where . . . the victim allegedly had violent proclivities towards the defendant in that case.
>
> Similar to State versus Woods, there's no evidence of the parties fighting until the stabbing itself. As I recall, and I heard it a few times here today, the defendant testified that it was essentially . . . [the victim] or him and his family and he wanted to get out of there. He says he never stabbed Kevin Davis because he lost control or he was in the heat of passion, or he somehow or another blacked out or didn't know what he was doing.
>
> So I don't agree that there's sufficient evidence in this case to show that the parties were so-called mutual combatants.

In order to generate an instruction on the mitigating defense of hot-blooded response to legally adequate provocation (under any of the various theories of provocation), there must be evidence that the defendant's blood was indeed hot. *Sims*, 319 Md. at 553. Because there was no evidence generated in this case that McClaine's blood was hot or that he killed Davis out of passion, the trial court declined correctly to give Appellant's requested instruction.[15]

---

[15] In fact, as noted earlier, Appellant testified at trial that he did not stab Davis, much less stab him in the heat of passion. Rather, he testified that he fought with the victim out of a necessity to defend himself and his family. That notwithstanding, the State produced evidence that Appellant admitted to stabbing the victim. None of that makes any legal difference in this case because criminal defendants are entitled to advance inconsistent defense theories, *Sims*, 319 Md. at 550, and because the source of the evidence supporting those theories may come from any source, *Dykes*, 319 Md. at 217.

B.

Appellant contends that the trial court erred by abusing its discretion in instructing the jury on concealment as evidence of consciousness of guilt.

While the parties and the trial court were discussing which jury instructions would be given, the subject of an instruction on concealment as evidence of consciousness of guilt came up. After the State requested that the trial court give the instruction to the jury, the following exchange occurred:

> THE COURT: What's the evidence of concealment?
>
> [THE STATE]: They had to search for him for eight days. He was found at the other lady's house, not his house. And Detective Paddy talked about how they had to use databases and law enforcement tools to try to locate him.
>
> THE COURT: What's the evidence that – so that's sufficient in your view that just because – he was at home, wasn't he?
>
> [THE STATE]: No, he wasn't at home.
>
> THE COURT: Where is the evidence at trial where he was?
>
> [THE STATE]: Well, he testified that he wasn't at home and Detective Paddy testified that he wasn't at home, and they had to use police resources to try to locate him. And it took them eight days to locate him.
>
> [DEFENSE COUNSEL]: The testimony was that he was in Capitol Heights, not that he was not at home. With regard to the detective testifying that they just used regular police investigative tools to locate a person of interest, I don't believe that is tantamount to concealment.
>
> [THE STATE]: He wasn't a person of interest. There was an active arrest warrant for him. And the defendant also testified they resided in Oxon Hill. The State did not elicit where he was to preserve the sanctity of the marriage.
>
> THE COURT: All right. I'll allow this jury instruction. I'll take out flight and have concealment.

Thereafter, the court gave the following jury instruction on concealment as evidence of consciousness of guilt:

> [A] person's concealment immediately after the commission of a crime or after being accused of committing a crime is not enough by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt. Concealment under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of concealment. If you decide there is evidence of concealment, you then must decide whether this concealment shows a consciousness of guilt.

The State contends that this contention is not preserved for review on appeal because Appellant did not comply with Maryland Rule 4-325(f) because he lodged no objection to the trial court's failure to give his requested instruction after the trial court instructed the jury. Appellant contends that he complied substantially with Rule 4-325(f) as contemplated by *Bennett v. State*, 230 Md. 562 (1963), *Gore v. State*, 309 Md. 203, 208 (1987), and their progeny, by making his position well known to the trial court before it instructed the jury.

In this instance, we agree with the State that this issue is not preserved. Appellant's extremely brief comments during the discussion of the jury instruction, coupled with the failure to lodge an objection as required by Rule 4-325(f), was insufficient to preserve this issue.

III.

Appellant contends that the trial court erred in excluding evidence that the police mistreated him prior to being interviewed by them. At several points during trial, Appellant sought to have evidence admitted that he had been beaten by the police after his arrest, but

before they interviewed him. For example, while McClaine was testifying on direct examination at trial, the following took place:

> [DEFENSE COUNSEL:] What happened to you when you were arrested?
>
> [THE DEFENDANT:] They kicked in the door and came and arrested me.
>
> [DEFENSE COUNSEL:] You've got to keep your voice up. I can't hear you.
>
> [THE DEFENDANT:] They kicked in the door and came and arrested me.
>
> [DEFENSE COUNSEL:] And arrested you?
>
> [THE DEFENDANT:] Yes, ma'am.
>
> [DEFENSE COUNSEL:] How did the police handle you?
>
> [THE DEFENDANT:] They beat me up.
>
> [THE STATE]: Objection.
>
> THE COURT: Sustained. Approach.

