

Circuit Court for St. Mary's County
Case No. C-18-CR-21-000211

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1703

September Term, 2023

LEONARD CHARLES HALL

v.

STATE OF MARYLAND

Graeff,
Leahy,
Tang,

JJ.

Opinion by Leahy, J.

Filed: November 14, 2025

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

Valdez Rico Baker was shot and killed as he was leaving a basketball court at Chancellor’s Run Park in Great Mills around 7:00 p.m. on June 14, 2021. A witness, W.,¹ identified Leonard Charles Hall, appellant, as the shooter. Following a six-day trial in the Circuit Court for St. Mary’s County, a jury convicted Hall of conspiracy to commit first-degree murder; conspiracy to commit second-degree murder; conspiracy to commit first-degree assault; wearing, carrying, or transporting a loaded handgun on his person; illegal possession of a firearm; and illegal possession of ammunition. Hall was subsequently sentenced to life imprisonment on the conviction for conspiracy to commit first-degree murder, plus 16 years running concurrently on his convictions for illegal possession of a firearm and illegal possession of ammunition.² This appeal timely followed.

Hall presents the following three questions for our review, which we have rephrased and reordered:³

¹ We refer to this witness by the letter “W” because of the intimidation suffered by this witness. There is no association between the letter “W” and the witness’s actual name.

² Specifically, Hall was sentenced to 15 years for illegal possession of a firearm and one year for illegal possession of ammunition, both concurrent with his life imprisonment. Hall’s convictions for conspiracy to commit second-degree murder and conspiracy to commit first-degree assault were vacated at the sentencing hearing.

³ Hall phrased the questions presented as follows:

1. Did the trial court err in admitting the prejudicial hearsay portions of a text message conversation?
2. Was the evidence legally insufficient to support Appellant’s conviction of conspiracy to commit first-degree murder?
3. Did the trial court err in striking and telling the jury to disregard a portion of Appellant’s closing argument that was both accurate and critical to his theory of defense?

- I. Did the trial court err in admitting the hearsay portions of a text message conversation?
- II. Did the trial court err in restricting a portion of Hall’s closing argument?
- III. Was the evidence legally sufficient to support Hall’s conviction of conspiracy to commit first-degree murder?

First, we hold that the trial court did not err in admitting the portions of the text message conversation at issue because they were admitted for non-hearsay purposes and the court gave the jury a clear instruction to that effect. In the alternative, we also conclude that the text messages were admissible under the hearsay exception for adoptive admissions. *Second*, we hold that the trial court did not abuse its discretion in restricting a portion of Hall’s closing argument because the closing argument contained statements not supported by evidence and the court appropriately addressed any potential prejudice by giving a limiting instruction. *Third*, Hall failed to preserve his claim that the evidence was insufficient to support his conviction for first to commit first-degree murder; nevertheless, we conclude that there was sufficient evidence to sustain that conviction. Accordingly, we affirm Hall’s convictions.

BACKGROUND

A. The Shooting

On June 24, 2021, W. and her brothers went to Chancellor’s Run Park in their grandmother’s car. They pulled into a parking lot down a small grassy hill from a basketball court. Baker, whom W. considered to be a very close friend, arrived at the park “a good 30 minutes, maybe an hour” later, according to W. While others were playing basketball, W. sat in the car watching the basketball game.

About 15 minutes later, W. noticed a black vehicle with out-of-state tags backing into a parking spot directly behind her. According to W., a man wearing a red top and a black ski mask exited the passenger side of that car and went to the basketball court. When that man lifted his ski mask, W. recognized him as Hall, because W. and Hall's sister had been friends. Hall then returned to the car parked behind W. At one point, W. also got a glimpse of a man in the driver's seat of the black car who she thought was James Flanagan—someone she recognized from her social media accounts. While the basketball game continued, W. observed the two men sitting in the parked car.

After the basketball game ended, W. went to Baker and gave him his phone. As W. continued walking towards the basketball court, she heard gunshots and turned around. She saw Baker lying on the ground in the grassy area between the basketball court and the parking lot, with the man she identified as Hall standing over him with a gun. According to W., Hall then ran and got back into the black Nissan before it drove away.

On June 18 and 22, 2021, the lead detective on the case, Det. Daniel Sidorowicz, conducted a recorded interview with W. During the interview, W. identified Hall and Flanagan as the persons involved in Baker's death. W. was also presented with a photo array. In that array, W. identified Hall as the shooter. In a separate array, she identified Flanagan as the getaway driver. Flanagan was arrested on June 23, and Hall was arrested the day after in Frederick County. Cellphones were seized from Flannagan and Hall upon their arrests.

A grand jury indicted Hall on July 12, 2021, and charged him with eleven offenses in connection with Baker's death: first-degree murder (Count 1); three counts of use of a

handgun in the commission of a crime of violence (Counts 2, 4, and 6); second-degree murder (Count 3); first-degree assault (Count 5); wearing, carrying, or transporting a loaded handgun on his person (Count 7); conspiracy to commit first-degree murder (Count 8); conspiracy to commit second-degree murder (Count 9); conspiracy to commit first-degree assault (Count 10); illegal possession of a firearm (Count 11); and illegal possession of ammunition (Count 12).⁴

B. The Trial

Hall’s jury trial proceeded over six days from May 5 to May 12, 2023. During its case-in-chief, the State called 29 witnesses, including W. and Det. Sidorowicz. The parties stipulated, among other things, that Hall was prohibited from possessing a regulated firearm and ammunition.

W. testified about the events on the day of the shooting as summarized above. During cross-examination, W. clarified that she “didn’t see the actual shooting” and

⁴ Four days later, W. signed a “Confidential Informant Agreement” with the St. Mary’s County Sheriff’s Office. In accordance with the terms of the agreement, the Sheriff’s Office relocated W. and gave her a recurring \$6,000 cash payment every three months for a year. The agreement was admitted into evidence without objection and read on the record at trial.

Following W.’s cross-examination, the State read a stipulation to the jury, which appears in the transcript, in relevant part, as follows:

On May 4th, 2023, [W.] observed a tweet, comma, a post and comma, on Twitter which states all rats must die, hashtag take it personal.

This tweet received a comment that read, quotation, can’t wait to see who gone be on that stand next week, quotation. Followed by an eye emoji, a police emoji hashtag, free who matter at LennyGWalk301, end quotation.

admitted that the shooter was wearing a mask when she turned around upon hearing gunshots. She clarified that, although she did not see the shooter get out of a car before the shooting, she did see him get in the black Nissan vehicle before it pulled off. W. testified that the getaway car had “yellow Massachusetts tags[.]” When asked if she could identify the driver of the car, W. responded, “I’m not sure[.]” but stated that she thought it was Flanagan. W. also acknowledged that she had “never really seen [Hall] around” despite having been friends with his sister, and had not seen Hall’s sister in five years. W. further testified that she did not mention Hall or Flanagan when the police spoke to her on the scene, explaining, “I was scared.”

Det. Sidorowicz also testified about the interview he conducted with W. on June 18 and 22, 2021. He stated that on the first day of the interview, W. told him, “I didn’t actually see this shooting” but explained that she saw Hall standing over Baker when she turned around after the sound of a gunshot. W. also told him that Hall was wearing a “red jacket” and riding in a “black rental car with Massachusetts registration plates.” On the second day, W. clarified that Hall and Flanagan arrived “in a black car with out-of-state registration plates” and that Hall was wearing a “red hoodie.”

