Circuit Court for Prince George's County
Criminal No. CT16-1079X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1394

September Term, 2017

DESHAWN MARTIN

v.

STATE OF MARYLAND

Friedman,
Beachley,
Shaw Geter,

JJ.

Opinion by Beachley, J.

Filed: July 11, 2018

Deshawn Martin, appellant, admitted shooting his estranged wife, then fleeing while she lay in an unoccupied parking lot with life-threatening injuries. Although appellant claimed that his shotgun fired accidentally, a jury in the Circuit Court for Prince George's County convicted him of attempted first-degree murder, first-degree assault, and use of a firearm to commit a crime of violence. Appellant was sentenced to life for the attempted murder and a consecutive twenty years for the firearm offense; the assault conviction was merged for sentencing purposes.

Appellant presents the following two issues for our review:

1. Did the trial court err by overruling defense counsel's objection to the improper statements made by the prosecutor during closing argument?

2. Was the evidence sufficient to convict Mr. Martin of attempted murder?

We conclude that the trial court did not abuse its discretion because the challenged argument was fair comment on the evidence, not improper denigration of defense counsel. Although appellant did not preserve his sufficiency challenge, his failure to do so was not prejudicial because the evidence amply supports the jury's finding that appellant intended to kill the victim after she left him and rejected his reconciliation request. Accordingly, we shall affirm appellant's convictions.

FACTUAL AND PROCEDURAL BACKGROUND

At trial, the State's theory of prosecution was that appellant attempted to kill his estranged wife, Nichola Martin, because if she "wasn't going to be with him, she wasn't going to be at all." The State pointed to evidence that shortly after learning Ms. Martin

was involved with another man, appellant bought a pump-action shotgun. On July 13, 2016, after Ms. Martin told appellant that she did not want to reconcile, appellant arranged to meet her, then sent text messages to friends and family expressing his love and thanks for their support. That evening, once appellant was alone with Ms. Martin in a parking lot, he shot her in the head at close range, causing life-threatening brain injuries. Unaware of two witnesses who saw the shooting, appellant made no effort to aid Ms. Martin. Instead, he fled home, changed vehicles, then drove to his mother's grave in Virginia, where he dumped the shotgun. When police in that jurisdiction spotted his vehicle, he led them on a car chase before being apprehended.

Ms. Martin testified that the couple had separated in June 2016 after appellant learned that Ms. Martin had a relationship with another man. Since then, Ms. Martin and the couple's two daughters had been living with a friend and with Ms. Martin's mother, while appellant remained in the family residence.

Appellant texted Ms. Martin just after 1:30 p.m. on July 13, asking whether she still loved him and wanted to "try and work things out[.]" She responded that she did not want to remain married to appellant.

Ms. Martin had previously asked appellant to find the children's birth certificates, so that the girls could be registered for summer classes. Later that afternoon, appellant told Ms. Martin that he would meet her with the birth certificates at the community center where registration was taking place. As Ms. Martin drove into the parking lot around 6:00 p.m., appellant followed right behind her vehicle and parked next to her.

After registering their children, appellant and Ms. Martin returned to their vehicles while arguing about something that, at trial, she could not recall. As she handed appellant the registration receipt, Ms. Martin "noticed the gun" in his truck and stated, "oh, a gun." "And that's when he pulled it out. He said, 'You like this?'" Ms. Martin testified that she put her "hands up like this (indicating), and he shot." She "fell" to the ground with injuries to her left hand, face, and breast. After "laying there for a few minutes, seven minutes, eight minutes," she got up, entered her truck, and drove about ten minutes to her mother's house.

In addition to Ms. Martin's account of the shooting, the State presented video surveillance footage of the incident at the community center as well as testimony from two witnesses who saw the shooting from the nearby construction site where they were working. Both witnesses testified that they saw appellant fire the weapon at Ms. Martin, then leave her lying in the parking lot as he fled.

Ms. Martin suffered life-threatening and permanent injuries. The police officer who responded to the 911 call described her wounds as "something out of a horror movie." The left side of Ms. Martin's head and neck, as well as her left hand, were partially missing, and her left eye was hanging "out." Photographs of her wounds were admitted into evidence.