During the ensuing bench conference, the trial court declined to admit the evidence on the basis that it was not relevant and because its probative value was outweighed by the danger of unfair prejudice. Specifically, the trial court said:

> I ruled on the issue of whether you can elicit from this witness that he was somehow or another mishandled, brutalized, mistreated by the police. I don't find it relevant to any issue in this case, even if it is relevant, it's [sic] probative value is outweighed by unduly prejudicial effect.

On appeal, McClaine asserts that the evidence was relevant for three reasons. *First*, he claims it was relevant to whether his statement to police was voluntary. *Second*, he maintains that the evidence was relevant to "an explanation for what [Appellant] chose – or felt forced – to reveal to the police." *Third*, he contends the evidence was relevant to

"bias, on the part of the individual officers or the police department as an institution" and that "[s]uch bias would cast doubt upon the police investigation as a whole."

Maryland Rule 5-401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Maryland Rule 5-402 states that, except as otherwise provided, "all relevant evidence is admissible[,]" and "[e]vidence that is not relevant is not admissible." Maryland Rule 5-403 states that otherwise relevant evidence "may be excluded if its probative value is substantially outweighed by [*inter alia*] the danger of unfair prejudice[.]"

The determination of whether evidence is relevant is a legal question which is reviewed without deference on appeal. *State v. Simms*, 420 Md. 705, 725 (2011). The determination of whether relevant evidence should be excluded under Maryland Rule 5-403 is left to the sound discretion of the trial court. *Id*. To demonstrate an abuse of that discretion, a decision must be "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *McLennan v. State*, 418 Md. 335, 353-54 (2011) (quotation marks and citation omitted).

We are of the view that, regardless of the relevance of the evidence, the trial court did not abuse its discretion in declining to admit it because its probative value was outweighed substantially by the danger of unfair prejudice. The trial court was in the best position to make that determination and its decision reflected "a reasonable decision based on the weighing of various alternatives." *Fontaine v. State*, 134 Md. App. 275, 288 (2000)

(quotation marks and citations omitted). "[W]here a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal." *Id*.

In any event, even if the trial court had erred in refusing to admit the evidence, we would still affirm the judgment of the circuit court because any such error would have been harmless. An error is deemed harmless if "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict[.]" *Dorsey v. State*, 276 Md. 638, 659 (1976). The evidence that the police beat Appellant was relevant, if at all, to the statement he gave the police when they interviewed him. In that statement, consistent with his trial testimony, he admitted that he fought the victim and denied that he stabbed him. Based on the video evidence admitted in this case, those facts appear to be incontrovertible.[16] As a result, we conclude, beyond a reasonable doubt, that any error in declining to admit the evidence in no way influenced the verdict.

IV.

Appellant contends that the trial court erred or abused its discretion in permitting Detective Paddy to narrate the surveillance videos and "otherwise provide prejudicial lay opinion testimony."

Although McClaine contends broadly that the trial court erred or abused its discretion in permitting Detective Paddy to narrate the surveillance videos that captured

[16] It is noteworthy that the jury heard the evidence that the police beat Appellant and the trial court sustained the State's objection to it, but the State did not move to strike it.

Appellant's attack on Davis, he directs our attention to two specific instances that he claims were particularly prejudicial. The "critical" instance, according to Appellant, came when Detective Paddy, without objection, testified that McClaine, "immediately upon exiting the restaurant, produced a knife and 'swung it' into the left side abdomen of Kevin Davis."[17] Of lesser importance, according to Appellant, was an instance where Detective Paddy "delivered a mini-lecture" on commonly carried pocket-knives.

Appellant recognizes that his trial counsel may have failed to preserve this issue for appeal because she "interposed only sporadic objections, which came after much of the damaging narrative had been completed." To the extent the issue is unpreserved for review, he asks us to review it under our authority to review unpreserved errors pursuant to Maryland Rule 8-131. Maryland Rule 8-131(a) provides that, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."

Although this Court has discretion to review unpreserved errors pursuant to Maryland Rule 8-131(a), the Maryland Supreme Court cautions that appellate courts should "rarely exercise" that discretion because "considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court[.]"

