Circuit Court for Baltimore City
Case No. 122221005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1583

September Term, 2023

MARIO A. DIAZ

v.

STATE OF MARYLAND

Arthur,
Beachley,
Ripken,

JJ.

Opinion by Arthur, J.

Filed: May 13, 2025

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

The State of Maryland charged Mario Diaz with shooting two brothers in Baltimore City. A jury convicted Mr. Diaz of attempted second-degree murder, two counts of first-degree assault, using a handgun during the commission of a crime of violence, and other offenses. The court sentenced Mr. Diaz to an aggregate term of 65 years of incarceration with all but 30 years suspended.

Mr. Diaz appealed his convictions. He alleges that the trial court erred in two respects. First, Mr. Diaz contends the trial court erred when it declined to instruct the jury on the defense of voluntary intoxication. Second, Mr. Diaz contends the trial court erred when it admitted evidence that he possessed a handgun other than the one that he used in the shooting.

We discern no error and affirm Mr. Diaz's convictions.

FACTUAL AND PROCEDURAL HISTORY

On Saturday, July 16, 2022, Mario Diaz met up with his friend, Michael Newell, in the Federal Hill area of Baltimore. Along with other friends, Mr. Diaz and Mr. Newell smoked marijuana in Mr. Diaz's car before participating in a bar crawl. At the bar crawl, Mr. Diaz drank "a bunch of different alcohols[]," including "Twisted Teas, beers, [and] liquor."

After several hours of drinking and smoking, the group went to M&T Bank Stadium to attend an English Premier League soccer match. Mr. Diaz testified that he drove his car to the stadium.

Mr. Diaz continued drinking at the soccer match. He testified that he had four purple cans of some kind of alcohol while at the match, but he could not remember exactly what he was drinking.

After the game, Mr. Diaz drove himself and his friends toward the Canton area of Baltimore. On the way, Mr. Diaz stopped at a liquor store and purchased more alcohol. The group smoked more marijuana in the car before arriving at a bar called Southern Provisions in Canton. Mr. Diaz estimated that, from the time he began drinking at the bar crawl to the time he arrived at Southern Provisions, he had consumed "30 to 35" drinks.

On that same day, Nikolas Athanasiou and his wife Brittany attended a friend's birthday party in Parkville. After the birthday party, they met up with Mr. Athanasiou's brothers, Theo and Nektarios, in Canton. After drinking at another bar in Canton Square, the group went to Southern Provisions.

At around 1:30 a.m. on Sunday, July 17, 2022, Southern Provisions held last call, and the Athanasiou party exited the bar. Nektarios[1] and a friend crossed the street to wait for an Uber, and Nikolas and Brittany followed them. While the group was waiting, Nektarios began "playing with a stop sign" that had come loose from the ground. A man started filming Nektarios while he was handling the stop sign, and Brittany asked him to stop recording. The man refused to stop filming and shouted obscenities at Brittany. Brittany and the man continued to argue, and the man "hit her in the face with . . . his fist." Nikolas testified that, after Brittany was punched, he "went to go push the guy

[1] As Nikolas, Nektarios, and Brittany all share a last name, we will refer to them throughout the opinion by their first names. We mean no disrespect.

[who punched her]" to "make sure nothing happen[ed] again." Nikolas and the man "had an altercation back and forth," and Nikolas brought the man to the ground. Nikolas testified that, while he was punching the man on the ground, he heard "a pop." He remembers his "stomach . . . caving in[.]"

Mr. Diaz and Mr. Newell also exited Southern Provisions after last call. Mr. Newell witnessed the fight between the Athanasiou brothers and the man recording Brittany, and he began to record the altercation on Snapchat.

Mr. Diaz testified that he, too, witnessed the altercation. He believed that Mr. Newell was involved in the altercation, because he thought he had witnessed Mr. Newell "grabbing on some females" shortly before the fight broke out. Mr. Diaz believed that the people were threatening Mr. Newell with violence, so he suggested that the two get in his car and drive back to their homes.

Mr. Diaz walked to his car, apparently unaccompanied by Mr. Newell. Once Mr. Diaz got to his car, which was parked less than a block from the altercation, he "hear[d] a commotion . . . right in the area where" he thought Mr. Newell was in an argument. Mr. Diaz testified that he looked toward that area and saw "12 [to] 15 people beating up on one person." Mr. Diaz mistakenly thought that the one person being hit by the large group of people was Mr. Newell.

