Circuit Court for Baltimore City
Case No.: 119009017

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1372

September Term, 2019

MAURICE POWELL

v.

STATE OF MARYLAND

Arthur,
Wells,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: March 25, 2022

Appellant, Maurice Powell, was indicted in the Circuit Court for Baltimore City and charged with first degree assault, second degree assault, reckless endangerment, use of a firearm in commission of a crime of violence, illegal possession of a regulated firearm, illegal possession of ammunition, wearing, carrying and transporting a handgun on his person, and wearing, carrying and transporting a handgun near a public building, the last charge being a violation of Baltimore City Code, Article 19, Section 59-5. A jury acquitted him on the two assault charges as well as the use of a firearm in commission of a crime of violence, but convicted appellant on the remaining charges. Appellant was sentenced to fifteen (15) years for illegal possession of a regulated firearm, the first five years without possibility of parole, to be followed by a consecutive five years for reckless endangerment, to be followed by one year consecutive, without parole, for the city code violation, and these sentences were concurrent with three years for wearing, carrying and transporting a handgun on his person and one year for illegal possession of ammunition, for an aggregate sentence of twenty-one (21) years, the first six without the possibility of parole. Appellant timely appealed and asks us to address the following questions:

> 1. Did the trial court err by refusing to instruct the jury on self-defense?
>
> 2. Did the trial court err in allowing the State to cross-examine appellant about a jail fight and being held in solitary confinement in prison?
>
> 3. Did the trial court err in allowing the State to cross-examine appellant about his research on self-defense law?
>
> 4. Did the trial court err by denying appellant's motion to suppress?

For the following reasons, we shall reverse the judgment based on appellant's conviction for reckless endangerment, but affirm all of the remaining judgments.

BACKGROUND

Kellen Bell testified that on December 1, 2018, he lived in Apartment 3 at 415 Lyman Avenue, a house that had been converted into multiple apartments.[1] Appellant lived next door with Michelle Parks. On that day, while he was cooking breakfast, Bell heard "crashing noises" outside his apartment. When he went outside, he saw appellant throwing two window air conditioning units onto Bell's porch. Appellant was "[l]ike literally heaving them up onto my porch."

The two men then argued over ownership of the air conditioning units, with Bell explaining that he sold them to appellant in exchange for two cigarettes two weeks earlier. Bell further testified that the air conditioning units worked, but that he did not need them, and did not want to move them, so he sold them to appellant.

Bell admitted that, while standing on his porch, he picked up one of the air conditioning units and threw it back towards appellant's door. He then went back inside his own residence.

Bell further testified that, prior to this incident, his relationship with appellant was "cordial" and "pretty neighborly." On this occasion, however, appellant "looked like he

[1] Photographs of the converted house were admitted as State's Exhibits 3, 11A, 11B, and 11C. Apparently, according to the testimony and exhibits, the front door of Bell's apartment was located off a wooden porch, set a few inches off the ground, near where an outdoor grill was located. Appellant's apartment was located adjacent to Bell's and underneath a set of stairs.

was intoxicated" and was "just a totally different person, you know." Bell testified that "[i]t was kind of scary 'cause I'm used to seeing him as my neighbor, you know, not somebody that's a threat."

After Bell returned inside his house, he heard more noise and looked out to see appellant throwing one of the units onto Bell's outdoor grill. As Bell started to go back outside a second time, he saw appellant turn and go back into his residence. By the time Bell reached the driveway, appellant had re-emerged from his residence, carrying a handgun.

According to Bell, appellant pointed the gun at his face, and Bell told him, "Maurice, you're high. You need to go sleep it off." Bell then turned, and, as he was walking to his residence, appellant "fired at the back of my leg and hit me." Bell was shot in the right leg just behind his knee.

Bell provided further detail, explaining that, when he went out the second time after appellant threw a unit onto his grill, he "like opened the door and just stepped on the porch and got out. [Appellant] darted right in his house and went right for the gun." Bell testified that appellant was inside his own residence only "seconds" before he re-emerged with the gun. Bell also testified that he was about ten (10) feet away from appellant when he was shot. Bell said that he "was never even near [appellant], close enough to touch him." Bell maintained that he did not threaten or curse at, or make any physical contact with, appellant.

On cross-examination, Bell agreed that he did come down his steps to "see what the problem was and why [appellant] was still destroying my porch." Bell admitted that he was going towards appellant's residence "to see what was going on."

Bell stated that he was not afraid of appellant and that he used to wrestle in high school and college. He also agreed that he was a professional mixed martial arts ("MMA") fighter. When asked if that sport required a "high level of ability," Bell replied "[s]ome would say, I guess so."

Bell then testified that, when appellant came out of his house pointing a gun at his face, he was "terrified." Bell continued: "[T]he gun did its job. He pointed it at me. So I backed away and went … back into the house." Bell maintained that he was scared.

Bell also testified that it was his intention, on this second occasion, to ask appellant why he was throwing the air conditioner units onto his property. Asked by defense counsel if he thought the ensuing confrontation would result in a fight, Bell replied, "why would he start the fight then? If he was so terrified of me, why would he throw the air condition[er]s up on my house? If he was so terrified of me, why would he even start a confrontation to begin with?"

On redirect examination, Bell testified that he and appellant had never been in any sort of physical altercation before this event. Bell also claimed that he never demonstrated his MMA skills to appellant, either prior to, or on the day in question. On recross-examination, Bell denied that he intended to hurt appellant.

Aleisha Johnson, Bell's fiancée, corroborated Bell's account, testifying that Bell came off their front steps and asked appellant "what the problem was." Bell and appellant "were just talking" and Bell did not approach appellant in a "threatening way or nothing like that." Johnson further testified that she witnessed the shooting, stating that "[appellant] shot him when he was turning to come back in the house." Johnson testified that appellant

pointed the gun at Bell and Bell told appellant "you must be high" and "[s]leep it off." Appellant shot Bell in the leg as Bell turned to walk away. Johnson also confirmed on cross-examination that appellant "went to his house and got a gun and came out and shot him." She maintained that Bell did not punch, threaten, or bully appellant.

Appellant testified on his own behalf. On December 1, 2018, he lived at the location in question with his fiancée and his three grandchildren. Pertinent to our discussion, he went outside his apartment twice that morning. On the first occasion, he went outside and saw the air conditioners just outside of his apartment. Explaining that they did not belong to him, appellant moved them onto Bell's property, sliding them onto Bell's porch, near Bell's grill.

At that point, Bell opened the door and said, "what the fuck are you doing[?]" Appellant stated that he asked Bell to move the air conditioners for a few weeks and "before I could get everything out, I said, I'm asking you – and he was on me. He swung at me." Appellant then ran back into his house and shut the door. Appellant was asked whether he was afraid of Bell when Bell first swung at him outside of his apartment, and appellant replied "Yes" and that was why he ran back inside his house.

It was at this time that appellant decided to grab his firearm out of his closet. Appellant explained that he knew that Bell was an MMA fighter and that "what he told me was he had knowledge of all mixed martial arts and he specialized in jiu jitsu." Asked whether Bell had ever threatened him or why he was afraid of him, appellant replied "he's a pretty intense guy, right? And I'm kind of laid back."