Det. Sidorowicz was given the names of Hall and Flanagan the morning after the shooting.⁵ He was able to obtain Flanagan’s phone records and observe that Flanagan “was in regular contact with” Hall, including on the day of and the day before the shooting. He

⁵ Following defense counsel’s objection and a bench conference, the parties agreed that Det. Sidorowicz would not testify about the source of the information.

also obtained a “mobile ping order”⁶ to determine the location of Hall and Flanagan in real time and to arrest them.

He executed a search warrant at the home of Darius Woodland, where Hall had been staying, and found “a rental . . . like an inspection form, and a manual for a gray Nissan Versa that was rented by Enterprise Rent-A-Car” in a bedroom downstairs. The Nissan referenced in the paperwork was rented to an individual named Amber Smith at the time of the shooting. The police seized that vehicle, which had a Massachusetts license plate, and photographed it. Det. Sidorowicz explained that the rental car paperwork was significant because W. “advised that she witnessed [Flanagan] and [Hall] utilizing a black Nissan Versa with Massachusetts plates[.]” He acknowledged that the car seized by the police was “dark silver, like a grayish” color, rather than black, and its license plate did not contain any yellow. Jessica Bernard, who participated in the search of Woodland’s home, also testified that she collected a “red and gray zippered jacket” (State’s Exhibit 47) and a “gray with red Nike zip-up jacket” (State’s Exhibit 48) in the bedroom.

The State introduced a hard drive containing the data extracted from the cell phones that belonged to Hall, Flanagan, and Baker. Following a bench conference, the court admitted the physical hard drive into evidence, but with a “caveat” that the jury could not view the digital data it contained. The extraction data from Hall’s cell phone—including Hall’s GPS, chat, and device connectivity history—and isolated communications between

⁶ Det. Sidorowicz explained that “a mobile ping is a [c]ourt order that’s sent to the carrier provider of a phone number . . . with the purpose of getting periodic pings, giving us the location of that device that’s utilizing that phone number in real time.”

Hall and Flanagan were also admitted as separate exhibits. Those exhibits included the “chat messaging history” between Hall and Flanagan between June 13 and June 14, 2021 (State’s Exhibit 281);⁷ a GPS extraction report from Hall’s phone (State’s Exhibit 282); and a compilation of the “instant messages and chat history between” Hall and Woodland after the shooting, from June 15 to June 17, 2021 (State’s Exhibit 284). Det. Sidorowicz explained that the GPS data on Hall’s phone was “plugged into Geotime, a program that . . . essentially pings on a map to show you the exact location of that latitude and longitude.” Between 6:48 p.m. and 7:06 p.m. on the night of the shooting, Hall’s phone was at Chancellor’s Run Park.

The police recovered two firearms during the investigation, according to Det. Sidorowicz: one from Chancellor’s Run Park on the night of the shooting, and the other after Flanagan’s arrest. However, after these firearms were processed, he received a confirmation that “neither of th[e] firearms were the murder weapon.”

Alicia Quinn, a forensic scientist with the Maryland State Police, was accepted without objection as an expert in firearms identification and tool mark examination. Quinn testified that she had examined “two firearms, three fired casings, two bullet jacket fragments, and a lead bullet” in connection with the Chancellor’s Run Park shooting. According to Quinn, the three casings had been fired from the same gun but not from either of the two firearms that she examined.

⁷ At trial, the prosecutor explained that this document contains communications between June 13 and 19, and the appellant’s brief states the same; however, the actual exhibit admitted into evidence shows only communications from June 13 and 14.

Amber Smith, the individual named in the rental car paperwork, testified that she had rented the Nissan from Enterprise after a car accident in May 2021. During the timeframe of the shooting in June 2021, she parked the Nissan in a parking lot across from Enterprise, left the keys in the car, and went to Georgia with her boyfriend. Around that time, Smith and her boyfriend posted on Facebook that they were out of town. When Smith returned from Georgia, the rental car was parked in the same spot, and the keys were still in the same location inside the car. She denied noticing anything unusual about the car. Smith testified that her boyfriend and Hall are friends.

Chelsea Norris, Woodland’s fiancée, stated that she lives with Woodland and her three children. Norris recounted that Hall “live[d] with his mother” but occasionally came over to Woodland’s residence “just like the rest of the boys” and “[s]ometimes . . . would crash” there like “numerous other boys.” She stated that Hall and others would use the downstairs area or living room when they would “crash” at Woodland’s house. As for the “red and gray zippered jacket” (State’s Exhibit 47) recovered during the search warrant execution, Norris testified that it belonged to Woodland. Ms. Norris also confirmed that the “Nike zip-up jacket” (State’s Exhibit 48), also recovered from the search, was hers.

After the State concluded its case, Hall moved for judgment of acquittal as to all twelve charges, but the trial court denied the motion. The defense then rested without presenting any witnesses or evidence.⁸ Hall subsequently renewed his motion for acquittal, which was again denied by the trial court.

⁸ Hall, having been advised of his rights, also elected not to testify.

On the last day of trial, the State and defense counsel presented closing arguments. The jury deliberated and found Hall guilty on seven counts, including conspiracy to commit first-degree murder and related gun changes.

We shall include additional facts as necessary for our discussion of each issue.

DISCUSSION

I.

ADMISSION OF HEARSAY EVIDENCE

A. Background

Hall first challenges the admission of text message communications between Hall and Woodland in the days immediately following the shooting (State’s Exhibit 284). During trial, defense counsel argued that Woodland’s messages to Hall were inadmissible hearsay because those messages contained “assertions of fact” and came from “a witness who [is] not present, [and] is not capable of being cross-examined[.]” For example, defense counsel argued that Woodland’s statement, “I just don’t feel like he crossed the line for death, Bro.”—was an assertion of fact that Hall was involved in the murder. Counsel further averred, “[i]f we want to strike Mr. Woodland’s statements from this and introduce Mr. Hall’s statements, that’s one thing[.]” but it would be a “problem” to put on “both sides of the conversation” where an unavailable witness is making assertions of fact.

The State countered that Woodland’s messages were non-hearsay because they were being offered to show the effect on the listener (Hall), and without Woodland’s messages, Hall’s responses lacked necessary context. The State asserted that the courts have “routinely given the cautionary instruction in situations like this[.]”

The court agreed with the State, ruling that Woodland’s messages to Hall were admissible as non-hearsay to show the effect on the listener, but noted:

The jury is going to be advised that . . . Mr. Woodland’s portion of [the text message communication] is only being provided for them to understand the effect on Mr. Hall and his responses thereto and that the statements by Mr. Woodland are not to be considered for the truth of the statements themselves.

Before the text messages were published to the jury, Hall’s counsel renewed his objection and asked the trial court to give the limiting instruction. The court then provided the following limiting instruction to the jury: Woodland’s messages “are being provided to you only for the purpose of the effect on the listener and they’re not being offered for the truth of the matter. So when you review that, it’s only to help you assist you in understanding the responses that were made by the listener on this document[.]” Neither party objected to the trial court’s instruction.