Mr. Diaz testified that he grabbed his firearm from his car because he thought that Mr. Newell was being beaten. In fact, Mr. Newell testified that he was yelling at the gunman, telling him to "chill, chill, chill."

Mr. Diaz testified that he fired a shot in the air "to try to get everybody to stop [fighting], but it seemed like nobody acknowledged it." Mr. Diaz testified that when no one responded to the warning shot, his goal was to shoot one of the attackers, Nikolas, in the leg. Directly before shooting Nikolas, however, Mr. Diaz yelled, "Stop before I shoot you in the fucking head."

Mr. Diaz shot Nikolas in the stomach rather than the head or the leg, and Nikolas collapsed to the ground. Mr. Diaz then stood over Nikolas with the gun pointed at his head. Mr. Diaz testified that he told Nikolas that he "didn't want to do this."

At this point, Nektarios went to "push [Mr. Diaz] off of" Nikolas. After Nektarios pushed Mr. Diaz, Mr. Diaz shot him in the back. Mr. Diaz testified that he did not mean to shoot Nektarios at all; he testified that he fired the third shot because his "finger was on the trigger still and when [he] was pushed the firearm just went off."

Mr. Newell testified that he walked home after the shooting. Mr. Diaz testified that he returned to his car and drove toward his home. He testified that at some point during his drive home, he stopped on the side of a road, "passed [] out," woke up roughly an hour later, and walked the rest of the way to his house.

The next morning, Mr. Newell looked at the Snapchat videos that he had posted and realized that Mr. Diaz had shot two people. Mr. Newell went to Mr. Diaz's house, and the two agreed to turn themselves in to the police.

Mr. Diaz's trial began on April 4, 2023. During opening statements, defense counsel made clear that Mr. Diaz did not contest that he was the person who shot the Athanasiou brothers. Defense counsel told the jury that Mr. Diaz was "guilty of crimes"

and indicated that Mr. Diaz would testify to that effect. Defense counsel stated that he intended to prove to the jury that Mr. Diaz was not guilty of attempted murder based upon the doctrine of voluntary intoxication. Defense counsel explained that "[i]f a person is under the influence of alcohol or drugs, [a jury has] the right to find they can't be responsible for intent crimes[.]" Defense counsel told the jury that it would hear that Mr. Diaz was so intoxicated that "when he came out of [his] car he thought his friend [Mr. Newell] was being assaulted by [the Athanasiou brothers]."

The State called Nikolas, Nektarios, and Brittany Athanasiou as witnesses. All three gave similar accounts of the incident.

The State also called Mr. Newell as a witness. Mr. Newell testified that he and Mr. Diaz had been drinking and smoking at the bar crawl for roughly three hours before heading to M&T Bank Stadium. Mr. Newell testified that he had "[o]ver ten shots [and] over ten beers" on the day in question, and he estimated that Mr. Diaz drank "just as much" as he did. When the State asked Mr. Newell if Mr. Diaz said anything to him right before the shooting, Mr. Newell said that he could not remember because he and Mr. Diaz "were on the pace of . . . blacked out," though not "completely [blacked out]." After the State showed Mr. Newell the video of the shooting, he testified that he told Mr. Diaz right before the shooting that the fight they were watching had "nothing to do with [them]." After watching the video, Mr. Newell testified that Mr. Diaz verbally agreed with him.

The defense called Mr. Diaz. Mr. Diaz testified that he was drinking and smoking marijuana from 1 p.m. until the time when he and his friends left the soccer match. He estimated that he consumed 30 to 35 alcoholic drinks on the day in question.

When asked about the shooting, Mr. Diaz testified that he first intended to break up the fight, which is why he fired a warning shot into the air. Once he saw that the group was continuing to "attack this person who [he] believed was [his] friend," he remembered thinking that he "would try and shoot [the assailant] in the leg." He said that he did so because nobody responded to his warning shot and he "thought it was a serious beating."

On cross-examination, the State asked Mr. Diaz how he got from Federal Hill to Canton on the night of July 16, 2022. Mr. Diaz responded that he drove his car. He testified that he did not get pulled over by the police during this drive, did not hit any cars, did not run any stop signs or get any tickets at a traffic light, and parked his car in Canton without incident.