Appellant testified that about a month prior to the incident in question, he saw Bell beat a man "lifeless" to the point that the man was not visibly breathing and had to be removed from the scene by an ambulance. Appellant said: "I witnessed this man put somebody in an ambulance with a lifeless body in the ambulance. They didn't use no siren. Lights on when he left." Afterwards, Bell came to appellant's door and told him to stay silent about the incident, stating "you don't know anything." Asked whether he was "afraid or not afraid" of Bell, appellant replied, "Yeah, man."[2]

While appellant was inside his house after this first encounter with Bell, he heard a noise outside his door. He then went out a second time, testifying as follows:

> Yeah, man. Boom. **The air conditioners hit the door**. Right? **I get into my closet. I got the firearm. I looked around my wall. My front door is cracked. I go to my front door and he's not there. The air conditioner [was] on the ground.** I opened the door and I looked. He said get some sleep, mother fucker. You're going to need it.
>
> So – and then **here come the other air conditioner. He throwing it right into my doorway. So I kicked it down** 'cause it would have hit my leg. And it would have hit my shin. I kicked the air conditioner down. And **when I kicked the air conditioner down,** I said, you know what, 'cause I didn't even have – **I put the firearm on my hip. And then I went down in front of my house where it looked like the first air conditioner was. And before I can pick up the air conditioner, he was on me. I mean, on me. We face to face now and then he takes – he punch me in the side right here and he tried to clip me. And when I went to go grab – this is a pistol. When he went to go clip me, the gun went off.** So now we're looking at each other. We're looking (indiscernible – 11:19:19) at each other. And I looked at the gun first. I looked at the gun first and then I looked – I looked

[2] Indeed, during cross-examination, appellant maintained that he knew that Bell was "violent" and that he "wanted to have violent conversations." He testified that Bell told him that he was going "to kill somebody." According to appellant, Bell also asked appellant to "tell him if I see it so he can kill that man. I'm going to fucking kill him. That's what he told me." He further testified that he knew that Bell "got holes in his walls and everything 'cause he gets fits of rage."

> him over. And then I looked at the man's eyes and he looked – he gave me a look like, yeah, the gun just went off. Right?"

(Emphasis added.)

Appellant testified that he did not have any intent to fire the handgun, stating that "I just brandished it to try to scare him off." Appellant hoped Bell "would go away."

On cross-examination, appellant repeated that, when he went back outside the second time with the handgun on his hip, appellant

> **grabbed the air conditioner and [Bell] was on me.** Like, I never even thought to look up for him. And we was face-to-face**. He didn't take him no time to punch me in my head. And then he went to clip me. When he punched me,** I went this way and I went to go – **and I grabbed the firearm to try to brandish it to get him away from me and then the gun went off.**

(Emphasis added.)

Appellant also reiterated, on cross-examination, that Bell came out the first time "to swing and punch at me[,]" jumping over the air conditioning units in the process, and that appellant turned and ran into the house. He then heard Bell throw an air conditioner unit onto appellant's porch, and that it was at that point that appellant retrieved his loaded handgun.

Appellant then testified that, when he went outside, the handgun was not in his hand but was "on my hip" and that he bent down, apparently on his porch, to pick up one of the air conditioners. Appellant continued: "By the time I picked it up, he was on me. We was face-to-face." Appellant dropped the air conditioner and Bell "punched me in my head." Appellant reiterated: "I pulled out the handgun, the firearm, right, and he tried to clip me and the gun went off." Appellant explained that "clip" meant that Bell "did a sweeping

motion with his feet to like trip me, to get me off my feet. That's what he did." Appellant testified that his "whole reason for even retrieving it off of my side was hopefully that it would scare him to get him away from me."

Appellant also did not know Bell was shot at first. According to appellant, Bell calmly stated that he was shot, then turned and walked back into his house. Appellant agreed that he then went back inside, put the handgun back in the closet, gathered some belongings and left the scene.

On redirect examination, appellant agreed that he was "[v]ery much" in fear of Bell on the day in question and that he felt his actions were to protect himself. He knew that Bell "forcefully enters people's homes and beat them."

On recross-examination, when specifically asked by the prosecutor, "[y]ou didn't have to come back outside, sir, with a gun[,]" appellant replied that he did not. But appellant maintained that the gun discharged by accident.

We shall include additional facts in the following discussion.

DISCUSSION

I.

Appellant first contends that the trial court erred by refusing to provide a self-defense instruction because, according to appellant, his testimony established the minimum level of "some evidence" to generate such jury instruction. In response, the State argues that, although appellant met two of the prerequisites to a self-defense instruction, appellant provoked the conflict by moving the air conditioners in the first encounter and by going back into his residence and arming himself with a handgun prior to the second encounter.

Appellant replies that there was evidence that he was not the aggressor in either encounter and that brandishing the handgun to fend off Bell's aggression, while in the curtilage of his own home, was not unreasonable. As will be explained, we conclude that there was some evidence to support appellant's requested self-defense instruction, and thus the court erred by not giving that instruction.

Maryland Rule 4-325(c) provides: "The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." In determining whether a requested jury instruction should have been given, we consider "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Bazzle v. State*, 426 Md. 541, 549 (2012) (quotation marks and citation omitted).

"The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge. The task of this Court on review is to determine whether the criminal defendant produced that minimum threshold of evidence necessary to establish a *prima facie* case . . ." *Id*. at 550 (quotation marks and citation omitted). The Court of Appeals has stated:

> As we explained in *Dykes v. State*, 319 Md. 206, 216–17, 571 A.2d 1251, 1257 (1990), the threshold is low, as a defendant needs only to produce "some evidence" that supports the requested instruction:
>
> > *Some evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence

> is immaterial; it may emanate solely from the defendant. It is of no matter that the self-defense claim is overwhelmed by evidence to the contrary. If there is any evidence relied on by the defendant which, if believed, would support his claim ... the defendant has met his burden. …
>
> *See also State v. Evans*, 278 Md. 197, 207–08, 362 A.2d 629, 636 (1976) ("[T]he burden of initially producing some evidence on the [requested instruction] (or of relying upon evidence produced by the State) sufficient to give rise to a jury issue with respect to [the instruction], is properly cast upon the defendant."). Furthermore, "[i]n evaluating whether competent evidence exists to generate the requested instruction, we view the evidence in the light most favorable to the accused." *General v. State*, 367 Md. 475, 487, 789 A.2d 102, 108 (2002).

Id. at 551 (footnotes omitted).

At the conclusion of the trial, defense counsel notified the trial court that appellant wanted both a perfect and imperfect self-defense instruction.[3] Counsel argued that, in the initial encounter, Bell came outside, took a swing at appellant, and chased him back to his residence. Appellant then retrieved his firearm and only came out after hearing the air conditioner hit his door. When appellant went outside and started to pick up the air conditioner, "Mr. Bell was on him. And that's when the actual shooting happened at that point."

In response, the State argued, *inter alia*, that "at the very end of the defendant's own testimony, he acknowledged point blank he did not have to go back out there with that handgun. And because of that, because he went back out there with a handgun, it destroys

[3] Appellant limits his argument on appeal to perfect self-defense, and notes that he is not claiming error for the failure to give an imperfect self-defense instruction, stating that "[t]his argument focuses only on the self-defense instruction." Our discussion proceeds accordingly.

the very concept of self-defense. There was no need for him to defend himself by going back out there with a gun." For that reason, according to the State, appellant was an aggressor and was not entitled to the instruction on perfect self-defense.