A trauma neurosurgeon from the Walter Reed Army Medical Center testified that Ms. Martin initially had "a very grim prognosis given the amount of soft tissue loss, the amount of brain penetration, and the extent of her neurological deficit." She sustained a

"severe penetrative brain injury" as well as "severe" injuries to the left side of her skull and neck when the shotgun shell exploded. Her injuries would have been fatal without a series of neurosurgeries during which the surgeons removed half of her skull. In addition to losing her left eye and the use of her left hand, she suffered permanent injuries to the left-side functions of her brain "controlling speech, memory, verbal abilities, . . . the ability to make decisions, prioritize information, [and] the ability to multitask."

To establish that the shooting was premeditated and intended to kill, the State presented the following evidence.

The day after learning about his wife's extra-marital relationship, appellant, on June 8, 2016, sent the "other man" the following text message:

> I'm sorry you got caught up in this man, I truly am, but I'm the kind of person that doesn't stop until everyone that was the cause of me hurting feels the same way. You really need to leave her alone before it really gets ugly, bro.

A month later, on July 11, appellant purchased a non-regulated, pump-action shotgun that did not require a waiting period, along with "dummy" shells for practice and shells that each contained approximately 400 "small BBs," which were suitable for hunting birds and small animals.

Although appellant claimed that he needed more time to retrieve the children's birth certificates because he needed a break from Ms. Martin, immediately after she told him on the afternoon of July 13 that she did not want to reconcile, he arranged to meet her with the birth certificates that evening.

Before that meeting, appellant sent the following text message to several friends and members of his family:

> I would like to thank all of you for being in my corner and having my back through all the craziness going on around me. I love you all, and you mean the world to me.

At 6:05 p.m., at the same time he was meeting with Ms. Martin, appellant also texted his oldest daughter from a previous relationship that he "will always love her," that she "is the light of [his] eyes," that he was "sorry," and that she should "always be [her]self[.]"

The two construction workers who witnessed the shooting both testified that they heard a first shot, then turned in time to see a man with a large weapon fire at a woman, who fell to the ground, bloodied. Although the man immediately jumped in his truck with his weapon and fled the parking lot, he returned one or two minutes later, then left again without aiding the victim, who was still lying on the ground.

Instead of calling 911 or otherwise seeking help for Ms. Martin, appellant drove home, left his white truck there, and drove away in a navy blue BMW. Before leaving his residence, appellant apologized to his sister.

Responding to "a lookout" for appellant's vehicle, sheriff's deputies in Fauquier County, Virginia, where the grave of appellant's late mother is located, spotted appellant's vehicle parked in that cemetery during the "early morning hours" of July 14, 2016. When the officers activated a spotlight from their unmarked vehicle, "the car took off." Although they pursued with emergency lights and siren activated, appellant did not pull over or slow his vehicle. Instead, he continued for another six to seven miles, during which a marked

police unit joined the chase. Eventually, appellant stopped in a commercial parking lot and was taken into custody.

The shotgun used to shoot Ms. Martin was found in a field behind the cemetery where appellant was spotted by Fauquier County deputies.

Testifying in his defense, appellant claimed that he was distraught by his best friend's sudden death on May 23, 2016, and by Ms. Martin's announcement shortly thereafter that she wanted to separate. On June 7, after attending his friend's funeral, he discovered a text message on his wife's phone from a man whom appellant knew. When confronted about the message, Ms. Martin admitted that "she had kissed him." Appellant asked her to leave the house. The next day, he sent that man the text message described above.

Appellant testified that on July 11th he bought the shotgun for protection after noticing a stranger parked outside his residence on two occasions the previous week. Because he did not have anywhere in the house to lock the weapon away from his younger daughters, he kept it in his truck.

After Ms. Martin asked appellant to find their daughters' birth certificates, he initially responded that he needed "two weeks" because he "was under a lot of pressure" after the death of his friend, their separation, issues with his sister, and financial issues. The next morning he located the documents and sent her a photo of them. After she called later that day to say she "needed the hardcopy," he arranged to meet her at the community center, where they successfully registered the children.

When they returned to their vehicles, appellant had a tent to give to Ms. Martin's mother. When Ms. Martin walked over and saw his shotgun, she asked to see it, and he removed it from his truck and told her it was "not loaded." According to appellant, "this was the first time" he had a gun, and he "was neglectful with the gun" and "shouldn't have been joking around with" it.

After the gun fired, he panicked and fled without rendering or calling for medical help. He went home, switched cars, and drove to his mother's grave in Virginia. He did not stop for the police until he got to a location that he felt would be safe for him to stop.