The State asked Mr. Diaz about his testimony that Mr. Newell participated in an altercation before Mr. Diaz went to his car to retrieve his gun. The State pointed out to Mr. Diaz that Mr. Newell testified he was not, in fact, in an argument or a fight with anyone before Mr. Diaz retrieved his gun. Mr. Diaz testified that Mr. Newell was lying on the witness stand to "disassociate himself from everything."

The State reviewed the video of the shooting with Mr. Diaz. The State asked Mr. Diaz why he threatened to shoot Nikolas in the head if his intention was simply to break up the fight. Mr. Diaz responded that he "remember[ed] feeling frustrated that they

didn't stop" fighting when he "tried to get them to stop." The State asked Mr. Diaz whether he agreed that he was walking normally and speaking clearly in the video. Mr. Diaz testified that "[y]ou could say that," but he added: "You can see that I'm . . . stumbling."

The State asked Mr. Diaz how he got home after the shooting. Mr. Diaz testified that he remembered "walking by some church" to look for his car and then remembered "eventually finding it." He testified that he lived about 20 minutes from Canton Square. Although he "[didn't] recall" how he got home after the shooting, he testified that, to get home from Canton, he ordinarily has to drive through stoplights and stop signs and make multiple turns.

The State asked Mr. Diaz whether he got a DUI, got pulled over by the police, got any tickets for running stoplights or stop signs, got any speeding tickets, or got into any accidents on his way home from Canton. Mr. Diaz replied only that he "might [have] hit a curb."

Mr. Diaz testified that he did not make it back to his house right away. Instead, he said, he "left [his] car somewhere" on the route to his house, and a few hours later began receiving "phone calls from [his] girlfriend" asking where he was. He remembered "pass[ing] back out" in the car and waking up "an hour later[.]" He testified that, once he woke up, he walked home.

On redirect, defense counsel asked Mr. Diaz about his testimony that he did not recall his drive home after the shooting. Mr. Diaz stated that he had "no recollection" of the drive home because he "was going . . . in and out of consciousness." Defense counsel

also asked Mr. Diaz about the portion of the video where he points the gun at Nikolas's head. Mr. Diaz testified that he "instantly regretted" shooting Nikolas and then pointing the gun at his head after doing so.

On re-cross, Mr. Diaz stated that he has "never been [as] drunk" as he was on the night of the shooting. He nonetheless agreed with the State that it takes some degree of hand-eye coordination to aim and fire a handgun. He also agreed with the State that he was "eventually" able to operate his car.

A number of witnesses testified that, in a search of Mr. Diaz's home, the police found two handguns: a nine-millimeter Glock pistol and a .45-caliber Smith & Wesson automatic pistol. A firearms examiner identified the Glock as the weapon that Mr. Diaz used in the shootings.

The jury convicted Mr. Diaz of attempted second-degree murder and first-degree assault of Nikolas Athanasiou, first-degree and second-degree assault of Nektarios Athanasiou, reckless endangerment, use of a handgun in the commission of a crime of violence, discharging a handgun in Baltimore City, and wearing, carrying, and transporting a handgun. This appeal followed.

QUESTIONS PRESENTED

Mr. Diaz poses two questions, which we quote:

1. Whether the trial court erred in refusing to instruct the jury regarding voluntary intoxication?

2. Whether the trial court erred in admitting evidence that police officers found a second handgun, not used in the shooting, during a search of Mr. Diaz's home?

We answer "no" to both questions.

DISCUSSION

I. VOLUNTARY INTOXICATION

"Rule 4-325(c) requires a trial court to give a requested [jury] instruction when (1) it 'is a correct statement of the law'; (2) it 'is applicable under the facts of the case'; and (3) its 'content . . . was not fairly covered elsewhere in the jury instruction[s] actually given.'" *Hayes v. State*, 247 Md. App. 252, 288 (2020) (quoting *Thompson v. State*, 393 Md. 291, 302 (2006)). "Unless the trial court has made an error of law, we review its decision to give a jury instruction for abuse of discretion." *Id.*

Mr. Diaz's proposed jury instructions in this case included the jury instruction on voluntary intoxication. The State objected to the instruction, relying on *Bazzle v. State*, 426 Md. 541 (2012), which held that defendants are "not entitled to an instruction on voluntary intoxication unless [they] can point to 'some evidence' that 'would allow a jury to rationally conclude' that [their] intoxication made [them] incapable of 'form[ing] the intent necessary to constitute the crime[.]'" *Id.* at 555 (citation and footnotes omitted).