Defense counsel responded by asserting that appellant had no duty to retreat because the incident occurred in the curtilage of his home. Defense counsel stated, in pertinent part:

> Mr. Bell said it best. The gun did what it was supposed to do. Now that could be interpreted different ways. Interpret him as a victim being shot. It can also be interpreted as him being an aggressor stopping his aggression and changing him from going in the direction of my client to turning him around and sending him back to his house.
>
> So certainly, we believe that the original intent of brandishing that firearm, even if it's pulled out and he said the actual firing of that gun is accidental, it's sufficient to generate not only self-defense, the full instruction, because he was at his dwelling, he was outside of his front door, but certainly on the curtilage of the property…

The court disagreed:

> Well, counsel, he on his own had the opportunity to go back in his house and stay in his house. He's the one who went back in his house and grabbed the gun and came back out. So I – this Court – I disagree with you. I think that he – the facts are insufficient for a perfect self-defense, the jury instruction…[4]

Self-defense is a defense to all assaultive crimes generally. *See Jones v. State*, 357 Md. 408, 424 (2000); *see also Bynes v. State*, 237 Md. App. 439, 442 (2018) ("[T]he defense of self-defense applies to assaultive crimes generally.") (quoting *Bryant v. State*, 83 Md. App. 237, 245 (1990)) (quotation marks and citation omitted). And, pertinent to

[4] Defense counsel preserved this issue by objecting when the court concluded its giving of the jury instructions.

the instant case, self-defense is also "relevant to a charge of reckless endangerment." *Jones*, 357 Md. at 430. The elements that must be present for a defendant to be entitled to a self-defense instruction are:

> (1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
>
> (2) The accused must have in fact believed himself in this danger;
>
> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
>
> (4) The force used must not have been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

State v. Faulkner, 301 Md. 482, 485-86 (1984); *accord Porter v. State*, 455 Md. 220, 234-35 (2017).

There also appears to be a fifth element - the duty to retreat. The Court of Appeals has explained: "[W]hen a defendant uses defensive, deadly force outside of his home, he has a duty 'to retreat or avoid danger if such means were within his power and consistent with his safety.'" *Porter*, 455 Md. at 235 (quoting *Burch v. State*, 346 Md. 253, 283 (1997)); *see also Redcross v. State*, 121 Md. App. 320, 328 ("In cases in which self-defense is claimed, the accused normally has a duty to retreat. In other words, except in limited circumstances, the accused must make all reasonable efforts to withdraw from the encounter before resorting to the use of deadly force."), *cert. denied*, 350 Md. 488 (1998) (footnote omitted).

"There must be 'some evidence,' to support each element of the defense's legal theory before the requested instruction is warranted." *Bynes*, 237 Md. App. at 449 (quoting

Marquardt v. State, 164 Md. App. 95, 131 (2005), *overruled in part on other grounds by Kazadi v. State*, 467 Md. 1, 27 (2020)) (cleaned up). It is only necessary to show that one of the elements of self-defense is lacking to uphold a court's decision not to give a self-defense instruction. *Id.* at 450-51 ("It may have been that the evidence failed to generate a self-defense issue with respect to various other components of self-defense. It is only necessary, however, that we focus on one of them[.]").

Here, the State concedes that there was sufficient evidence of the first two elements of self-defense to support the giving of the instruction. First, there was evidence from appellant that Bell was a professional fighter and recently had beaten a neighbor so badly that the neighbor had to be taken from the property by an ambulance. Second, there was also evidence that appellant believed himself to be in danger from the encounters with Bell on the day in question. The dispute is over the last three grounds: (3) whether appellant provoked the conflict or was the aggressor; (4) whether he used unreasonable and excessive force by arming himself with a handgun and shooting Bell in the leg; or (5) whether appellant had a duty to retreat.

Regarding the third element, "[a]n aggressor is not entitled to a self-defense instruction if he initiated a deadly confrontation or escalated an existing confrontation to that level." *Thornton v. State*, 162 Md. App. 719, 734 (2005), *rev'd on other grounds*, 397 Md. 704 (2007). The State claims that appellant "initiated the conflict by moving the air conditioners and escalated what had been a previously unarmed dispute by returning to the scene with a gun when he was already safely inside his home." When, however, appellant placed the air conditioners on Bell's porch, Bell responded by coming out and taking a

swing at appellant, at least according to appellant's version of events. Appellant's testimony, in our view, constitutes "some evidence" that Bell was the initial aggressor, not appellant. *Cf. Marquardt*, 164 Md. App. at 140-41 (deeming that Marquardt provoked the conflict when he broke and entered the victim's apartment armed with a baseball bat), *overruled on other grounds by Kazadi, supra.*

Continuing the sequence of events, after Bell "swung" at him, appellant said that he went back inside his home and armed himself with his handgun. Whether appellant's actions were excessive is the subject of the next element, but, as for this element, there was "some evidence" that appellant did not go back outside again *until after* he heard Bell throwing the air conditioner units back onto his doorstep, hitting his door in the process. It was at this point, according to appellant, that he decided to go back out again, this time armed with the handgun on his hip.

The next moments are where the "some evidence" standard comes into play, because Bell and appellant presented conflicting accounts. Although Bell testified that appellant pointed the gun at him and then shot him after he started to walk away, appellant countered that, when he bent down to pick up the air conditioner unit outside his door, Bell was "on me" and punched him in the head. The jury heard evidence that appellant then pulled out the handgun to "brandish" it as Bell tried to sweep appellant off his feet. At that point, according to appellant, the gun simply "went off."

Because there was evidence before the jury that appellant was not the aggressor during both encounters, we conclude that "some evidence" of the third element of the self-defense instruction was generated. *See Gainer v. State*, 40 Md. App. 382, 391 (observing

that, under similar circumstances, the issue should be left "for determination by the jury under appropriate instructions"), *cert. denied*, 284 Md. 743 (1978).

Turning next to the fourth element - whether appellant used unreasonable and excessive force, the Court of Appeals has observed that

> the right to use deadly force to resist a[n] … attempted or ongoing assault … exists only during the time that the victim of the attack reasonably believes that such force is necessary to repel an imminent danger of death or serious bodily harm – during the time that "the exigency demanded" the use of such force.

Sydnor v. State, 365 Md. 205, 217 (2001), *cert. denied*, 534 U.S. 1090 (2002).

Although the right to self-defense "is not necessarily forfeited by arming one's self in anticipation of an attack, … that right is qualified by the proviso that the right only extends to 'one who [was] not in any sense seeking an encounter.'" *Marquardt*, 164 Md. App. at 141 (quoting *Perry v. State*, 234 Md. 48, 52 (1964)), *overruled on other grounds by Kazadi*, *supra*; *accord Holt v. State*, 236 Md. App. 604, 625 (2018); *see also Marr v. State*, 134 Md. App. 152, 183 (2000) (observing that there is no "right" to arm oneself in anticipation of an assault), *cert. denied*, 362 Md. 623 (2001).