We shall provide additional facts as necessary to resolve the issues raised by appellant.

DISCUSSION

I. Challenge to State's Closing Argument

Appellant contends that the trial court abused its discretion in overruling his objection to remarks made by the State, as follows:

> [PROSECUTOR]: I am going to be back in a moment. The defense is going to get up and, through his attorney, try to provide you and ask you to accept excuses for his actions and for what he did to Nichola, but I am going to tell you that –
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> THE COURT: I'm sorry. Did you make an objection?
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: Basis?
>
> [DEFENSE COUNSEL]: Characterization.

THE COURT: Overruled.

[PROSECUTOR]: I am going to tell you this: In this case, there is absolutely no excuse, no justification for the defendant's heinous actions in attempting to take the life of Nichola Martin. Thank you.

For the reasons that follow, we hold that the trial court did not abuse its discretion in overruling the defense objection.

A. Standards Governing Closing Argument

This Court recently summarized the legal standards and precedent that govern appellate review of closing argument:

> "A trial court is in the best position to evaluate the propriety of a closing argument[.]" *Ingram v. State*, 427 Md. 717, 726, 50 A.3d 1127 (2012) (citing *Mitchell v. State*, 408 Md. 368, 380-81, 969 A.2d 989 (2009)). Therefore, we shall not disturb the ruling at trial "unless there has been an abuse of discretion likely to have injured the complaining party." *Grandison v. State*, 341 Md. 175, 243, 670 A.2d 398 (1995) (citing *Henry v. State*, 324 Md. 204, 231, 596 A.2d 1024 (1991). Trial courts have broad discretion in determining the propriety of closing arguments. *See Shelton v. State*, 207 Md. App. 363, 386, 52 A.3d 995 (2012).
>
> "[A]ttorneys are afforded great leeway in presenting closing arguments[.]" *Degren v. State*, 352 Md. 400, 429, 722 A.2d 887 (1999). "The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom." *Id*. at 429-30, 722 A.2d 887. "Generally, counsel has the right to make any comment or argument that is warranted by the evidence proved or inferences therefrom; the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is [the] accused's counsel to comment on the nature of the evidence and the character of witnesses which the (prosecution) produces." *Wilhelm v. State*, 272 Md. [404, 412, 326 A.2d 707 (1974)]; *accord Degren v. State*, 352 Md. at 430, 722 A.2d 887.
>
> > While arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments [of]

> opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined—no well-defined bounds beyond which the eloquence of an advocate shall not soar. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

Wilhelm v. State, 272 Md. at 413, 326 A.2d 707; *accord Degren v. State*, 352 Md. at 430, 722 A.2d 887.

> Even when a prosecutor's remark is improper, it will typically merit reversal only "where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Lawson v. State*, 389 Md. 570, 592, 886 A.2d 876 (2005) (quoting *Spain v. State*, 386 Md. 145, 158-59, 872 A.2d 25 (2005)).

Winston v. State, 235 Md. App. 540, 572-73, *cert. denied sub nom. Mayhew v. State*, 458 Md. 593 (2018).

We have long held that "a prosecutor may not impugn the ethics or professionalism of defense counsel in closing argument. When prosecutors cross the line, and defense counsel objects, trial courts should do something about it." *Smith v. State*, 225 Md. App. 516, 529 (2015). In *Reidy v. State*, 8 Md. App. 169, 172-79 (1969), for example, this Court reversed a capital conviction based on the State's closing argument that the defendant's self-defense theory was "a fiction manufactured by defense counsel," reasoning that those remarks improperly suggested that defense counsel had suborned perjury or fabricated the defense:

> Where, as in the present case, the prosecutor's remarks had such a clear potential of prejudicing appellant's right to a fair trial, and objection was immediately made thereto on the ground that they were "absolutely improper

> and out of order," we think the situation thus created was one screaming out for the forceful interdiction of the trial judge and, at the least, a directive to the prosecutor to apologize to defense counsel for the remark–this being all that defense counsel had requested be done. But even without the apology sought by the appellant, it is not unlikely that the jury would have considered the prosecutor's remarks, standing alone, as the practical equivalent of an argument that the claim of self-defense was so far-fetched that it was utterly devoid of any merit. Had not the trial judge, therefore, in referring to the prosecutor's remarks, instructed the jury that "it is no improper remark," a different case may well have been presented than that now before us. But the trial judge's statement, viewed in the light of his refusal to order the prosecutor to apologize to defense counsel, necessarily reinforced and gave significant substance to the prosecutor's argument, with the result likely created in the mind of the jury that the trial judge, like the prosecutor, thought appellant's claim of self-defense was a "fiction manufactured by defense counsel"—a conclusion which was considerably strengthened when the prosecutor, without rebuke or correction from the court, interrupted defense counsel's closing summation to the jury to state that his remarks were not only not improper, but the court had ruled that they were indeed proper.