After reviewing *Bazzle*, the trial court declined to read the instruction to the jury. The court ruled that, although Mr. Diaz had a lot to drink on the night in question, he "found his way to his car to retrieve his firearm," had "the requisite mindset to fire . . . a warning shot, [a] second [shot] to aim at the leg and not the stomach, and . . . [a] third [shot] because he was pushed," and "drove home" after the shooting. The court found that "the testimony that [Mr. Diaz] generated [was] insufficient . . . for the court to give

the instruction," specifically because "his own testimony negate[d]" the argument that he could not "form the specific inten[t] to commit the crimes."

A. Waiver

Before addressing the merits of Mr. Diaz's argument, we address the State's preliminary contention that Mr. Diaz waived his challenge to the trial court's refusal to give his requested jury instruction.

Defense counsel clearly objected to the trial court's initial refusal to give the voluntary intoxication instruction. Once the court made its ruling, defense counsel said that he was "objecting to the court's ruling" and that he was "objecting to that ruling, that decision." After the trial court actually instructed the jury, however, the court asked the parties if they had "[a]ny objection . . . to the court's jury instructions as read[.]" At that point, defense counsel replied, "No."

The State argues that defense counsel waived his earlier objection by not complying with Maryland Rule 4-325(f). That rule states, in pertinent part, that "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly *after* the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." (Emphasis added.)

For two reasons, we disagree that defense counsel waived the objection to the court's refusal to give the instruction on voluntary intoxication by failing to object again after the court instructed the jury.

First, as the State concedes, strict compliance with Rule 4-325(f) is not always necessary. *Watts v. State*, 457 Md. 419, 427 (2018). An objection that does not strictly

comply with the rule "may survive nonetheless if it substantially complies with Rule 4-325[(f)]." *Id.* (citing *Bennett v. State*, 230 Md. 562, 569 (1963)).[2] As long as "the record reflects that the trial court understands the objection and, upon understanding the objection, rejects it, this Court will deem the issue preserved for appellate review." *Id.* at 428 (citing *Sergeant Co. v. Pickett*, 283 Md. 284, 289 (1978)). In this case, defense counsel twice stated that he objected to the court's ruling, and the trial court understood the objection and rejected it. The court specifically stated: "That objection will be noted for the record."

Second, even if defense counsel did not renew his objection after the court instructed the jury, he did not waive his earlier objection by answering "No" when the court asked if either party had any objection to the court's jury instructions "*as read*." (Emphasis added.) As Mr. Diaz argues in his brief, "[t]he court *already* knew there was an objection to the instructions that were *not read*. The court's specific question was focused on the instructions that were read to the jury." (Emphasis in original.) We agree.

Finally, it is doubtful that defense counsel agreed with the trial court's decision not to instruct the jury on voluntary intoxication after hearing the jury instructions in full. In his opening statements, defense counsel told the jurors that they "were going to hear about" the defense of voluntary intoxication "from the judge" at the close of the case. Many of the questions defense counsel asked Mr. Newell and Mr. Diaz focused on their

[2] *Watts* refers to Rule 4-325(e). As a result of amendments in 2021, which added a new Rule 4-325(e), former Rule 4-235(e) became current Rule 4-325(f).

drunkenness on the night of the shooting. Voluntary intoxication was Mr. Diaz's only defense to the shooting.

In sum, Mr. Diaz did not waive his objection to the exclusion of the voluntary intoxication jury instruction and preserved his objection for appeal.

B. The Merits

"Generally, voluntary [intoxication] is no defense to a criminal charge." *State v. Gover*, 267 Md. 602, 606 (1973). Persons are "'presumed to be in possession of [their] mental faculties until the contrary is shown.'" *Id.* at 607 (quoting *Beall v. State*, 203 Md. 380, 385-86 (1953)); *accord Bazzle v. State*, 426 Md. at 553. "The only exception to this occurs when a defendant, charged with a crime requiring a specific intent, is so [intoxicated] that [the defendant] is unable to formulate that mens rea." *State v. Gover*, 267 Md. at 606. Nonetheless, "'[t]he degree of intoxication which must be demonstrated to exonerate a defendant is great.'" *Bazzle v. State*, 426 Md. at 559 (quoting *State v. Gover*, 267 Md. at 607).