We conclude that appellant's version of events presented "some evidence" that he did not use excessive or unreasonable force in responding to Bell's attack. As argued by appellant in his reply brief, "[t]he force that [appellant] used was brandishing his gun while Mr. Bell, a deadly professional fighter, wailed on him. [Appellant] testified that he brandished the gun to scare away Mr. Bell. … But the gun accidentally discharged when Mr. Bell tried to kick [appellant]'s legs out." We further agree with appellant that "[i]t was up to the jury, not the courts, to decide whether [appellant]'s use of force was unreasonable

and excessive." *Cf. Pagotto v. State*, 127 Md. App. 271, 356 (1999) (stating, in a case reversing a police officer's convictions of involuntary manslaughter and reckless endangerment in connection with a shooting of a motorist, that "[i]t cannot be that the accidental discharge of a weapon would be deemed more blameworthy than the intentional shooting of the victim"), *aff'd*, 361 Md. 528 (2000).

Finally, we consider the fifth element of a self-defense claim - the issue of whether appellant had a duty to retreat. As indicated above, "when a defendant uses defensive, deadly force outside of his home, he has a duty 'to retreat or avoid danger if such means were within his power and consistent with his safety.'" *Porter*, 455 Md. at 235 (citation omitted). However, there are exceptions to the duty to retreat, including an exception for circumstances where the defendant is attacked within his home. *See Burch*, 346 Md. at 283-84. This exception extends to the curtilage of a home. *See Gainer*, 40 Md. App. at 388 ("[A] person who is without fault and is attacked within his dwelling or its curtilage, to stand his ground and defend himself, even if a retreat could be safely accomplished.") (footnotes omitted).

The State argues on appeal that appellant was not in the curtilage but was within the common area of the converted apartment building. *See e.g., Lindsey v. State*, 226 Md. App. 253, 281 (2015) (discussing curtilage and common areas of apartment buildings in Fourth Amendment context), *cert. denied*, 447 Md. 299 (2016); *Fitzgerald v. State*, 153 Md. App. 601, 664 (2003) (same), *aff'd*, 384 Md. 484 (2004). Although the record "is not entirely clear," we agree with appellant that there was "some evidence" from which the jury could decide that Bell's attack on appellant occurred on appellant's porch, and thus within the

curtilage of appellant's home. *See, e.g.*, *McGurk v. State*, 201 Md. App. 23, 40-41 (2011) (citing cases where other jurisdictions have considered whether a porch is curtilage for Fourth Amendment purposes); *Braboy v. State*, 130 Md. App. 220, 230 n.10 (noting that a porch may be considered curtilage), *cert. denied*, 358 Md. 609 (2000).

Furthermore, the State suggests that, after the initial encounter, when appellant retreated to his home, he should have remained therein and not gone back outside his own residence, armed with a handgun. Such argument ignores the fact that there was testimony that Bell continued the incident by throwing the air conditioner units onto appellant's doorstep and cracking his front door. Appellant argues that he "was not required to stay in his home, especially after his home became unsafe." Indeed, there is law to support appellant's position:

> "[N]o generally recognized rule of law deprives one who expects an attack to be made upon him of going to places where he otherwise has a legal right to go," and we add now what might well have been added then, the first part of the next sentence, reading: "On the contrary he may proceed with his legitimate business."

Perry v. State, 234 Md. 48, 54 (1964) (emphasis omitted, discussing *Gunther v. State*, 228 Md. 404 (1962)); *see also* 40 Am. Jur. 2d Homicide § 149 (stating the general rule as in *Perry*, *supra*, but also noting that exceptions exist for: luring someone into a residence; purposefully leaving the residence to confront someone; and, lying in wait).

Ultimately, we are persuaded that there was "some evidence" that supported all of the elements of appellant's self-defense claim. The trial court thus erred by not giving

appellant's requested self-defense instruction. We shall reverse appellant's conviction for reckless endangerment and remand for further proceedings on that count.[5]

II.

Appellant next asserts the trial court erred in admitting evidence on cross-examination that appellant was involved in a fight while incarcerated, during which appellant "bloodied another inmate and was sent to solitary confinement[.]" The State responds that appellant opened the door to the evidence because it "directly contradicted

[5] Appellant asserts that "[h]ad the jury been properly instructed on self-defense, the jury could have acquitted Appellant of reckless endangerment, *or any of the other charges of which Appellant was convicted*," which we understand to refer to the handgun-related convictions. (Emphasis added.) In support, appellant cites *Brooks v. State*, 299 Md. 146 (1984), where the Court of Appeals reversed all convictions, stating that, although the trial court's errors directly invalidated the judgment on only one of the charges, "they also bring into question the validity of the judgments on the other two charges[.]" *Brooks*, 299 Md. at 156. Appellant, however, recognizes that this Court declined to apply *Brooks* in *State v. Wallace*, 247 Md. App. 349, 364-65 (2020), *aff'd*, 475 Md. 639 (2021). In affirming our decision, the Court of Appeals explained that, "[w]hen reviewing an error in a case with 'multiple offenses involved,' this Court has stated that 'the remedy for an error in the instructions on one of the offenses depends upon the degree to which the erroneous instruction taints each individual conviction.'" *Wallace*, 475 Md. at 659-60 (quoting *State v. Hawkins*, 326 Md. 270, 291 (1992)). The *Wallace* court concluded that, although "[t]here is a 'substantial or significant possibility' that Wallace's conviction for attempted second-degree murder was affected by counsel's failure to object to the erroneous instruction" at issue therein, the remaining convictions were unaffected by that error. *Id.* at 660-62.

Here, we conclude that reversal is not required as to the handgun-related offenses because (1) the issue has neither been adequately presented nor briefed, *see generally* Md. Rule 8-504(a), and (2) self-defense does not apply to the handgun charges under the circumstances of the instant case. As this Court explained in *Marr v. State*, 134 Md. App. 152 (2000), *cert. denied*, 362 Md. 623 (2001), there is no "right to arm, either as a general affirmative right or as a defense to the violation of a statutory prohibition against possessing or carrying weapons in public." *Id.* at 183 (quotation marks and citation omitted).

his testimony that he was not violent and therefore would never have intentionally shot Bell." We concur with the State.

During direct examination, appellant testified that he did not want to hurt Bell, that he was "trying to keep my distance[,]" that Bell "knew that I was backing off" from him, and that he, appellant, was "not a violent person." On cross-examination, the following ensued:

> Q. **You described yourself – you said that you are not a violent person, is that correct?**
>
> A. **Yes, sir.**
>
> Q. Is there any particular reason that you're in Jessup instead of Central Booking?
>
> [DEFENSE COUNSEL]: Objection, Your Honor. Object.
>
> THE COURT: Overruled.
>
> THE WITNESS: It's because of the circumstances that happened at my house.
>
> BY [PROSECUTOR]:
>
> Q. Is it also because of some circumstances that happened in jail? Jessup is a segregation –
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> THE WITNESS: Say it –
>
> BY [PROSECUTOR]:
>
> Q. Jessup is a segregation wing. So why aren't you in with the regular detainees?
>
> A. I – no.

Q. Did you assault them? Did you have any incident in jail at Central Booking that would cause you to be at Jessup in the segregation wing?

You're under oath, sir.

A. Well, we get – and in Central Booking, they have dorms. It's about 60 gentlemen –

[DEFENSE COUNSEL]: That's out – I'm going to object. May we approach, Your Honor?

THE COURT: Yes.