The relevant portions of the messages that were presented to the jury are as follows:

[WOODLAND]:	Bruh ima tell you this and one time only if you care anything about my family you’d duck off. They on your line especially ar an it’s coming from a reliable source. I already know you had something to do with it so go to moms for a week I’m not ready sit around and let Alex thing happen to my house because of you. I’m telling you this if you want any support from me or anything gtf I’m not even playing at this point bruh this nothing to play With and you some put my family at risk. I’m asking you as brother. You duck off I’ll support you send you bread whatever bruh but this not something you take light. And if you do I’m forced to cancel the lease and put my family in a hotel. Your choice either that or I pack up and be outta here tomorrow.
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[WOODLAND]: I love you bro just please lay low imma ack you all the way anything you need but only if you moving smart. Your name out here super heavy and I gotta protect my family and YOUR included in that statement.

[HALL]: **Love ya more you right**

[HALL]: **You not wrong safety first**

[WOODLAND]: You need anything hit me bro I just talked to black ass. And brah I hope after this you smarten up like I did. Got nothing but love and went to war with my girl last night for you don't ever think it's throng different. It's just all for a better picture you don't see rn

[HALL]: It's all good better safe than sorry. YOU have nothing to worry about

[WOODLAND]: So far now but it's ain't nothing light so we can't take it light. If they can't get you who knows wha they'll do bro. Cant down play anything especially when I'm constantly getting calls

[HALL]: Like you said safety first bra mfs going say all types of shit outa anger they mad as shit I would be too shit they man got smoked they going say all types of shit[.]

* * *

[WOODLAND]: I just don't feel like he crossed the line enough for death bro. If he wanted shit hit he know too much it ain't hard. Keep him close, and I know as far as I'm in the picture he good plus o can't have that shot happen when he under my care

[WOODLAND]: I just don't get it tho bro, this had nothing to do with Twann and I respected you for doing it for him. . . . You can't be out here beefing and shooting shit and in wars and at the end of the day come home to FAMILY. . . .

[HALL]: **Has everything too do with twan an my lil folks Bj ik what team I play for team #Twan an they kno what they did fuck em. . . .**

[HALL]: That's dangerous waiting for him to come around naw naw I love my life he carried the shit out me lmao kill it's all good but I told you too talk to him from your thoughts but last night you sat there bra an ain't even tell em the fuckery he be doing

[WOODLAND]: It had something to do with the fight and brah the whole Twann shit all that! Cant be at my house ! You can't be out here in the streets doing what you do and coming back to my house cause it'll eventually catch up to you and we can't be a causality to your war idk how you don't see that shit

[WOODLAND]: Me personally I been talked to him about our personal shit we had going on that's why I paid from him but as far as the Geelch shit and everting else the talked on It too that's why the only hint was the shot between y'all

[WOODLAND]: And what it mean when you type all your s' s into 5' s.

[HALL]: **You right bro** I'll move smarter

(Emphasis added.)

During its closing argument, the State referenced the messages exchanged between Woodland and Hall, stating:

On June 16th, Darius Woodland sends that long string of text messages that you read yesterday. "I want you to duck off. Get out of my house. Don't bring this to my house. what you did^{l"} and I'll say it again, Darius doesn't say "you murdered him," right? He doesn't come around and say. You read the messages, but he says, "What you did, I'm getting multiple calls. This is my family that you have brought this to." [] Darius Woodland starts that texting with him on June 16th. You know from that text message

string that by the end of, I believe it was June 18th, it goes on for a couple days, where Woodland’s confronted him. And the Defendant says, “I got it. I need to be smarter.”

* * *

The text with Darius Woodland, “You right, Bro.” Woodland confronts them, as you read. They talk about the motive. Woodland says, “What was done,” to whoever Austin is, “wasn’t, did not justify what you did.” Then they had this discussion back and forth about the action of whatever happened to Twan that this justified Leonard Hall’s. Woodland, as you’ve read, disagreed. The Defendant says it was all for Twan. Then he has a discussion, “You need to move smarter. This was not right. What you did, what you did...” Darius Woodland tells him several times in that text message, “What you did,” “I know,” by the Defendant. [“]You right, Bro. I’ll move smart.” And this language is the same language that we’ll get to that the Defendant instructs Darius Woodland to do about showing up to Court (indiscernible).

* * *

It is not plausible, the State submits to you, that Darius Woodland is the shooter. You have these text messages and you’ve read them yesterday. He’s not confronting himself about being the shooter. He’s confronting the Defendant. “What you did, what you did. You can’t bring this home to my family.” He’s confronting the Defendant in the text messages, which are here, which at the end, the Defendant’s statement is, “You’re right, Bro. I need to move smart.”

(Emphasis added.) Hall did not raise any objection during the State’s closing argument.

B. Parties’ Contentions

Hall contends that despite the limiting instruction, the circuit court erred in admitting Woodland’s messages. Hall claims that in these messages, Woodland “declar[es] as fact that [Hall] killed Baker, expressing the repercussions Woodland faced as a result of [Hall]’s commission of the murder, and directing [Hall] what to do next[.]” According to

Hall, these out-of-court statements were “assertions of [Hall’s] guilt relied upon by the State for their truth” and therefore inadmissible hearsay.

The State counters that the circuit court did not err in admitting Woodland’s messages to Hall “because they were not offered in evidence as an assertion of Woodland to prove the truth of the matter.” In response to Hall’s argument that it urged the jury to consider Woodland’s statements for their truth, the State argued that it only “highlighted Hall’s *responses* to Woodland’s accusatory messages—the precise limited purpose for which Woodland’s text messages were admitted.” The State also emphasizes that the jury is presumed to understand and follow the court’s instructions, and that Hall did not rebut this presumption.

C. Legal Framework

Hearsay and Non-Hearsay

Maryland Rule 5-801(c) defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” “Maryland Rule 5-802 prohibits the admission of hearsay, unless it is otherwise admissible under a constitutional provision, statute, or another evidentiary rule.” *Wallace-Bey v. State*, 234 Md. App. 501, 536 (2017). When a hearsay objection is raised, we ask two threshold questions: “(1) whether the declaration at issue is a ‘statement,’ and (2) whether it is offered for the truth of the matter asserted.” *State v. Young*, 462 Md. 159, 170 (2018) (quoting *Stoddard v. State*, 389 Md. 681, 688-89 (2005)). Thus, where, as here, the declaration undisputably qualifies as a statement, “if it is not offered for the truth of the matter asserted, it is not hearsay and it will not be excluded

under the hearsay rule.” *Id.* (citations omitted). Whether a declaration is hearsay is an issue of law that we review without deference to the trial court, *Bernadyn v. State*, 390 Md. 1, 8 (2005), “but the factual findings underpinning this legal conclusion . . . will not be disturbed absent clear error[.]” *Gordon v. State*, 431 Md. 527, 538 (2013).

An out-of-court declaration offered to show its effect on the listener, rather than to prove the truth of the matter asserted, does not constitute hearsay. *Burgess v. State*, 89 Md. App. 522, 538 (1991). Indeed, “a statement that is offered for a purpose other than to prove its truth is not hearsay at all.” *Ashford v. State*, 147 Md. App. 1, 76 (2002) (quoting *Hardison v. State*, 118 Md. App. 225, 234 (1997)). A statement may be offered to show its effect on the listener by, among other things, “provid[ing] needed context for the responses of the other party to a conversation, who is often a party-opponent of the proponent of the evidence.” 6A Lynn S. McLain, *Maryland Evidence: State and Federal* 245-46 (3d ed. 2013); see also *Ezenwa v. State*, 82 Md. App. 489, 514 (1990) (agreeing with the State’s argument that out-of-court statements from a third party were admissible “only insofar as they provide a predicate for assessing the appellants’[] reaction and the meaning of appellants’[] statements”). Accordingly, where an out-of-court statement “was offered to show not the truth of the thing asserted, but simply to show that the appellant heard that assertion and reacted to it[.]” that statement may be admitted as non-hearsay. *Ashford*, 147 Md. App. at 77.