The leading case in Maryland on the voluntary intoxication instruction is *Bazzle v. State*. In that case, the State charged the appellant with attempted second-degree murder, attempted armed carjacking, and first-degree assault. *Bazzle v. State*, 426 Md. at 547. Defense counsel requested a jury instruction on voluntary intoxication. *Id.* In support of the request, defense counsel pointed to evidence that the appellant's blood-alcohol content was almost twice the legal limit, he claimed that he was unable to recall some of his own behavior on the night of the incident, his alleged behavior was "senseless" and "illogical," and a witness testified that he was "about to pass out." *Id.* at 548-55. Even

though defense counsel elicited all this evidence during trial, the trial court declined to read the voluntary intoxication instruction to the jury. *Id.* at 563.

In a 4-3 decision, the Court affirmed the trial court's judgment. The Court explained that, in general, the threshold for inclusion of a jury instruction is low; a defendant only needs to produce some evidence that supports the requested instruction. *Id.* at 551. The Court quoted *Dykes v. State*, 319 Md. 206, 217 (1990), which outlines the "some-evidence" standard in the self-defense context: "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 [the] claim . . . the defendant has met [the] burden." The Court specified, however, that in the context of voluntary intoxication, there is a general presumption that people intend the natural consequences of their acts. *Bazzle v. State*, 426 Md. at 558.

In *Bazzle*, the appellant argued that "his blood[-]alcohol content and memory loss on the night of the crime, combined with [a witness's] testimony that he was 'almost about to pass out' and the illogical manner in which the assault was committed[,]" constituted some evidence that he was so intoxicated that he could not form a specific intent. *Id.* at 552. The Court concluded that the appellant "undoubtedly" produced "'some evidence' that he was drunk," but had not presented "'some evidence' that he was unable to form a specific intent." *Id.* at 556.

Although the *Bazzle* Court quoted *Dykes v. State*, 319 Md. at 217, for the proposition that it is "of no matter" that a defense claim is "overwhelmed by evidence to the contrary" when determining whether a court should have instructed the jury on a

particular defense, the *Bazzle* Court enumerated the ways in which the appellant's actions were "inconsistent with the intoxication defense." *Bazzle v. State*, 426 Md. at 556. The Court explained that the appellant "was able to recognize the gender of his two attackers, escape by running (not walking) away from them, and then locate [a witness's] house on foot in the dead of night while severely injured." *Id.* In addition, the Court observed that the appellant was able to "speak intelligibly" on the night of the crime and wore "a bandana over his face" when committing the crime, both of which were "inconsistent with the assertion that [the appellant] was unable to form any specific intent that night." *Id.* at 557. "Thus," the Court concluded, "not only is there insufficient evidence, standing alone, to support [the appellant's] intoxication theory, but there is also ample evidence, uncontradicted at trial, that is inconsistent with the intoxication defense." *Id.* at 558.

Mr. Diaz argues that the trial court's "view of some evidence was far narrower than required for the instruction." According to Mr. Diaz, "[t]he trial court incorrectly found that [he] failed to meet the low threshold that 'some evidence' existed to generate the instruction and incorrectly weighed competing evidence instead of viewing it in the light most favorable to [him]." In light of *Bazzle*, we conclude that Mr. Diaz did not present sufficient evidence that he was so drunk that he was unable to form a specific intent to commit murder.

Certainly, Mr. Diaz presented evidence that he drank heavily on the day and night leading up to the shooting. Mr. Diaz testified that he consumed roughly 30 to 35 drinks from the time he arrived at the Federal Hill bar crawl to the time he entered Southern

Provisions.[3] He recalled drinking "a bunch of different alcohols" at the bar crawl, including "Twisted Teas, beers, [and] liquor." He remembered drinking four tall, purple cans of alcohol while he was at M&T Bank Stadium. He testified that he stopped at a liquor store on his way to Canton from the stadium.