(Whereupon, counsel approached the bench and the following occurred:)

[DEFENSE COUNSEL]: The reason why I'm objecting, Your Honor, number one, is JC has no some [sic] type of segregated area. But number –

THE COURT: You'll be able to cross – redirect –

[DEFENSE COUNSEL]: But number two, Your Honor, is the whole point of not having him in shackles is so –

THE COURT: He already has testified – he opened the door. You put him on the stand.

[DEFENSE COUNSEL]: Okay.

THE COURT: He testified. He opened the door. The door is wide open.

[DEFENSE COUNSEL]: Okay.

THE COURT: Overruled.

(Emphasis added.)

Appellant then admitted that he was involved in a fight in the jail with another inmate and that he was subsequently placed in "lock down." He explained that the other person was trying to "take my commissary from me and they were strong-arming me to do it." Some people were stabbed during the fight and appellant testified that "[w]e both were

found I guess you could say guilty…" Asked about that incident, appellant became evasive:

> [BY PROSECUTOR:]
>
> Q. Okay. So you beat up another inmate inside of the jail.
>
> A. We were fighting.
>
> Q. Did you beat him up?
>
> A. We were fighting.
>
> Q. Who won the fight?
>
> A. I wouldn't say – I couldn't say, yes, sir. Like, I mean, even – listen, even if you had a report, the CO is who they report. I wouldn't say – we were fighting and split up by a CO.
>
> Q. And, sir –
>
> A. We had to be – we both had to be pulled apart from each other.

These answers continued after the prosecutor asked if the other inmate sustained injuries and whether he was bleeding. Appellant answered, "they said that it was suspected blood." Appellant then admitted that he caused the other inmate "to bleed."

The State argues that appellant opened the door to the above evidence by testifying that he was not a violent person. The "opening the door" doctrine is "a rule of expanded relevancy" that permits a party to introduce evidence that otherwise might not be admissible in order to respond to certain evidence put forth by opposing counsel. *See State v. Heath*, 464 Md. 445, 459 (2019). The doctrine, however, is limited in that it does not allow parties to "inject[] collateral issues into a case or introduc[e] extrinsic evidence on collateral issues." *Id*. at 459 (quotation marks and citation omitted). "A collateral issue is

one that is immaterial to the issues in the case." *Id*.

Whether "an opening the door doctrine analysis has been triggered is a matter of relevancy, which [an appellate court] reviews *de novo*." *Id.* at 457. "A trial court does not have discretion to admit irrelevant evidence." *Id*. at 457-58 (citing *State v. Simms*, 420 Md. 705, 724-25 (2011)). Where the responsive evidence is relevant, we consider such evidence under an abuse of discretion standard. *Id.* at 458. Under that deferential standard, we review a decision to admit responsive evidence for proportionality, to determine whether the proffered responsive evidence was necessary to remove any unfair prejudice. *See State v. Robertson*, 463 Md. 342, 357-58 (2019). Moreover, an additional limitation exists that "excludes evidence if its probative value 'is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.'" *Heath*, 464 Md. at 460 (quoting Md. Rule 5-403).

Several cases inform our analysis. In *State v. Robertson, supra*, Robertson, a college student, was on trial for a murder that occurred during an altercation between two groups regarding a counterfeit payment for a marijuana purchase. *Robertson*, 463 Md. at 347. After defense counsel elicited Robertson's testimony on direct that he had never been arrested or in "any trouble[,]" the State was permitted to cross-examine him about an unrelated fight that took place a year earlier. *Id*. at 349-50 n.1. The Court of Appeals held that the "general nature" of defense counsel's questioning on direct "opened the door"

under Maryland Rule 5-404(a)(2)(A). *Id.* at 360.[6] The Court held, however, that the trial court erred by allowing the State to elicit specific details about the prior incident. *Id.* at 363-64 (discussing *Khan v. State*, 213 Md. App. 554 (2013)).

In *State v. Heath, supra*, it was undisputed that an altercation at the Ottobar, a Baltimore city bar, ended with Heath cutting the throat of the victim. *Heath*, 464 Md. at 451. Before trial, the prosecutor and defense counsel agreed to redact a portion of Heath's statement to police indicating that he went to the bar that night to sell "white" (i.e., cocaine) and that selling drugs was "his primary source of income." *Id*. at 451-52. Nevertheless, in her opening statement, defense counsel told the jury that tattooing was one of Heath's "primary sources of income" and that "his goal and . . . his purpose [was] to stop by the Ottobar that night" because it was "a good source" for business income. *Id*. at 452 (quotation marks and emphasis omitted). The State did not object to the opening statement, but waited until the evidentiary portion of trial to move to unredact the portion of Heath's statement wherein he admitted that he actually went to the Ottobar to sell drugs. *Id.* The trial court granted the State's motion and allowed the State to play that portion of Heath's statement to the jury, reasoning that Heath's '"statement as to why he was there that night with regard to certain business operations"' was relevant and not unfairly prejudicial evidence of "'the manner in which he is alleged to have conducted himself that evening.'" *Id*. at 453-54.

[6] Md. Rule 5-404(a)(2)(A) states: "Character of Accused. An accused may offer evidence of the accused's pertinent trait of character. If the evidence is admitted, the prosecution may offer evidence to rebut it."

Initially, the Court of Appeals agreed that the open door doctrine applied to statements made by defense counsel during opening statement. *Id.* at 456. The Court decided, however, that reversal was required because the evidence that Heath went to the Ottobar to sell drugs: (1) was collateral to the underlying criminal charges concerning a bar fight that was entirely unrelated to that purpose, *id*. at 450, 462-63, (2) was disproportionate to defense counsel's remarks during opening statement and could have been better handled by a motion to strike the opening statement and not by the unredaction of Heath's statement to police, *id*. at 463-65, and (3) was "substantially more prejudicial than probative[,]" because "it associated Mr. Heath with drugs and likely undermined his credibility with the jury." *Id*. at 457.

In *Terry v. State*, 332 Md. 329 (1993), several men, including Terry, were arrested on suspicion of narcotics distribution. *Terry*, 332 Md. at 331-32. In opening statement, defense counsel informed the jury that the other men had pleaded guilty to the crimes, but that Terry did not because he was not involved. *Id*. at 332. In response, the trial court admitted evidence, over objection, that Terry had recently been convicted of a nearly identical offense. *Id*. at 332-33.

The Court of Appeals rejected the State's argument that Terry had opened the door to the evidence. *Id*. at 336. Agreeing that the defense's opening statement was inappropriate, the Court nevertheless concluded that the error was "not egregious" and could have been easily corrected by a timely objection and/or curative instruction to disregard the statement. *Id*. at 337-38. The Court further observed that, even where such evidence is admissible, "the remedy must be proportionate to the malady." *Id*. at 338. The

admission of evidence that Terry had been convicted of a similar crime under similar circumstances was "tantamount to killing an ant with a pile driver. The potential of improper prejudice so far outweighed the relevance of the evidence as to make it inadmissible on that ground alone." *Id*. at 339.[7]

And, in *Hannah v. State*, 420 Md. 339 (2011), the Court of Appeals reviewed the admissibility of the defendant's self-written rap lyrics. The defendant was accused of crimes that stemmed from a drive-by shooting. *Hannah*, 420 Md. at 340-42. To respond to the defendant's testimony that he had no interest in guns, the prosecutor offered, and the trial court admitted, evidence of rap lyrics that the defendant had written. *Id*. at 345-46. The Court reversed the trial court, holding that there was "no evidence that [defendant]'s lyrics are autobiographical statements of historical fact" and that the lyrics were "probative of no issue other than the issue of whether [the defendant] has a propensity for violence." *Id*. at 349, 355.