It is also well-established that “statements can have both hearsay and non-hearsay uses.” *Young*, 462 Md. at 178 (citation omitted); see *Bernadyn*, 390 Md. at 15 (stating that evidence can be offered for both hearsay and non-hearsay purposes). Therefore, when an

out-of-court statement is inadmissible to prove the truth of the matter asserted therein but is admissible for another purpose, “the court should either exclude the evidence or make clear that the evidence is admitted for a limited purpose.” *Young*, 462 Md. at 181 (quoting *Bernadyn*, 390 Md. at 15). As such, counsel is put “on notice that the evidence is admissible, *albeit* for a limited purpose, and may then request a limiting instruction.” *Bernadyn*, 390 Md. at 15. Once the trial court gives the limiting instructions, “[i]n the absence of evidence to the contrary, . . . jurors are generally presumed to follow the court’s instructions.” *Donaldson v. State*, 200 Md. App. 581, 595 (2011).

Hearsay Exception for Adoptive Admissions

Even if a statement was offered to prove the truth of its assertion and thus constitutes hearsay, it may be admissible if it “satisfie[s] an exception under the hearsay rule.” *Bernadyn*, 390 Md. at 18. As pertinent to this appeal, adoptive admissions of a party opponent are admissible under Maryland Rule 5-803(a)(2), which provides as follows: “[a] statement that is offered against a party and is: . . . A statement of which the party has manifested an adoption or belief in its truth” is not excluded by the rule against hearsay, regardless of the declarant’s availability. “In many, if not most, circumstances, a trial court’s decision about whether a person made an adoptive admission will be factual.” *Gordon*, 431 Md. at 539. “Even if there is no dispute about *what* was said or done, the decision of whether there was an adoptive admission may still be factual when the circumstances allow different inferences depending on the trial court’s interpretation of those facts.” *Id.* at 540. Therefore, when we review admissibility of evidence as an adoptive admission, “the question is not whether the evidence before the judge clearly

proved that the person against whom the statement was admitted unambiguously adopted the statement” but “whether ‘there is sufficient evidence from which a jury *could* reasonably conclude that the defendant unambiguously adopted another person’s incriminating statement.’” *Id.* at 547.

D. Analysis

Applying the above principles to the issue presented in this appeal, we hold that the trial court did not err in admitting Woodland’s messages because they did not constitute inadmissible hearsay.

At the outset, we must keep in mind that the messages between Woodland and Hall contained highly relevant admissions by a party opponent, admissible under Maryland Rule 5-808(a)(1). It is clear that Hall’s messages cannot be understood without the context provided by Woodland’s messages to which Hall was responding. Although Hall fails to identify in which message Woodland “declar[es] as fact that [Hall] killed Baker,” Hall’s “you right bro” responses are not relevant without the preceding messages that mention “beefing and shooting[,]” “wars[,]” and “cross[ing] the line enough for death.” Woodland’s statements, such as, “I just don’t feel like he crossed the line enough for death bro[,]” and “you can’t be out here beefing and shooting shit” were not introduced to establish whether Woodland felt that the person in question had, in fact, “crossed the line enough for death.” Rather, those messages were admitted into evidence to provide context for assessing Hall’s reaction and the meaning of Hall’s response that “[h]as everything to do with twan an my lil folds Bj ik what team I plan for[.]” *See Parker v. State*, 408 Md. 428, 438 (2009) (“[A] relevant extra judicial statement is admissible as non[-]hearsay when

it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statements are true.”) (internal quotation marks and citations omitted); *United States v. Lewisbey*, 843 F.3d 653, 685 (7th Cir. 2016) (holding that the text messages the defendant received from a third party were admissible when “admitted not for the truth of the matter asserted but instead to provide context for [the defendant’s] own messages”).

Indeed, consistent with our decisional law, the trial court made it clear that Woodland’s messages were only offered to show the effect on the listener, in this case, Hall:

[T]he Court is going to allow [the text messages between Woodland and Hall] to be presented to the jury, but with the cautionary instruction. The jury is going to be advised that it is only being -- **Mr. Woodland’s portion of it is only being provided for them to understand the effect on Mr. Hall and his responses thereto and that the statements by Mr. Woodland are not to be considered for the truth of the statements themselves.**

(Emphasis added). *See Young*, 462 Md. at 181 (noting that when an out-of-court statement is inadmissible to prove the truth of the matter asserted therein but admissible for another purpose, “the court should either exclude the evidence or *make clear that the evidence is admitted for a limited purpose*” (emphasis added)). Subsequently, after Hall’s counsel renewed his objection to the text messages, the court gave a cautionary instruction to the jury, expressly stating that Woodland’s statements were being published “only for the purpose of the effect on the listener, and they’re not being offered for the truth of the matter.” *See id.*; *Bernadyn*, 390 Md. at 15. Notably, Hall never challenged the adequacy of the trial court’s cautionary instruction regarding the limited use of Woodland’s messages, and

nothing in the record suggests that the jury failed to follow the court’s instruction. See *Donaldson*, 200 Md. App. at 595 (“In the absence of evidence to the contrary, . . . jurors are generally presumed to follow the court’s instructions.”).

We also agree with the State that during closing arguments, it did not urge the jury to consider Woodland’s statements for their truth, but rather, presented Woodland’s statements to highlight Hall’s responses. As noted, Hall raised no objection to the mentioning of Woodland’s statements during the State’s closing argument. See *Warren v. State*, 205 Md. App. 93, 133 (2012) (holding that “any issue as to the prosecutor’s remarks is not preserved for appellate review” where appellant raised no objection to the comments at issue during the State’s closing argument). In any event, even if Woodland’s messages were considered for the truth of the matter asserted, as Hall suggests, we conclude that those messages qualify for an exception to hearsay rule under Maryland Rule 5-803(a)(2) in that they show Hall manifested an adoption or belief in Woodland’s statements. For example, in response to Woodland’s statement, “I already know you had something to do with it so go to moms for a week[.]” Hall confirmed: “Love ya more you right” and “You not wrong safety first[.]” In response to Woodland’s statement, “You can’t be out here in the streets doing what you do and coming back to my house cause it’ll eventually catch up to you and we can’t be a casualty [*sic*] to your war idk how you don’t see that shit[.]” Hall agreed: “You right bro I’ll move smarter[.]” Thus, to the extent that Woodland’s text messages suggest Hall’s involvement in the shooting of Baker, the jury could reasonably find that Hall “unambiguously adopted” Woodland’s incriminating statements. *Gordon*,

431 Md. at 547. Accordingly, we conclude that Woodland’s statements were admissible under the hearsay exception for adoptive admissions.