Id. at 178.

In *Beads v. State*, 422 Md. 1, 9-11 (2011), the Court of Appeals applied these same principles in disapproving the following closing argument by the State:

> You're now going to hear from the Defense attorneys, both of whom are fine attorneys. I caution you, that unlike the State, the Defense's specific role in this case is to get their Defendants off. . . .
>
> It is their job, and they do it well, to throw up some smoke, to lob a grenade, to confuse.

Id. at 8. The Court held that "The prosecutor's comments about the role of defense counsel, although inappropriate, are unlikely to have 'misled or influenced the jury to the prejudice of the accused.'" *Id*. at 11.

In *Carrero-Vasquez v. State*, 210 Md. App. 504, 510 n.4 (2013), we disapproved the following closing argument similarly attacking defense counsel:

> [Defense counsel] are criminal defense attorneys and it is their job to try to get their clients off. They're pretty good at it.
>
> Their job is to sling mud and let's see what sticks. Sort of smoke and mirrors but they have to count on a couple of things. That you all aren't that bright and that you're easily confused.

Although there was no appellate challenge to this argument, we felt "compelled by precedent to observe that the prosecutor's rebuttal began with an improper attack on the integrity of defense counsel[.]" *Id*.

B. Appellant's Challenge

Citing *Reidy*, appellant contends that the prosecutor's remark was improper and tainted his defense. In appellant's view, the comment "that defense counsel was going to try to give the jury excuses for Mr. Martin's behavior" prejudicially "denigrated the defense" by "accus[ing] defense counsel of offering excuses instead of a proper defense based on the lack of evidence." The effect of such "improper remarks," appellant maintains, was to "prime" the jurors to "believe that the defense was based on excuses for behavior," which "could not have been the basis for an acquittal," and to reject "the defense argument that the State had failed to meet its burden in proving intent to kill."

The State counters that, even "[a]ssuming that the single word 'characterization' was sufficient to 'plainly' raise this . . . claim," the trial court did not abuse its discretion in overruling the defense objection "because the argument was reasonably based on defense counsel's opening statement, cross-examination of State witnesses, and examination of Martin when he testified on his own behalf." We agree.

From the outset of this trial, appellant advanced a "stress defense" in an effort to persuade the jury that the shooting was neither planned nor intentional, but instead the result of reckless handling of an unfamiliar weapon by a man who was struggling under a confluence of stressful circumstances. At the end of her opening statement, defense counsel told the jury that the evidence would show that

> [o]n May 30th, Mr. Martin learned from his wife that she wanted to separate. Subsequent to that Mr. Martin has to deal with other issues as well. Mr. Martin also felt threatened by another individual other than [Nichola Martin].
>
> Mr. Martin was under a lot of stress. He had a household that was now going to be a one income household, not two because his wife was leaving, and he was under a significant amount of stress.

Appellant advanced his "stress defense" during his own testimony. He testified on direct about the stressful events leading up to the shooting. On June 7, he had "just buried [his] best friend" who died "from a sudden heart attack on May the 23rd." When he returned to his residence, he was met by "a CPS investigator" who interviewed him regarding "issues" he was "having with [his] sister." That evening, he discovered that his wife was "having an affair with another man" when he saw a text message on her phone.

Appellant also linked his purchase of the shotgun to the stress of seeing an unidentified vehicle observing his home:

> I purchased the gun to protect . . . my home. Because a week prior, a car was parked outside . . . my house . . . and I thought it was a little strange, you know.
>
> And it was late at night. It was parked there with the engine running. I turned my porch light on, and the car pulled off.

> The very next night, the same car was parked outside my house, but this night, I turned the porch light on, and then I opened the door. And then the car pulls off.