Returning to the case at bar, we conclude that the State's responsive evidence was relevant and that the trial court properly exercised its discretion to admit the same. Appellant testified that he was not a violent person. The evidence that he had been involved in a fight while subsequently incarcerated on the charges in the instant case was not collateral and was relevant to those charges and appellant's claim of self-defense. *Cf. Williams v. State*, 457 Md. 551, 568-69 (2018) (holding that trial court did not abuse its

[7] We note that *Terry* was decided before *Jackson v. State*, 340 Md. 705, 714 (1995), wherein the Court of Appeals ruled that similar prior convictions are not per se inadmissible, but are subject to the probative-prejudice weighing process under Maryland Rule 5-609.

discretion in admitting rebuttal evidence of prior assault conviction after jury arguably got "an incomplete impression of [the defendant's] character for peacefulness").

We also are persuaded that evidence of the details of the fight was neither disproportionate nor unfairly prejudicial. The details of the fight were elicited by the State in direct response to appellant's evasive answers during cross-examination and his attempt to put the fight in a misleading context more favorable to him. The prosecutor's first question on cross-examination about the fight prompted appellant to improperly invoke his "Fifth Amendment right." The essence of appellant's testimony was that he had recently fought and injured another inmate, which resulted in appellant's transfer to a segregation unit. Given the relevance of appellant's testimony as rebuttal to his claim that he was "not a violent person" during the confrontation and shooting of Bell, and the evasive and misleading answers to the prosecutor's questions, we cannot conclude that the trial court abused its discretion in admitting into evidence the details of the fight.

In addition, the issue in this case was whether or not appellant acted in self-defense. When appellant testified that he was not a "violent person," appellant asked the jury to consider his character for peacefulness. This opened the door for the State to rebut that assertion. *See* Md. Rule 5-404(a)(2)(A). And, as for whether the evidence was more probative than unfairly prejudicial, we recognize that the fact of appellant's incarceration pending trial on these charges may be prejudicial. *See Rainville v. State*, 328 Md. 398, 407-10 (1992) (concluding that informing the jury that the defendant was "'in jail for what he had done to Michael"' "almost certainly had a substantial and irreversible impact upon the jurors"). Nevertheless, by the time the State cross-examined appellant about this jail

fight, the jury already had heard evidence that appellant was incarcerated when the State played his recorded phone call discussing this case, without objection. Furthermore, "prejudice" alone is not the standard. The issue is whether this evidence was "unfairly prejudicial." As the Court of Appeals has explained, "[p]robative value is outweighed by the danger of 'unfair' prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case." *Odum v. State*, 412 Md. 593, 615 (2010) (quoting Murphy, *Maryland Criminal Evidence Handbook* § 506(B) (3d ed. 1993 & Supp. 2007)) (emphasis omitted). We hold that the trial court neither erred nor abused its discretion by admitting appellant's testimony concerning his fight with another inmate during appellant's pre-trial incarceration.

III.

Appellant asserts that the trial court erred by admitting evidence, on cross-examination, that appellant conducted legal research concerning self-defense prior to trial. The State responds that such issue was not preserved and that it is without merit in any event. As will be explained, there are actually two contentions at issue here.

By way of background, the jury heard a phone call from June 11, 2019, between appellant and Michelle Parks, his fiancée, that was recorded when appellant was incarcerated pre-trial.[8] During the call, appellant claimed that he initially wanted a court trial, not a jury trial, because "[e]verything's based off of law[,]" and that he was going to assert "mitigation from provocation and imperfect self-defense. He provoked me and it

[8] The recorded phone call was marked for identification but not admitted into evidence. The phone call took place approximately two weeks before the trial in this case.

was imperfect self-defense on my part." Appellant also claimed that the air conditioners belonged to Bell and that "when he caught me putting them back, he wanted to fight." Appellant denied that he simply came out of his residence and "pulled out a gun and shot him."

At trial, appellant testified that Bell "swung" at him during the first encounter of the incident, and that, in the second encounter, when appellant was armed, Bell was "on me" and "punched me in my head." On cross-examination, appellant agreed that he spoke to an attorney three days after the incident. He also confirmed that he never went to the police and told them that Bell punched him, nor did he tell them that "your neighbor had done all these crazy jiu jitsus [sic]" on him during the incident.

Thereafter, appellant testified without objection that, at the time of the recorded jail call, approximately six months after the shooting and two weeks prior to trial, he considered asserting imperfect self-defense and claiming that he was provoked. Following that, the prosecutor asked appellant when was the first time he ever asserted that Bell punched him in the head:

> Q. Okay. And you also never said until today that he ever actually did punch you. Not to the police then, not to any police later. Not to the person you were speaking to on the phone two weeks ago. Correct?
>
> A. I only spoke with – to my attorney.
>
> Q. Okay. But you never reported it, correct?
>
> A. No, not –
>
> Q. Okay.
>
> A. No, I didn't, sir.

Q. Right. And the reason that you never reported anything like that is because now your attorney explained to you that imperfect self-defense does not apply –

[DEFENSE COUNSEL]: Objection, Your Honor.

Q. – to any of the crimes that you're charged with.

THE COURT: Overruled.

BY [PROSECUTOR]:

Q. Correct?

[DEFENSE COUNSEL]: I would object, Your Honor.

THE COURT: I'm going to overrule your objection, counsel.

[DEFENSE COUNSEL]: All right.

A. No, sir.

BY [PROSECUTOR]:

Q. Well, you understand now that there is no such thing as imperfect self-defense in this context, right?

After the trial court overruled defense counsel's general objection to this line of questioning, and after the prosecutor asserted that imperfect self-defense did not apply in this case, appellant proceeded to explain that he had been studying, among other things, the topics of mitigation and provocation, as well as imperfect self-defense, and the applicability of these topics to his case. When the prosecutor asked another question about appellant's study of imperfect self-defense and whether he could get his charges "mitigated down," defense counsel objected on the grounds of relevance, stating: "I'm not asking for any type of imperfect self-defense instruction." The court overruled the defense objection.

Cross-examination continued, and appellant agreed that his primary trial theory was that he was "defending" himself. Appellant maintained that he was "trying to get my case mitigated[,]" which he understood to mean "play it down to a lesser charge…"

On appeal, we discern two arguments by appellant on the question of whether the trial court erred in overruling appellant's objections during cross-examination. First, appellant asserts that the court erred in permitting the inquiry about his research on self-defense law generally. Second, appellant contends that the court erred in permitting the State to inquire about privileged communications between him and his attorney.

As to the second argument, defense counsel generally objected when the State asked whether appellant's attorney explained that imperfect self-defense did not apply to the charged offenses. On appeal, appellant claims that such inquiry violates the attorney-client privilege. We disagree. When the prosecutor's question is read in context, it is clear that the prosecutor was seeking information on appellant's understanding of imperfect self-defense and its applicability to the facts of the instant case. After appellant denied any communication from his attorney about imperfect self-defense, the prosecutor asked: "Well, you understand now that there is no such thing as imperfect self-defense in this context, right?" Furthermore, even if the prosecutor's question was improper, the error was harmless. Not only did appellant not divulge any privileged communications, but indicated that his understanding of the law was based on his own research in jail and did not come from conversations with his attorney.