In sum, the trial court did not err in publishing the text message communication between Woodland and Hall to the jury because Woodland’s statements were not being offered for the truth of the matter, and the court made it clear that the statements were admitted for a limited purpose by giving cautionary jury instructions. In the alternative, we conclude that those statements were admissible as a hearsay exception under Rule 5-803(a)(2) because they show Hall manifested “an adoption or belief in [the] truth” of Woodland’s statements.

II.

RESTRICTION OF HALL’S CLOSING ARGUMENT

A. Background

Hall’s second challenge stems from the admission of the hard drive containing the data extraction from the cell phones that belonged to Hall, Flanagan, and Baker. During trial, Hall’s counsel objected to its admission, noting that the hard drive contained large amounts of inadmissible digital evidence. Counsel then clarified that he had no objection to the admission of the hard drive as physical (rather than digital) evidence of the State’s investigation. The court sought confirmation from the State that there would be “no way for [the jury] to be able to start [] up” the hard drive and view its digital contents. With that caveat, Hall’s counsel withdrew his objection, and the court admitted the hard drive into evidence.

During Hall’s closing argument, defense counsel referred to the download of Hall’s phone and told the jury the following: “There’s no photographs of guns on his phone. There’s no conversations about guns. There’s no conversations about here’s the --[.]” At that point, the State objected and then the following discussion occurred during a bench conference:

[THE STATE]: There was a conversation about buying guns on his phone. *We didn’t introduce it*, which is why the whole extract doesn’t get introduced. So, it’s not there. It is in evidence, because they’ve extracted -- the extraction was -- and I’ll explain the whole text history. *We didn’t print it out because it’s not the time period*, but there is.

THE COURT: Okay.

* * *

THE COURT: **[Defense counsel], so the record is clear, did you know that there was communication on the phone regarding buying guns?**

[DEFENSE COUNSEL]: **Well, there was communication on the phone with a slang term, the Sheriff’s Office believes it’s related to a gun. There was not a certain (indiscernible) note that’s (indiscernible). There was in fact a gun interpretation made by the Sheriff’s Office.**

[THE STATE]: **There was clear impression that him and Flanagan talk about getting a gun.**

[DEFENSE COUNSEL]: The gun --

[THE STATE]: And specifically (indiscernible) that says, “He has it (indiscernible),” or he has (indiscernible).

THE COURT: Now, [defense counsel]:

[DEFENSE COUNSEL]: I don't have the exact language, but it's not, "let[s] go get a gun." It's something like a stick or a jug or something, slang term, I want for my boy. It is up for matter of debate. Now, there's a principle that says, I, Detective Sidorowicz believe this mean[s] "gun." That's obviously not a -- somebody can say, "This is significantly what one person means by this drug."

[THE STATE]: But Your Honor, it is evidence that there is a statement to the jury, said there was no evidence. The evidence is, which will be up to the jury to decide whether it's Defendant or not (indiscernible). And that's the language --

THE COURT: So what is the State asking?

[THE STATE]: I'm asking that the Court sustain the objection[.]

* * *

[DEFENSE COUNSEL]: **So, first off, closing arguments are not evidence. They can be instructed and already instructed. Obviously, the State showed the jury evidence, showed the jury of actual assertions, and I can to run up and jump and stop them from doing so.**

The Court excluded during this trial. I didn't ask the jury to determine new facts or new information that's (indiscernible). To the extent I should have said that the evidence doesn't show facts, and instead I said, "There is no evidence,[""] I can certainly clean it up in my further argument.

But for the State to argue (indiscernible), there was no argument introducing the facts or making determinations of evidence that is extraordinarily prejudicial.

THE COURT: But [defense counsel], it's not the State wanting to do that. It's addressing the fact

that we’ve just told this jury that there was no evidence on his phone about anything to do with guns, when in fact allegedly there’s evidence on his phone that had to do with guns that the State did not put into evidence but that the Defense knew existed.

[THE STATE]:

Well, it is in evidence because technically that portion is in evidence. So technically, it is in evidence, but we did not print out those text messages. Technically, just for the record, it is evidence, but there’s no way for the jury to see it.

* * *

THE COURT:

So [defense counsel], what is your proposed response?

[DEFENSE COUNSEL]:

That you give the general instruction that closing arguments are not evidence. That you members of the jury, the jury’s memory of the evidence controls. To the Court stepping in offensively trying to introduce more facts -- when the evidence is closed and it’s closing argument, we’re commenting on the evidence.

THE COURT:

So I don’t disagree that they have to respond to, I mean that their closings are not evidence and that their memory of the evidence is what controls. What I want to know is what is your belief as to the cure remedy about the statement being made to them that there was nothing on the phone when that’s an evidentiary issue that wasn’t presented to them?

[DEFENSE COUNSEL]:

They can determine (indiscernible) Counsel’s last statement, and I’ll rephrase it as, “there is nothing in evidence that shows a gun in his hand.”

[THE STATE]:

Technically that’s not true, because there is. It’s on the extraction. They can pull it in -

[DEFENSE COUNSEL]: Hold on a second.

THE COURT: But they're not -- number one agree, *the extractions are not readable and [the jury is] not going to be getting the software to be able to look at the extractions.*

[THE STATE]: He's taking. Letting him rephrase it --

THE COURT: *I'm not saying I agree with the rephrasing.*

* * *

[DEFENSE COUNSEL]: I can go back.

[THE STATE]: But we need to give an instruction to the jury about the misrepresentation in the first place.

[DEFENSE COUNSEL]: Obviously, if the State has cases they want us to look at, then let's get the cites and let's look at the cases. If there's a proposed instruction, let's see what the proposed instruction is. *This is highly irregular for the Court to jump in and start instructing the jury on disputed factual issues that are not in evidence.*

THE COURT: So, this is what I'm going to do. I'm going to instruct the jury to disregard the last statement made by the Defense Counsel. I'm going to advise them that the evidence is the evidence and their memory of the evidence is what controls in this case. I'm going to allow the State, when closing is done, if they want to make an argument as to some other instruction that should be given, I'll take it up at that point.

(Emphasis added.)

The court then provided the following curative instruction to the jury:

THE COURT: Ladies and gentlemen, I'm going to ask you to disregard the last statement made by Defense Counsel. That is not to be considered. The

evidence in this case is the evidence you are the ones that decide what the evidence shows or doesn't show, and your memory of the evidence is what controls in this case.

Hall did not object to this curative instruction.

B. Parties' Contentions

Hall contends that the trial court committed reversible error by sustaining the State's objection to his closing argument. Hall asserts that his closing argument was factually correct because "[t]here was *no evidence* before th[e] jury of any photographs of guns or conversations about guns on [his] phone." Although Hall does not deny that such photographs or conversations might "have been . . . retrieved from [his] phone," he emphasizes that those data were not admitted into evidence at trial and, therefore, the State's position improperly "conflat[es] the mere existence of information with what actually was *admitted at trial*."

Hall further claims that the court's curative instruction was prejudicial "both in its timing and its content." He argues that the instruction, given immediately after the State's objection and a bench conference, "implied that defense counsel had done something wrong and that it was a matter of great urgency[.]" and thus the trial court "improperly commented on the evidence and invaded the province of the jury[.]" According to Hall, if any curative instruction were needed, "it should have been *only* that the jury's recollection of the evidence controlled and that the closing arguments of counsel are not evidence."