[17] Detective Paddy never testified precisely that McClaine stabbed the victim with a knife. Rather, he testified that he saw Appellant on the surveillance video deliver a "strike" to the victim's left abdomen, and observed Appellant holding what appeared to him to be a knife inside the restaurant.

Ray v. State, 435 Md. 1, 23 (2013) (quotation marks and citation omitted). Therefore, plain error review "is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Savoy v. State*, 218 Md. App. 130, 145 (2014) (quotation marks and citation omitted). Under the circumstances presented, we decline to overlook the lack of preservation, and thus exercise our discretion to not engage in plain error review. *See Morris v. State*, 153 Md. App. 480, 506-07 (2003) (noting that the five words, "[w]e decline to do so[,]" are "all that need be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation" (emphasis omitted)).

To the extent that the issue is preserved, we discern no abuse of discretion of the trial court in permitting Detective Paddy to testify to what he saw on the surveillance video and offer his lay opinion about it. In *Paige v. State*, 226 Md. App. 93 (2015), this Court addressed the admissibility of the testimony of a loss prevention officer who described what he saw on, and offered lay opinions about, a video purporting to show the defendant involved in shoplifting from a store. *Id*. at 125-30. In *Paige*, unlike this case, the loss prevention officer had witnessed the events first-hand as they ocurred while recording them on video, and this Court relied, to some extent, on that fact in upholding the admissibility of the evidence in that case. That fact was not, however, entirely dispositive. We noted in *Paige* that, to the extent that the loss prevention officer "went beyond testifying to mere facts," the opinions she offered "were rationally based on her perception." *Id*. at 126-27 We concluded also that the loss prevention officer was experienced, and her testimony was helpful to the jury. *Id*. at 127.

Like the security officer in *Paige*, Detective Paddy offered testimony based on his own observations of the video and some opinions about them. We are persuaded that Detective Paddy's experience as a police officer made his lay opinion about what the footage showed helpful to the jury and did not cross the line into expert testimony.

V.

Appellant contends that the trial court erred in permitting the State to overstate the probative force of a handwriting comparison by analogizing it to fingerprint comparison.

As noted earlier, various letters were introduced into evidence at trial that appeared to be from McClaine to the trial judge. Because Appellant denied writing some of them, the State employed an expert witness to compare writings seized from Appellant's cell to writings retrieved from the court file.

The Supreme Court of Maryland makes clear that the State has the right to present handwriting comparison expert testimony and the jury is entitled to compare handwriting for themselves whenever the genuineness of handwritten documents is at issue. *Miller v. State*, 421 Md. 609, 620-21 (2011).

Appellant directs our attention to the following exchange, occurring while the State was questioning the witness in advance of tendering her as an expert, which Appellant argues overstated the probative force of handwriting comparison analysis:

> [THE STATE:] So is it fair to say handwriting between individuals is akin to fingerprints, it's individualized?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.

> [THE STATE:] Go ahead.
>
> [THE WITNESS:] It is. It is unique.

McClaine ignores the witness's explanation of handwriting comparison analysis that immediately preceded the above passage. The witness, without objection, said the following:

> [THE WITNESS:] The basic principles of handwriting are that no two people write exactly alike. You never write the same way twice and you don't go above your skill level.
>
> [THE STATE:] What do you mean by that?
>
> [THE WITNESS:] So if you are thinking about handwriting comparisons or writing something you have – without thinking about it, subconsciously you have natural variation as you write. You are not really thinking about how you are writing but you are thinking about what you are writing. So within your writing style, you may have some similarities within a writing style. There will be a lot of unique differences within how each person writes. No two people will write exactly the same way twice. As far as, like, – or no two people write exactly alike. As far as, you know, writing exactly the same way twice, you can sign your name 400 times and it will never exactly overlay on top of each other. If I were to take two signatures they will never overlay on top of each other unless it's a forgery.
>
> And you never write above your skill level. If you receive, let's say I received a letter that was poorly written and then the individual that was the Defendant had a PhD in rocket science or something, we might have a problem with, obviously, their skill level of being able to write such a poorly written letter.

As germane to this discussion, the thrust of the expert's testimony was that no two people have precisely the same handwriting and no person writes exactly the same way every time. We do not believe that, under these circumstances, the trial court abused its discretion or otherwise committed reversible error in overruling Appellant's objection to a

question asking whether "handwriting between individuals is akin to fingerprints" after the witness had just explained that handwriting is unique between individuals.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.