When recounting events on the day of the shooting, appellant again referred to the stresses he was under, as follows:

> The previous evening, my wife had wanted birth certificates to register my children in summer camp.
>
> And I told her that the birth certificates were put away with all the other paperwork in the house. And she – she kept asking me to find the birth certificates so that she could register the kids.
>
> So I had asked her to just give me two weeks. You know, just, I was under a lot of pressure with other things that was going on in my life, my friend passing away, our separation, the issues I was having with my sister, financial issues in the house and issues even with my kids, just trying to be a better dad to my children.
>
> And that morning, when I woke up, I had found the birth certificates. I took a picture of it. I sent it to my wife, Nichola Martin. I didn't want to call her because, like I said, I just wanted two weeks away from her to kind of get myself together. I wanted to seek counseling.

Defense counsel's closing argument also predictably focused on the stress theme.

> [Y]ou have Mr. Martin telling you, he was under a lot of stress. He had financial difficulties. His best friend had died of a heart attack. Soon after that, Nichola tells him she wants a separation. Soon after that, he finds out there are infidelity issues. . . .
>
> So you have a person who his mother's deceased. His best friend has died. His wife, who he also considered his best friend, is telling him she no longer wants the relationship, and he finds out that she is involved with someone else.
>
> Mr. Martin was under significant stress and pressure at this time. He tells you that he went and bought the gun. He bought the gun, he told you, because he wanted to protect his home.

In her last words to the jury, defense counsel reiterated that appellant "had a lot to deal with, and he knew it, and he was trying to seek the help that he needed."

Reviewing the remark challenged by appellant in this context, we are not persuaded that it crossed the line that separates fair comment about this evidentiary record from improper denigration of defense counsel's character or role. Most importantly, the prosecutor did not impugn the integrity of defense counsel; instead, she focused on the lack of any legally viable justification for the shooting. In our view, counsel's characterization of appellant's defense as "excuses" was fair comment based on the evidentiary record. *Cf. Smith*, 225 Md. App. at 529 (holding that State's closing argument that defense counsel was presenting "smoke and mirrors" was not improper because it was "clearly directed to defense counsel's argument and did not impute impropriety or unprofessional conduct to defense counsel"). Indeed, after the court overruled the defense objection, the prosecutor unequivocally told the jury, "there is absolutely no excuse, no justification for the defendant's heinous actions in attempting to take the life of Nichola Martin." Because the challenged remark was not improper, the trial court did not abuse its discretion in overruling the defense's objection to it.

II. Sufficiency Challenge to Conviction for Attempted First-Degree Murder

In his alternative assignment of error, appellant challenges the sufficiency of the evidence supporting his conviction for attempted first-degree murder on the ground that there is no evidence from which the jury could find that he had the requisite intent to kill. We disagree and explain.

A. Standards Governing Sufficiency Challenge to Attempted Murder *Mens Rea*

In determining whether evidence is sufficient to establish attempted murder, "[t]he correct standard is whether any rational trier of fact could have found" beyond a reasonable doubt that the defendant "had the required specific intent to kill." *Spencer v. State*, 450 Md. 530, 571 (2016). As the Court of Appeals explained in *Spencer*,

> [t]he intent which is required in the crime of "attempted murder is the specific intent to murder, i.e., the specific intent to kill under circumstances that would not legally justify or excuse the killing or mitigate it to manslaughter."
>
> "Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." The required *mens rea* of intent to kill may be proved by circumstantial evidence. "[T]he trier of fact may infer the existence of the required intent from surrounding circumstances such as 'the accused's acts, conduct and words.'" Additionally, "under the proper circumstances, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body."

Id. at 568-69 (citations omitted).

Applying these principles, the *Spencer* Court held that evidence that the defendant recklessly operated a vehicle was insufficient to establish the specific intent to kill necessary to convict him of attempted murder. *See id*. at 571. "The defendant must actually know that the probable result of the action is the death of the victim, as was the case in *Raines*[,]" where the defendant fired a gun into the driver's side window of a moving tractor-trailer. *See State v. Raines*, 326 Md. 582, 592-93 (1992) ("Raines's actions in directing the gun at the window, and therefore at the driver's head on the other side of the window, permitted an inference that Raines shot the gun with the intent to kill."). In

contrast to Raines's deliberate targeting of his victim's head with a firearm, "Spencer was driving extremely recklessly to avoid capture—not to kill." *Spencer*, 450 Md. at 570. Because "[t]here was no evidence of a specific intent, based on Spencer's acts or words that he actually saw and intended to hit [the victim], . . . the inference that he had the intent to kill is not proper." *Id*. at 571 (citation omitted).