In response, the State contends that the trial court properly sustained the objection because defense counsel's closing statement was "inaccurate" and "misleading[.]" The

State notes that both parties at trial “agreed that the phone extraction contained a discussion that may have alluded to a slang term for gun[,]” and yet defense counsel’s closing statement denied the existence of such a conversation “on [Hall’s] phone[,]” which was misleading. The State also avers that the trial court’s instruction was not an “improper[] comment on the evidence” or an intrusion on the jury’s role, as it merely reminded jurors to rely on their memory of the evidence. In the alternative, the State argues that even if the court erred in sustaining the objection and issuing its curative instruction, the error was harmless beyond a reasonable doubt.

C. Legal Framework

Standards Governing Closing Argument

A criminal defendant’s right to counsel under the Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, “entails the opportunity to present closing argument.” *Washington v. State*, 180 Md. App. 458, 471 (2008); *see also Herring v. New York*, 422 U.S. 853, 862 (1975) (“The Constitutional right of a defendant to be heard through counsel necessarily includes his right to have his counsel make a proper argument on the evidence and the applicable law in his favor[.]” (quoting *Yopps v. State*, 228 Md. 204, 207 (1962))). As the United States Supreme Court explained:

It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries’ positions. And for the defense, closing

argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant’s guilt.

Herring, 422 U.S. at 862.

Consistent with the fundamental importance of the right to present a closing argument, our case law recognizes that counsel have great latitude in their presentation of closing arguments. *Ingram v. State*, 427 Md. 717, 727 (2012). As a general matter, “[c]losing argument . . . does not warrant appellate relief unless it ‘exceeded the limits of permissible comment.’” *Anderson v. State*, 227 Md. App. 584, 589 (2016) (quoting *Lee v. State*, 405 Md. 148, 164 (2008)). Whether counsel exceeded these limits “depends on the facts of each case.” *Smith v. State*, 388 Md. 468, 488 (2005). Because the “trial court is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case[.]” the court has broad discretion in making such determinations, and we do not disturb the exercise of that discretion “unless there is a clear abuse of discretion that likely injured a party.” *Ingram*, 427 Md. at 726.

As to the scope of permissible closing argument, the Supreme Court of Maryland has instructed as follows:

As to summation, it is, as a general rule, within the range of legitimate argument for counsel to state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence; and such comment or argument is afforded a wide range. Counsel is free to use the testimony most favorable to his side of the argument to the jury, and the evidence may be examined, collated, sifted and treated in his own way. . . . Generally, counsel has the right to make *any comment or argument that is warranted by the evidence proved or inferences therefrom*[.]

* * *

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 to 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. [Counsel] may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. [Counsel] may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

Wilhelm v. State, 272 Md. 404, 412-13 (1974) (emphasis added), *abrogation on other grounds recognized in Simpson v. State*, 442 Md. 446, 458 n.5 (2015).

When counsel makes improper statements during closing argument, the trial court “must take effective action to overcome the likelihood of prejudice.” *White v. State*, 125 Md. App. 684, 710 (1999). The court may, for example, “inform[] the jury that the attorney’s words were improper, strik[e] the remarks, and instruct[] the jury to disregard them.” *Id.* (citing *Holbrook v. State*, 6 Md. App. 265, 270 (1969)). In “particularly egregious” cases, the court may also engage in “an open court chastising of the offending attorney, a strong, swift, and sure condemnation, a ‘stern rebuke,’ in order to assure that the jury is aware that the use of such arguments is out of bounds.” *Id.* (quoting *Wilhelm*, 272 Md. at 428).

Closing Arguments Regarding “Facts Not in Evidence”

More pertinent to the instant appeal, “it is within the scope of permissible closing argument for counsel to draw inferences from the evidence *admitted at trial*, which includes the ability to comment on an absence of such evidence[.]” *Mitchell v. State*, 408 Md. 368, 383-84 (2009) (emphasis added). For example, counsel may reference “negative

evidence” during closing argument, pointing out that “absent evidence 1) could have been obtained by routine and reliable means; and 2) the State’s failure to offer it [at trial] was unexplained.” *Ford v. State*, 73 Md. App. 391, 395 (1988). On the other hand, counsel is precluded from “stat[ing] and comment[ing] upon facts not in evidence or [] stat[ing] what he [or she] could have proven.” *Washington*, 180 Md. App. at 473 (quoting *Wilhelm*, 272 Md. at 413). As the Supreme Court of Maryland has recognized, “[a]rguing facts not in evidence is highly improper.” *Fuentes v. State*, 454 Md. 296, 319 (2017).

The line between a permissible comment on the absence of evidence and an impermissible assertion of facts not in evidence can be quite subtle, and yet critical, as illustrated by *Eley v. State*, 288 Md. 548 (1980), and *United States v. Hoffman*, 964 F.2d 21 (D.C. Cir. 1992) (per curiam).

In *Eley*, the defendant was prosecuted for multiple charges arising out of a shooting and subsequent carjacking. 288 Md. at 549, 551. Although multiple witnesses to the shooting identified Eley as the shooter, the victim of the carjacking could not identify him, and Eley also denied having been at the crime scene. *Id.* at 549-50. Notably, at trial, the State “neither listed nor presented any witnesses to discuss whether fingerprint tests had been performed on the [stolen] vehicle.” *Id.* at 550. During closing argument, defense counsel attempted to highlight that the State did not produce any fingerprint evidence, but the trial court intervened, stating, “You are not going to get a chance to talk about what didn’t happen. You must confine yourself to the arguments . . . about the evidence that existed.” *Id.*

On appeal, reversing the trial court, the Supreme Court of Maryland agreed with Eley that the court “went beyond limiting counsel from arguing facts outside the evidence” and “improperly precluded counsel from arguing the logical inferences from the facts and gaps in that evidence.” *Id.* at 551. The Court held that “where there is unexplained silence concerning a routine and reliable method of identification[,], especially in a case where the identification testimony is at least subject to some question, it is within the scope of permissible argument to comment on this gap in the proof offered.” *Id.* at 555; *see also Henderson v. State*, 51 Md. App. 152, 153 (1982) (stating the holding of *Eley* as “[p]ossible relevant evidence not introduced, or its absence explained, may be used against the State” in closing argument). Such comments, the Court reasoned, are relevant “to the strength of the prosecution’s evidence, or more specifically, to the lack of evidence[,],” potentially generating a reasonable doubt in the jury’s minds. *Eley*, 288 Md. at 553 (emphasis added). The Court concluded that it was therefore permissible for Eley to “establish the adverse inference . . . that his fingerprints were not on the car and, therefore he was not at the scene” by highlighting that the State failed to “introduc[e] evidence of his fingerprints on the car” without an explanation. *Id.* at 555-56.