Mr. Diaz also presented testimony that he "exhibited the typical characteristics of being drunk[]" on the night of the shooting. *Id.* at 556. He claimed that he went to grab his gun from his car in the first place because he believed Mr. Newell was being beaten when, according to Mr. Newell, Mr. Diaz had verbally agreed the fight had "nothing to do" with the two of them. He testified that the video of the shooting shows him "stumbling" in a way that would suggest inebriation. His judgment was obviously impaired. He recalled that, on his drive from Canton back to his house in Baltimore County, he was going "in and out of consciousness" "[f]rom so much drinking."

None of this evidence is, however, sufficient to rebut the presumption that people intend the natural consequences of their acts. *Id.* at 558. As in *Bazzle*, there is ample evidence that Mr. Diaz was able to form the requisite specific intent for murder. Mr. Diaz described in detail his state of mind directly before and after the shooting. He testified that he first attempted to avoid shooting at Nikolas by firing a warning shot in

[3] Mr. Diaz did not offer any testimony concerning how much alcohol he typically consumes on a day similar to the one in question. Nor did he testify as to his height and weight or his general tolerance for alcohol. Hence, his case for the voluntary intoxication instruction runs afoul of *Bazzle*'s warning that "the mere consumption of alcohol, 'with no evidence as to the [effect] of that alcohol on the defendant, would not permit a jury reasonably to conclude that he had lost control of his mental faculties to such an extent as to render him unable to form the intent[.]'" *Bazzle v. State*, 426 Md. at 555 (quoting *Lewis v. State*, 79 Md. App. 1, 12-13 (1989)).

the air. He testified that he was "frustrated" when his warning shot did not break up the fight as he intended. Mr. Diaz recalled that, in his frustrated state, he tried to shoot Nikolas in the leg. Before doing so, however, he threatened Nikolas by saying he was going to shoot him in the head. After Mr. Diaz shot Nikolas in the stomach, he remembered standing over him and telling him that he "didn't want to do this." Mr. Diaz spoke clearly and directly throughout the confrontation. On redirect examination, Mr. Diaz claimed that he "instantly regretted" the shooting and regretted pointing the gun at Nikolas's head after shooting him in the stomach. Mr. Diaz's purported attempts at de-escalation and regret followed by his own substantial escalation are inconsistent with the contention that he was so intoxicated that he could not form the specific intent to commit some of the crimes with which he was charged.

Mr. Diaz's accurate memory of details surrounding the shooting beyond his own state of mind is also inconsistent with the theory that he was too intoxicated to form the requisite intent for attempted murder. Mr. Diaz testified that there were roughly "12 [to] 15 people" involved in the altercation. This recollection is consistent with the video of the shooting, which shows roughly 15 people surrounding the main altercation between Nikolas and the man who punched Brittany. Mr. Diaz testified that, immediately after the shooting, he remembered passing a church on the way to his car, which was parked about a half a block away from the shooting. The video of the shooting depicts a church in the background of the altercation. Mr. Diaz recalled Nektarios pushing him after he shot Nikolas and claimed that he shot Nektarios because his finger hit the trigger of his

gun after Nektarios pushed him. The video shows Nektarios pushing Mr. Diaz right before the sound of a gunshot.

Mr. Diaz could also remember details of his night before arriving at Southern Provisions. Mr. Diaz recalled stopping at a liquor store on the way from M&T Bank Stadium to Canton. He remembered the color of the cans and size of the drinks he consumed at M&T Bank Stadium, although he could not remember exactly what was in the cans.

Mr. Diaz testified that he drove 20 minutes from M&T Bank Stadium to Canton and then 20 minutes from Canton to his house in Baltimore County without getting a speeding ticket, getting a ticket for running a red light, being pulled over by a police officer, getting a DUI, or doing any significant damage to his car.[4]

Finally—and perhaps most importantly—Mr. Diaz testified that he did, in fact, intend to shoot Nikolas, but in the leg rather than the stomach. Mr. Diaz argues that his poor aim is evidence of his inability to form a specific intent for attempted murder. His stated intent to shoot Nikolas undermines his argument, regardless of where the bullet ended up hitting the intended victim.