Regarding appellant's first argument that the trial court erred in overruling his objection to the State's questions about his legal research prior to trial, the State contends

that this issue was waived by similar evidence admitted during Bell's direct examination, namely, the recorded phone call between appellant and his fiancée wherein appellant told her that his defense was "based off of law," and that he was going to assert "mitigation from provocation and imperfect self-defense." In *Yates v. State*, 429 Md. 112, 120 (2012), the Court of Appeals stated: "Where competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received." (quotation marks and citation omitted); *see also DeLeon v. State*, 407 Md. 16, 30-31 (2008) (holding that a defendant waived an objection to what he claimed was irrelevant and highly prejudicial testimony about his purported gang affiliation because "evidence on the same point [was] admitted without objection" elsewhere at trial). We agree and conclude that appellant's argument is not preserved for our review.

Even if preserved, we are not persuaded that the trial court erred in permitting the State's cross-examination on the issue of appellant's legal research. In our view, it is apparent, from the State's questions, that the intended target of the impeachment was appellant's changing facts and legal theories about the nature of the shooting, including whether and when appellant first reported that the victim punched him in the head. It is settled that the scope of cross-examination is within the "broad discretion" of the trial court. *Myer v. State*, 403 Md. 463, 476 (2008). And the purpose of cross-examination has been stated as follows:

> Cross-examination has many purposes. The questioner may intend to impeach a witness with a prior inconsistent statement, to show bias or interest of a witness, or to even bring out helpful information not included in the direct testimony. We have described the role of cross-examination as follows:

> "The real object of cross-examination is 'to elicit all the facts of any observation or transaction which has not been fully explained.' That a witness may be cross-examined on such matters and facts as are likely to affect his credibility, test his memory or knowledge or the like, is a fundamental concept in our system of jurisprudence. And cross-examination to impeach, diminish, or impair the credit of a witness is not confined to matters brought out on direct examination; it may include collateral matters not embraced in the direct examination to test credibility and veracity, it being proper to allow any question which reasonably tends to explain, contradict, or discredit any testimony given by the witness in chief, or which tends to test his accuracy, memory, veracity, character or credibility. Of course, the right to cross-examine effectively necessarily includes the right to place the testimony of a witness in its proper setting to fairly enable the jury to judge its credibility."

Id. at 477 (quoting *State v. Cox*, 298 Md. 173, 183-84 (1983)).

It was within the realm of proper cross-examination to impeach appellant with his changing versions of events and corresponding legal theories as evidence of consciousness of guilt. *See Simms*, 420 Md. at 727 ("'[I]t is not necessary that evidence of this nature conclusively establish guilt. The proper inquiry is whether the evidence could support an inference that the defendant's conduct demonstrates a consciousness of guilt.'") (quoting *Thomas v. State*, 397 Md. 557, 577 (2007)) (emphasis omitted); *see also State v. Frazier*, 407 So. 2d 1087, 1089 (Fla. Dist. Ct. App. 1982) (concluding that evidence of multiple versions of events may be "used to affirmatively show consciousness of guilt and unlawful intent"); *State v. Martinez*, 979 P.2d 718, 727 (N.M. 1999) ("A change in a defendant's story to the police may constitute evidence of a consciousness of guilt."); *Couchman v. State*, 3 S.W.3d 155, 164 (Tex. App. 1999) (observing that a change in story is evidence of consciousness of guilt).

We also concur with the State that appellant's reliance on *Snyder v. State*, 361 Md. 580 (2000), and *Martin v. State*, 364 Md. 692 (2001), is misplaced. In *Snyder*, the Court of Appeals held that the defendant's failure to inquire as to the status of the investigation into his wife's disappearance over a seven year period was too ambiguous and equivocal to support any inference that such conduct constituted a consciousness of guilt. *Snyder*, 361 Md. at 596. Similarly, in *Martin*, the State sought to draw an inference of guilt from the defendant's consultation with an attorney. The Court held that consulting an attorney, standing alone, would not support any logical inference of guilt. *Martin*, 364 Md. at 706. Here, the State's questions directly attacked the veracity of appellant's testimony about the circumstances surrounding the shooting of Bell. We conclude that, even if not waived, the trial court properly exercised its discretion in permitting the State's cross-examination as to appellant's changed version of events and the legal theories regarding the same.

IV.

Finally, appellant argues that the trial court erred in denying his motion to suppress evidence seized from his residence, that is, the handgun and ammunition, on the grounds that the police entered the residence without a warrant. Appellant further contends that the State did not offer any evidence at the motions hearing, and that the "proffer" during the hearing was not evidence.

The State responds that it had "no notice that Powell planned to argue a motion to suppress on the morning of trial and did not have its witnesses available." The State continues that its proffer, namely, that the gun was found after the police obtained and executed a valid search warrant, was consistent with evidence elicited at trial. The State

concludes by asserting that appellant did not object to the State's proffer and thus any argument to that effect is waived.[9]

Here, immediately prior to jury selection on the first scheduled trial day, defense counsel moved to suppress evidence of the handgun and ammunition on the grounds that the police entered his residence without a warrant. Notably, the State offered no evidence on the appellant's motion and never sought to admit the search and seizure warrant. Instead, the only evidence before the motions court was the testimony from the defense witness, Michelle Parks.

During that hearing, Parks testified that she was at her home, located at 415 Lyman Avenue with appellant on the day in question. Asked what occurred that day, she testified: "An argument occurred over some trash that was constantly being placed on our side kitchen door. It was two air conditioners." She further agreed that there was an "incident" between appellant and another unidentified individual that day.

[9] We note that '"[a] proffer is not evidence unless the parties stipulate that a proffer will suffice."' *Bryant v. State*, 436 Md. 653, 667-68 (2014) (quoting *Ford v. State*, 73 Md. App. 391, 404 (1988)). There was no such stipulation in this case. We further note that defense counsel originally filed an omnibus motion pursuant to Maryland Rule 4-252 shortly after entering an appearance in the case. On the day of jury selection, and after the State noted that it had received no notice of the motions hearing, the trial court proceeded to consider appellant's motion. Interpreting Maryland Rule 4-252, the Court of Appeals in *Denicolis v. State*, 378 Md. 646, 660-61 (2003) explained that, although such procedure is disfavored, it is within the trial court's discretion to permit a defendant to proceed on an unsupported motion, so long as the State is not unduly prejudiced. *See also Sinclair v. State*, 214 Md. App. 309, 324 (2013), *aff'd*, 444 Md. 16 (2015).

After this "incident," the police arrived and "surrounded the outside" and "started yelling and screaming." Parks opened the door and the police "kept yelling to get on the ground." According to Parks, the police entered and found a handgun.

Parks's testimony on whether and when the police had a search warrant for her residence was inconsistent, to say the least. On direct examination, she testified that the police never showed her a search warrant and that she was transported to the police station after the gun was found. Parks also testified that, while she was at the police station, she was informed that "they was working on a warrant."

On cross-examination, Parks testified that the police entered her shared residence between 12:00 and 1:00 p.m., but she was not present when it was alleged by the prosecutor that the police later returned with a search warrant and recovered the handgun.