As a noteworthy comparison, *Hoffman* illustrates the boundary that counsel may not cross in making closing arguments. In that case, Hoffman was prosecuted in a federal district court for several narcotics offenses after Amtrak police officers discovered and seized narcotics from his luggage. 964 F.2d at 22-23. At trial, Hoffman claimed the drugs belonged to an unknown train passenger who had been sitting next to him before the officers boarded the train. *Id.* at 23. None of the prosecution’s witnesses made any mention

of fingerprint evidence, and defense counsel did not cross-examine any of the witnesses on this point. *Id.* During closing argument, defense counsel asked the jury, “If [the Amtrak police officers] had told you the truth in this case, wouldn’t [they] . . . have sent [the drugs] to be examined for fingerprints?” *Id.* Counsel then stated, “I mean I wouldn’t be here making any argument at all if this bag containing cocaine had been examined by the police lab like they should have done.” *Id.* The trial court sustained an objection by the prosecutor and instructed the jury: “counsel may only argue evidence in the case, and there is no evidence of fingerprints. Therefore, I exclude that part of his argument. Disregard it.” *Id.*

On appeal, the United States Court of Appeals for the District of Columbia Circuit affirmed the trial court’s ruling, explaining as follows:

In this case, the only “evidence” on the fingerprint issue was purely negative—*i.e.*, the fact that the Government did not introduce any fingerprint evidence at all. As the Government concedes, the absence of such evidence is a relevant “fact” which properly could have been argued to the jury. Thus, it would not have been improper for defense counsel to point out to the jury that the government had not presented any evidence concerning fingerprints.

The record reveals, however, that Hoffman’s attorney attempted to go far beyond merely pointing out the lack of fingerprint evidence and arguing that its absence weakened the Government’s case.

* * *

Hoffman’s attorney moved from arguing fair inferences from the record to arguing the existence of facts *not* in the record—*viz.*, that the police did not look for fingerprints, that fingerprints could have been obtained from the plastic bags containing the narcotics and that standard police procedure required fingerprint analysis. Because neither defense attorney had laid any evidentiary foundation for those assertions—by, for example, asking one of the officers on cross-examination whether the plastic bags were (or could have been) tested for fingerprints, and whether standard procedure required such testing—Hoffman’s argument was improper. Accordingly, we hold that the District Court did not err, much less abuse its discretion, in refusing to permit the argument.

Id. at 24-25 (emphasis added) (internal citations and quotation marks omitted). In sum, because defense counsel’s closing argument relied on factual assertions not established by the record—*i.e.* that the police officers did not look for fingerprints even though they could have—rather than on the absence of fingerprint evidence, the Court found no abuse of discretion in limiting the argument. *See also Washington*, 180 Md. App. at 481 (“[T]here was no evidence in *Hoffman* that the government had tested the contraband for fingerprints. It was on that basis that the appellate court upheld the trial court’s refusal to permit the argument sought by the defense.”).

Eley and *Hoffman* collectively stand for the following principle: while defense counsel may comment on the absence of evidence to challenge the prosecution’s case during closing argument, they must refrain from claiming as a fact that the prosecution did not (or could not) find that evidence, unless such a claim is supported by the evidence presented at trial.

D. Analysis

With these principles in mind, we find no abuse of discretion by the trial court in sustaining the State’s objection to Hall’s closing statement. As noted, during closing argument, Hall’s counsel told the jury: “[t]here’s no photographs of guns on his phone. There’s no conversations about guns.” That statement did not simply remind the jury of the evidence missing from the State’s case; instead, it affirmatively suggested that there was “no conversation about guns” on Hall’s phone *at all*.

This assertion is not supported by the record. Just as there was no evidence at trial suggesting the existence of gun-related photographs or conversations on Hall’s phone, there was also no evidence indicating their non-existence. In fact, when the trial court asked defense counsel if he “kn[e]w that there was communication on the phone regarding buying guns[,]” counsel acknowledged that “there was communication on the phone with a slang term [that] the Sheriff’s Office believes [is] related to a gun.” We therefore conclude that defense counsel improperly stated facts not in evidence during closing argument.

We emphasize again the fine but clear distinction between commenting on absent evidence (which is permissible) and arguing facts not in evidence (which is impermissible). In *Hoffman*, while no fingerprint evidence was presented at trial, the record also lacked any indication that police officers had looked for—and failed to find—such evidence. 964 F.2d at 25. Accordingly, the D.C. Circuit held that when Hoffman’s counsel stated during closing argument that the police did not look for fingerprints “like they should have done[,]” *id.* at 23, counsel “moved from arguing fair inferences from the record to arguing the existence of facts not in the record.” *Id.* at 25. Similarly, Hall’s counsel’s assertion that his phone extraction did not contain “any conversations about guns” relied on factual assertions that were not in the record—*i.e.* that the State had searched for, and failed to find, conversations about guns on Hall’s phone. Indeed, counsel himself demonstrated an awareness of this distinction at trial, as he voluntarily offered to rephrase his statement from “There’s no photographs of guns on his phone” to “[T]here is nothing in evidence that shows a gun in his hand.”

We also conclude that the trial court took “effective action to overcome the likelihood of prejudice.” *White*, 125 Md. App. at 710. In *White*, we instructed that when facing counsel’s improper remarks during closing argument, trial courts may, among other things, “strick[e] the remarks, and instruct[] the jury to disregard them.” *Id.* That is precisely what the trial court did in this case. Moreover, following the trial court’s curative instruction, Hall failed to raise any objection, and therefore “any question regarding the content of the . . . instruction was not properly preserved for appellate review.” *Paige v. State*, 222 Md. App. 190, 200 (2015) (citations omitted); *see also* Md. Rule 4-325(f) (“No party may assign as error the giving [of] an instruction unless the party objects on the record promptly after the court instructs the jury[.]”).

Accordingly, we do not see any abuse of discretion by the trial court in limiting the defense counsel’s closing argument and instructing the jury to disregard the improper portion of it.

III.

SUFFICIENCY OF EVIDENCE

A. Parties’ Contentions

Finally, Hall contends that the evidence was legally insufficient to sustain his conviction for conspiracy to commit first-degree murder. According to Hall, the evidence was not legally sufficient because Hall and Flanagan discussed “no plans . . . overtly—or that could be inferred—about committing a murder—much less of whom, when, where, by what means, or what role each would play.” Hall also argues that “there was neither direct

nor circumstantial evidence” suggesting that he and Flanagan had a meeting of the minds to kill Baker, with Hall as the shooter and Flanagan as the getaway driver.

The State responds by arguing that Hall’s counsel failed to preserve his claim that the evidence was legally insufficient to convict him of conspiracy to commit first-degree murder. According to the State, “[a]t no time did Hall argue that the evidence was legally insufficient for the reason articulated on appeal—that the State failed to present sufficient evidence of an agreement between Hall and Flanagan to establish conspiracy.” In the alternative, the State asserts that there was legally sufficient evidence to sustain Hall’s conspiracy conviction, noting that Hall and Flanagan acted in a coordinated manner and messaged each other about “what type of vehicle they [would be] using . . . and where they [would] meet” before Baker’s shooting.

B. Preservation

In a criminal case tried by a jury, “the only way to raise and to preserve for appellate review the issue of the legal sufficiency of evidence is to move for a judgment of acquittal on that ground.” *Fraidin v. State*, 85 Md. App. 231, 244 (1991). Under Rule 4-324(a), a criminal defendant who moves for judgment of acquittal must “state with particularity all reasons why the motion should be granted.” A defendant “is not entitled to appellate review of reasons stated for the first time on appeal.” *Starr v. State*, 405 Md. 293, 302 (2008) (citations omitted). The defendant is required to “‘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.’” *Poole v. State*, 207 Md. App. 614, 632 (2012) (quoting *Arthur v. State*, 420 Md. 512, 522 (2011)). “[A] motion which merely asserts that evidence

is insufficient to support a conviction, without specifying the deficiency, does not comply with Rule 4-324 and thus does not preserve the issue of sufficiency for appellate review.” *Mulley v. State*, 228 Md. App. 364, 387-88 (2016) (alteration in original) (quoting *Johnson v. State*, 90 Md. App. 638, 649 (1992)).