Because *Bazzle* inverts the typical some-evidence standard as to the voluntary-intoxication instruction, the myriad of characteristics Mr. Diaz displayed that are

[4] Mr. Diaz did testify that he may have hit the curb at some point during his drive back to his house in Baltimore County. He also claimed that he stopped on the side of the road and passed out at some point during his drive. He said that he left his car and walked home once he woke up. Mr. Diaz's account is arguably inconsistent with Detective Andres Severino's testimony that he saw Mr. Diaz's car in the driveway of his house when executing the search warrant on his house later that night.

inconsistent with the instruction lead us to conclude the trial court did not abuse its discretion by refusing to read the instruction to the jury. This is true even though we "tak[e] for granted everything [Mr. Diaz] claims about his drunken state[.]" *Bazzle v. State*, 426 Md. at 558.

II. THE SECOND HANDGUN

Mr. Diaz argues that the trial court erred when it admitted evidence that the detectives found an "unrelated" .45-caliber handgun when executing a search warrant on his home. Mr. Diaz claims the evidence was not relevant and that its prejudicial effect "far exceeded any probative value."

We engage in a two-step inquiry when examining the trial court's decision to admit evidence concerning the second gun. *Montague v. State*, 471 Md. 657, 673 (2020). "First, we consider whether the evidence is legally relevant[,] which is a conclusion of law" that we review without deference to the trial court. *Id*. "After determining whether the evidence in question is relevant, we consider whether the trial court abused its discretion by admitting relevant evidence which should have been excluded as unfairly prejudicial." *Id*.

While Detective Demario Harris was on the witness stand, Mr. Diaz moved to exclude the evidence that detectives recovered two guns when they searched Mr. Diaz's home. Defense counsel argued that any discussion of the .45-caliber Smith & Wesson would have been irrelevant because it was not used in the shooting. The State disagreed. It argued that the evidence was relevant because the detectives found the two guns at the same time; it was not until detectives sent the guns for testing that they learned which gun

Mr. Diaz used in the shooting. The trial court agreed with the State that the evidence was relevant and denied Mr. Diaz's motion.

The trial court then admitted, over defense counsel's objection, Detective Harris's body-worn camera footage of the search of Mr. Diaz's home. Detective Harris subsequently testified that detectives recovered two guns from Mr. Diaz's home, and defense counsel did not object.

Detective Harris was not the only witness to testify that the detectives recovered two guns from Mr. Diaz's residence. Detective Severino, who also searched Mr. Diaz's home, testified that the detectives recovered two handguns while executing the search warrant. Defense counsel did not object to Detective Severino's testimony.

The State also called a firearms examiner, Jeremy Monkres. Mr. Monkres testified that he "received two firearms" to examine in connection with the shooting. He testified that, upon examining the bullets and the cartridge casings with which the State provided him, he was able to conclude that the bullets were not fired from a .45-caliber weapon. The State offered into evidence Mr. Monkres's written report, which states that he examined both a "Glock 43X 9mm Luger pistol" and a "Smith & Wesson M&P45 .45 Auto pistol[.]" Defense counsel did not object to Mr. Monkres's testimony or to the admission of his written report.

The last person to testify about the Smith & Wesson was Mr. Diaz himself. On direct examination of Mr. Diaz, defense counsel recalled previous "testimony about a second gun" and asked Mr. Diaz to explain what the testimony was "all about[.]" Mr. Diaz responded that he "had another gun that [he] kept at home."

Maryland courts have "'long approved the proposition that [they] will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury *without objection* through the prior testimony of other witnesses.'" *Yates v. State*, 429 Md. 112, 120 (2012) (quoting *Grandison v. State*, 341 Md. 175, 218-19 (1995)) (emphasis in original). In other words, even if a party objects to the admission of certain pieces of evidence, the party waives that objection "if, at another point during the trial, evidence on the same point is admitted without objection." *DeLeon v. State*, 407 Md. 16, 31 (2008).

To the extent that evidence of Mr. Diaz's second handgun is objectionable, he did not object to the testimony of Detective Severino and Mr. Monkres concerning the gun. He then offered his own testimony about the second handgun in response to a direct question from his own counsel. Mr. Diaz affirmatively waived his objections.

But even if Mr. Diaz had not waived his objections, we would find no error or abuse of discretion in the admission of evidence about the second gun.