B. Appellant's Challenge

Appellant acknowledges, as he must, the undisputed evidence that he shot Ms. Martin in the head at point blank range, causing severe brain injuries that would have been fatal without timely neurosurgery. Yet he cherry-picks other evidence as support for his claim that the evidence shows only that he inadvertently, rather than intentionally, fired the weapon, with no specific intent to kill Ms. Martin. Citing *Spencer*, appellant argues that

> [t]he physical evidence at the scene of the shooting supported the defense theory that only one shot was fired. Ms. Martin testified that Mr. Martin only pulled the gun out of his truck and showed it to her after she asked him about it after seeing it. Additionally, there was evidence that Mr. Martin had never used a shotgun before and that he had purchased dummy shells and believed that those were in the gun at the time of the incident. *See Spencer v. State*, 450 Md. 530 (2016) (engaging in extremely reckless behavior not sufficient for intent to kill). Even if a factfinder could conclude based on the evidence that the shooting was not an accident, the State's gun expert testified that Ms. Martin was shot with "birdshot," which is generally used to shoot small animals, as opposed to larger pellets or a slug.

The State responds that appellant's sufficiency challenge is not preserved for our review because defense counsel did not argue these reasons when she moved for a judgment of acquittal. We agree.

Under Md. Rule 4-324(a), a defendant must "state with particularity all reasons why" his motion for acquittal "should be granted," and failure to do so precludes appellate review. *See State v. Lyles*, 308 Md. 129, 135-36 (1986). "This means that a defendant must 'argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient.'" *Arthur v. State*, 420 Md. 512, 522 (2011) (citations omitted). Although an appellant may present "a more detailed version of the argument advanced at trial[,] . . . . a defendant 'is not entitled to appellate review of reasons stated for the first time on appeal.'" *Id*. at 523 (citation omitted).

In this case, defense counsel, when moving for a judgment of acquittal at the close of the State's case, merely "submit[ted] on argument." At the close of all the evidence, when defense counsel again moved for judgment, she again stated only that she "would submit . . . on argument." Because neither of those motions particularized the "intent to kill" challenge presented by appellant to this Court, appellant's sufficiency challenge is not preserved for appellate review. *See, e.g., Garrison v. State*, 88 Md. App. 475, 478 (1991) (holding that defendant waived a sufficiency challenge by choosing to "submit" on his motions for judgment "without articulating the particularized reasons which would justify acquittal").

Assuming appellant had preserved his sufficiency argument, we would nevertheless conclude that there is ample evidence to support the jury's finding that appellant intended to kill his estranged wife. As appellant acknowledges, "shooting someone can certainly

indicate an intent to kill[,]"particularly when the gunshot is to the victim's head. *See Raines*, 326 Md. at 591 ("[U]nder the proper circumstances, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body."). Based solely on the evidence that appellant fired a shotgun from close range into Ms. Martin's head, causing life-threatening brain injuries, the jury could find beyond a reasonable doubt that appellant intended to kill her. *Cf. id.* at 592 (holding that evidence that defendant fired gun into driver's side window of moving tractor-trailer was sufficient to establish intent to kill).

Moreover, this case is easily distinguished from both the reckless driving in *Spencer* and the shot of a random motorist in *Raines*, by the existence of strong circumstantial evidence that this shooting was deliberate and designed to kill. Appellant purchased the shotgun two days before the shooting, arranged to meet Ms. Martin after she rejected his reconciliation request, sent "farewell" text messages to loved ones shortly before the shooting, pumped the shotgun and fired at Ms. Martin while her hands were raised in submission, returned to determine whether she was dead or dying, failed to render or seek medical help for her, and fled from both the scene of the shooting and from police attempting to apprehend him. *See generally Jones v. State*, 213 Md. App. 483, 508 (2013) ("Maryland courts have consistently allowed the admission of consciousness of guilt evidence, including flight from the scene of a crime, or flight from apprehension as 'a factor that may be considered in determining guilt.'" (quoting *Davis v. State*, 237 Md. 97, 105 (1964))).

Based on this record, the trial court did not err in denying appellant's unparticularized motions for acquittal.

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