The record demonstrates that Hall failed to preserve the issue of evidentiary sufficiency for our review. During Hall’s motion for judgment of acquittal, his counsel stated:

At this point, the Defense will move for judgment of acquittal as to all counts. We may have to go through, back to the records for this. **Number one we will move generally on sufficiency of the evidence**, that the State has not laid out a prima facie case.

(Emphasis added). Counsel also claimed that there had been no in-court identification of Hall, and that jurisdiction had not been established, *i.e.*, no witness testified that the shooting had taken place in St. Mary’s County. The trial court denied Hall’s motion for acquittal. As for Hall’s argument on sufficiency of evidence, the court stated:

With regard to the sufficiency of the evidence argument that [defense counsel] makes, there is obviously, [defense counsel] I think has pointed out plenty of contradictions and what was said and when it was said, but I do think that those specific issues are for the trier [of] fact to evaluate and make a decision on.

The Court does believe that in considering what’s been presented by the State, that there is sufficient evidence that if believed by the jury that they could find the Defendant guilty of these charges beyond a reasonable doubt. So at this point, in a light most favorable to the State, the Court is going to deny the Motion for Judgment of Acquittal.

The court also determined that Hall had been identified in court during the trial and that jurisdiction had been established.

After the defense rested—without presenting additional evidence or testimony—Hall’s counsel renewed the motion for judgment of acquittal, stating that he would like to “renew and re-incorporate the arguments made previously.” Counsel offered no further arguments. The court denied the renewed motion, ruling that “[t]his is a case where I think it really is a factual issue,” “there’s been sufficient facts put forward for each of the individual counts in this case[,]” and “[w]hether or not the jury believes it is an issue for them[.]”

Hall’s requests for judgment of acquittal fail to satisfy Rule 4-324’s requirement that “[t]he defendant . . . state with particularity all reasons why the motion should be granted[,]” and therefore “do[] not preserve the issue of sufficiency for appellate review[,]” *Mulley*, 228 Md. App. at 387-88 (citation omitted). Other than stating that he would “move generally on sufficiency of the evidence,” Hall’s counsel only raised the issue of jurisdiction and in-court identification. Hall’s counsel mention any “ways in which the evidence should be found wanting” or “particular elements of the crime as to which the evidence is deficient.” *Poole*, 207 Md. App. at 632 (citation omitted). Certainly, Hall did not argue that the evidence was legally insufficient because the State failed to present sufficient evidence of an agreement between Hall and Flanagan to establish conspiracy to commit first-degree murder. Accordingly, Hall’s argument on appeal challenging the sufficiency of the evidence was not properly preserved.

**C. Even if Hall’s Challenge to the Sufficiency of the Evidence
Had been Preserved, the Evidence is Sufficient to Sustain the Conviction**

Conspiracy is a common law crime in Maryland. *Mitchell v. State*, 363 Md. 130, 145 (2001). The Supreme Court of Maryland has summarized the elements of a conspiracy as follows:

“A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The essence of a criminal conspiracy is an unlawful agreement. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown.”

Id. (quoting *Townes v. State*, 314 Md. 71, 75 (1988)). A conspiracy can be established by “circumstantial evidence from which an inference of common design may be drawn.” *McMillan v. State*, 325 Md. 272, 292 (1992) (citation omitted). We have explained why evidence of the concerted nature of the actions is key in establishing conspiracy:

In conspiracy trials, there is frequently no direct testimony, from either a co-conspirator or other witness, as to an express oral contract or an express agreement to carry out a crime. It is a commonplace that we may infer the existence of a conspiracy from circumstantial evidence. If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may, but need not, infer a prior agreement by them to act in such a way. From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence.

Jones v. State, 132 Md. App. 657, 660 (2000).

When assessing the sufficiency of the evidence to sustain a criminal conviction, we must “determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Howling v. State*, 478 Md. 472, 507 (2022) (quoting *State v. Manion*, 442 Md. 419, 430 (2015)); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Furthermore, “[w]here it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence.” *State v. Suddith*, 379 Md. 425, 447 (2004) (alterations in the original). Put differently, “the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have persuaded any* rational fact finder.” *Allen v. State*, 158 Md. App. 194, 249 (2004). Viewing the evidence before the trial court through this lens, we conclude that there was sufficient evidence to support Hall’s conviction for conspiracy to commit first-degree murder.

At trial, W. testified that Hall and Flanagan arrived at the park together and waited for Baker to finish playing a basketball game on the nearby court. Then, after W. “heard gunshots going off” and saw Baker “on the ground[,]” she saw Hall running back to the car driven by Flanagan, who then drove away with Hall. In addition, the State presented evidence of the conspiracy through the text messages exchanged between Hall and Flanagan on June 13 and June 14, 2021 (the day before and the day of the shooting).⁹ A total of 31 text messages between Hall and Flanagan, 29 of which were exchanged on the day of the shooting, were admitted at trial. The text messages show that, the day before the shooting, Hall told Flanagan, “Bet bra I’m in a Nissan grey joint.” On the day of the

⁹ Although the State’s brief only mentions the messages between Hall and Flanagan “on the day of the murder coordinating their meet up,” the evidence shows text messages exchanged on both days.

shooting, Flanagan texted Hall, “[t]he parking lot in the town homes[,]” to which Hall responded, “On my way!” Then Flanagan subsequently texted Hall, “Wya,” and Hall replied, “Maken this play bro I’m park ready slide.” See *Jordan v. State*, 246 Md. App. 561, 601 (2020) (finding evidence legally sufficient to support conspiracy when the appellant and co-conspirator arrived together to the shooting location, the co-conspirator was the getaway driver for the appellant after the shooting, and the duo exchanged at least 18 cell phone messages before and after the shooting, even though “[p]recisely what was said between the appellant and [the co-conspirator]” was not known).

Here, as in *Jordan*, there was ample evidence that Hall and Flanagan acted in concert on the day of the murder, and their text messages suggest that “[t]here was at least an abundant opportunity for them to have discussed . . . what was about to happen[.]” 246 Md. at 601. To be sure, the text messages they exchanged *before* the shooting do not specify their intention to murder Baker, and there is no text message exchange in the record *after* the shooting.¹⁰ Nonetheless, whereas “[p]recisely what was said between the appellant and [the co-conspirator]” was not known in *Jordan*, 246 Md. App. at 601, the text exchange here show that Hall and Flanagan discussed meeting at the parking lot before the shooting. When considered together with W.’s testimony about the conduct of Flanagan and Hall before and after the shooting, the messages demonstrate that Hall and Flanagan “act[ed] in what appears to be a concerted way” before shooting Baker, from

¹⁰ Although the State’s evidence originally included two text messages exchanged after the day of the shooting, the trial court sustained defense counsel’s objection to their admission.

which a reasonable jury could draw inferences about the conspiracy. *Jones*, 132 Md. App. at 660.

Viewing the evidence in the light most favorable to the State, we would conclude that even if the issue were properly preserved for our review, the evidence is sufficient to support the jury’s determination that Hall was guilty of conspiracy to commit first-degree murder.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ST. MARY’S COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**