To begin with, the evidence is relevant. Md. Rule 5-401 sets a low bar for relevance. To be relevant, evidence need only tend "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* In this case, the officers discovered both the Smith & Wesson and the Glock in a gun case when they searched Mr. Diaz's home. At the time the officers found both guns, they did not know which one Mr. Diaz used in the shooting of Nikolas and Nektarios. They sent both guns to the firearms examiner, who

determined that Mr. Diaz used the Glock, and not the .45-caliber Smith & Wesson, in the shooting. Mr. Monkres's report mentions both guns, ruling out one and identifying the other. The Smith & Wesson, which was not used in the shooting, is relevant as part of the investigatory narrative that culminated in Mr. Monkres's determination that Mr. Diaz used the Glock to shoot Nikolas and Nektarios.

The evidence of the second firearm is not admissible simply because it is relevant. Relevant evidence is "generally admissible[,]" but Md. Rule 5-403 "excludes relevant evidence if its probative value is substantially outweighed by, among other things, the danger of unfair prejudice." *Woodlin v. State*, 484 Md. 253, 264-65 (2023). Nonetheless, "[w]e do not exclude relevant evidence merely because it is prejudicial, as '[a]ll evidence, by its nature, is prejudicial.'" *Id.* at 265 (quoting *Williams v. State*, 457 Md. 551, 572 (2018)). The evidence must be "*unfairly* prejudicial," and the unfair prejudice must "*substantially* outweigh[] [the evidence's] probative value." *Id.* (emphasis in original).

Because we apply the deferential abuse-of-discretion standard in reviewing a circuit court's evaluation of probative value versus the danger of unfair prejudice, we must be convinced before discerning error that "no reasonable person would take the view adopted by the circuit court." *Williams v. State*, 457 Md. 551, 563 (2018). We are not convinced in this case.

Mr. Diaz argues that "the jury could have believed that [he] was more prone to violence because he owned multiple guns." His argument would be more convincing had the identification of Mr. Diaz as the shooter been at issue in the case. Mr. Diaz readily

admitted to the jury that he shot Nikolas and Nektarios. His defense was that because of his intoxication he was not guilty of the specific-intent crimes with which he was charged. Whether Mr. Diaz owned one gun or two guns was unlikely to factor into the jury's decision concerning his intent at the time he shot Nikolas and Nektarios.

Mr. Diaz cites *Smith v. State*, 218 Md. App. 689 (2014), to support his argument that the evidence of the second handgun was unfairly prejudicial. In that case, the defendant was accused of fatally shooting his roommate. *Id.* at 696. He denied the charges and contended that the roommate had committed suicide. *Id.* at 697. This Court concluded that the trial court abused its discretion when it admitted evidence that the defendant owned eight other firearms and that officers found ammunition in the defendant's apartment. *Id.* at 705-06. In reaching that decision, we reasoned:

> Mr. Smith's ownership of unrelated firearms and ammunition was minimally relevant, at best, and highly prejudicial, and should have been excluded from the trial of these charges. Neither the State nor the trial judge articulated how this evidence was relevant to whether Mr. Smith committed the alleged crimes. The fact that Mr. Smith legally possessed guns and ammunition does not make the weapons relevant to the victim's death, and we cannot see from this record how the inclusion of this evidence would help prove the offense charged. Without a more direct or tangible connection to the events surrounding *this shooting*, the evidence of the other weapons and ammunition owned by Mr. Smith failed the probativity/prejudice balancing test, and the trial court erred by admitting it.

Id. (emphasis in original).

Smith does not support Mr. Diaz's argument. In *Smith*, the central question was whether Smith had killed his roommate or whether the roommate had killed himself. In those circumstances, the evidence that Smith possessed numerous firearms and

ammunition unfairly implied that he had a propensity for gun-related violence and, thus, that he had probably committed the offense. *See id*. at 704-05.

Here, by contrast, the central question was not whether Mr. Diaz shot the Athanasiou brothers, but whether Mr. Diaz was so intoxicated that he was unable to form the specific intent to commit some of the crimes with which he was charged. Consequently, the evidence that Mr. Diaz owned two weapons, one of which he used in committing the crime, did not create anything approaching the same level of unfair prejudice as did the evidence of the eight other guns and ammunition in *Smith*.

For all of these reasons, the ruling in *Smith* cannot be used to determine that the admission of evidence of the second handgun in Mr. Diaz's case was so unfairly prejudicial such that his convictions should be overturned.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.