On redirect examination, Parks testified again that the handgun was recovered by the police before she was transported to the police station. Upon further questioning by the court, Parks indicated that she was told that the handgun was recovered from the closet and that the police did not show the firearm to her before she was transported away from the residence.

During argument, defense counsel conceded that Parks let the police into the residence but that there was "no request to search the home[,]" and that, instead, "[t]hey just immediately start searching and tell them to get on the ground. They do recover a firearm. And she states that she's --- that that fact happened before she ever went to the police station." Defense counsel continued:

> [Parks] states that when she got to the police station, that's when they told her they were in the process of getting a warrant. So, in fact, they had, roughly – they had gotten a warrant after the fact. And there's no other – nothing else was really mentioned in terms of any – of the type of special services that would give rise to an opportunity to be able to search a residence without a warrant. And it's in violation of the United States Constitution Fourth Amendment, Maryland Declaration of Rights. And we're actually arguing that it was – the firearm that was recovered, the actual firearm itself that was recovered, was (indiscernible – 11:42:28). Submit.

In response, the State first asserted that it had no notice that the appellant's motion would be heard by the court immediately prior to jury selection. The State then proffered:

> I can certainly provide a copy to Your Honor but I would proffer, and I don't think counsel would dispute, that, in fact, there was a search warrant signed by Her Honor, Judge Catherine Chen, and that that is when, in fact, the search was executed of the home pursuant to a warrant by Detective Nagovich and Ott with Crime Lab Technician Hare present and it was then that they located the gun. And testimony would be provided and I'll proffer now that Crime Lab Technician Hare was present when that gun was found recovered and that was in the evening hours of December the 1st well after Ms. Parks had been taken down to the police station for questioning.

The State then argued that the initial entry was a "protective sweep at one point to find an armed suspect." The home was secured until the search warrant was issued and the handgun was then found. Defense counsel offered no rebuttal to this argument. The trial court ruled as follows:

> Counsel, I'm going to deny your request. It's my understanding there was an alleged shooting and extant circumstances where the police were attempting to locate the suspect. They went to his house. He was let in – they were let in by Ms. Parks. **Ms. Parks says that, through testimony, that they recovered the gun at the 1 o'clock hour. I asked if they showed her the gun or if she saw them retrieve the gun and she said no. The State's evidence is that they received a legal[ly] signed warrant by a district court judge, Judge Che[n], and that the gun was recovered subsequent to a lawful search and it was recovered upon execution of that search warrant.** So I am going to deny your request.

(Emphasis added.)

Although our standard of review is limited to the facts elicited at the suppression hearing, *see Trott v. State*, 473 Md. 245, 253-54 (2021), we continue our recitation with detail from the trial because it informs the State's waiver suggestion. *See also Haslup v. State*, 30 Md. App. 230, 239 (1976) (observing that an appellate court may determine *sua sponte* whether a party has preserved a suppression issue for appellate review).

Initially, we observe that appellant never objected when the gun and ammunition were admitted at trial. A technician testified, without objection, to State's Exhibit 12, a "gun bag" containing the handgun at issue, as well as the original cartridges and ammunition, indicating that these items were recovered inside 415 Lyman Avenue, Apartment 4. When the State offered the gun and ammunition into evidence at trial, defense counsel expressly stated "No objection."

Maryland Rule 4-252(h)(2)(C) provides:

> If the court denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise. A pretrial ruling denying the motion to suppress is reviewable on a motion for a new trial or on appeal of a conviction.

In interpreting an earlier version of that rule, this Court stated that "the lower court's ruling on the motion is … preserved for appellate review, even if no contemporary objection is made at trial." *Jackson v. State*, 52 Md. App. 327, 331 (1982). If, however, the court denies a motion to suppress and the defense affirmatively states that it has "no objection to the admission of the contested evidence," the statement "effects a waiver[.]" *Id*. at 332 (citing *Erman v. State*, 49 Md. App. 605, 630, *cert. denied*, 292 Md. 13 (1981)).

For example, in *Erman*, 49 Md. App. at 630, this Court held that a defendant had waived his objection to the denial of a motion to suppress his statement to the police because he "specifically advised the trial judge that there was no objection to the admission of the statement."

"Waiver 'extinguishes the waiving party's ability to raise any claim of error based upon that right.'" *Brice v. State*, 225 Md. App. 666, 679 (2015) (quoting *Brockington v. Grimstead*, 176 Md. App. 327, 355 (2007), *aff'd*, 417 Md. 332 (2010)), *cert. denied*, 447 Md. 298 (2016). "'Thus, a party who validly waives a right may not complain on appeal that the court erred in denying him the right he waived, in part because, in that situation, the court's denial of the right was not error.'" *Id*. (quoting *Brockington*, 176 Md. at 355).

In short, if a court denies a motion to suppress and the defendant says nothing at all when the State moves to introduce the challenged evidence at trial, the defendant has preserved an objection to the denial of the motion to suppress. *Jackson*, 52 Md. App. at 331. If, on the other hand, the court denies a motion to suppress and the defendant affirmatively states that the defense has no objection to the introduction of the challenged evidence at trial, the defendant has waived the objection to the denial of the motion to suppress. *Erman*, 49 Md. App. at 630.

We conclude that appellant waived any objection to the warrantless entry into his residence, and ultimately, the seizure of the handgun and ammunition from within. Defense counsel expressly stated "[n]o objection" when these critical items were admitted

at trial. Under the aforementioned principles, we conclude that the issue was waived.[10]

Alternatively, and as further evidence of waiver, appellant never argued, until now, that the State's "proffer" was insufficient and that the motions court could not rely on the proffer or the search warrant. Indeed, appellant's argument during the hearing appears to acknowledge the existence of a search warrant, but focuses on discrepancies in Parks's account of when the police searched the residence pursuant to that warrant. We conclude that appellant's argument that the motions court should not have considered the proffer and search warrant was not raised in that court and amounts to an appellate afterthought. As the Court of Appeals has explained, "[a]n appeal is not an opportunity for parties to argue the issues they forgot to raise in a timely manner at trial. Nor should counsel 'rely on this Court, or any reviewing court, to do their thinking for them after the fact.'" *Peterson v. State*, 444 Md. 105, 126 (2015) (citations omitted); *see also Hartman v. State*, 452 Md. 279, 299 (2017) ("We made clear in *State v. Bell*, 334 Md. 178, 638 A.2d 107 (1994) that our review of arguments not raised at the trial level is discretionary, not mandatory.").[11]

JUDGMENT ON CONVICTION FOR RECKLESS ENDANGERMENT REVERSED; ALL OTHER JUDGMENTS AFFIRMED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 75% BY APPELLANT AND 25% BY MAYOR AND CITY COUNCIL OF BALTIMORE.

[10] We are aware that the Court of Appeals has granted a writ of certiorari on this question. *See Huggins v. State*, Case No. 59, Sept. Term, 2021 (cert. granted 02/09/22, to be argued 05/05/22).

[11] We also conclude that appellant's reliance on *Barnes v. State*, 31 Md. App. 25 (1976), as well as *Bishop v. State*, 417 Md. 1 (2010), *Taylor v. State*, 388 Md. 385 (2005), and *Polk v. State*, 85 Md. App. 648 (1991), is misplaced. Those cases primarily concerned the evidentiary value of an agreed statement of facts supporting guilty pleas and/or court trials, and not, as here, a question of preservation.