Circuit Court for Baltimore City
Case No. 117342007

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1771

September Term, 2019

DEVON RICHARDSON

v.

STATE OF MARYLAND

Arthur,
Leahy,
Kenney, James A., III.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 24, 2022

Appellant, Mr. Devon Richardson, shot Mr. Elijah Johnson multiple times, killing him, following a heated altercation in the afternoon of October 26, 2017, on the corner of Benton Heights and Belwood Avenues in Baltimore City.

Mr. Richardson was arrested on November 2, 2017 and charged with killing Mr. Johnson. Over four days in June and July 2019, Mr. Richardson was tried by a jury in the Circuit Court for Baltimore City for murder, use of a handgun in the commission of a crime of violence, and possession of a firearm with a disqualifying conviction. He argued that the killing of Mr. Johnson was justified under theories of self-defense and defense of others. In the seconds before Mr. Richardson fired his weapon, he claimed that Mr. Johnson shot his sister, Sylvia, and was turning his body in Mr. Richardson's direction.

The jury convicted Mr. Richardson of first-degree murder, use of a handgun in the commission of a crime of violence, and possession of a firearm with a disqualifying conviction. He was sentenced to life imprisonment plus ten years.

Mr. Richardson presents two issues for our review, assigning error to the circuit court in the first:

> I. "Did the trial court err in allowing the State to impeach [Mr. Richardson] with his 12-year-old murder conviction?"

Having reviewed the record in this case under the applicable standard, abuse of discretion, we conclude the circuit court's decision to admit Mr. Richardson's prior conviction under Maryland Rule 5-609 was not an abuse of discretion. The second issue Mr. Richardson presents as:

II. "Did the State fail to prove that [Mr. Richardson] did not act in perfect or imperfect self-defense and/or defense of others?"

The State points out that Mr. Richardson had the burden at trial to prove that he acted in perfect or imperfect self-defense, or, in perfect or imperfect defense of others. The State reformulates the second issue in its briefing, therefore, as: "If preserved, is the evidence sufficient to sustain the conviction of first-degree murder?" We hold that Mr. Richardson did not properly preserve his sufficiency of the evidence claim, and, even if he had, the argument fails on its merits.

BACKGROUND

The following facts are derived from the evidence presented at Mr. Richardson's jury trial. We present the evidence in the light most favorable to the State. *Hayes v. State*, 247 Md. App. 252, 306 (2020) ("In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State."). We later supplement these facts in our discussion of the issues.

A. The State's Case

The Neighbor's Testimony

Ms. Jacqueline Moore, who lived at the corner of Benton Heights and Belwood Avenues, testified that Mr. Richardson, Mr. Johnson, and an individual named Tony went to the store to purchase beer around 10:00 a.m. at on the morning of the shooting. Later that afternoon, she looked out of a window facing her backyard because her dog was "barking real crazy." In her quick glance, she noticed a masked individual exiting an alley

near the rear of her home. As Ms. Moore went to let her dog in, she "heard a commotion" in her front yard and walked to her front door to see what was causing the "fussing." After opening the front door, she noticed that Mr. Johnson was sitting on her front steps with "six or seven other people . . . standing around him." She recognized several people in the crowd, including Mr. Richardson's sister Sylvia. Ms. Moore asked the crowd to leave and, moments later, she heard Mr. Johnson say, "Put down that gun" and "I'm gonna knock you out." In Ms. Moore's nine years of knowing Mr. Johnson, she had never heard that he carried or was known to carry weapons. Approximately ten or fifteen minutes after she heard Mr. Johnson make this statement, she went back outside to find him on the ground, shot multiple times.

Ms. Moore testified that she did not recognize the person in the mask and did not hear any arguing on the day of the shooting. However, the State offered a videotaped interview given by Ms. Moore several months after the shooting, which contradicted this statement. In the interview, Ms. Moore told Baltimore homicide detectives that Mr. Richardson was arguing with Mr. Johnson on the day of the shooting. When shown a photo array, Ms. Moore identified an individual and wrote "Devon argued with deceased person" on the piece of paper. She also noted that she saw Mr. Richardson put a mask on and identified him as the "shooter." Although the interview was not conducted under oath, Ms. Moore testified that to her knowledge, what she told the officers "was true."

On the day of the shooting, Ms. Mary Griffen, who lived approximately six houses from where the shooting took place, heard "loudness and arguments" as she arrived home

from work. In the months after the shooting, Ms. Griffen was diagnosed with stage one dementia; however, at trial her recollection was refreshed after she reviewed a statement given to police minutes after the shooting took place. Ms. Griffen testified that she heard Mr. Richardson say that he was "going to get a gun." then heard a "pop" and turned around to see "a guy on the ground and somebody running." Ms. Griffen testified that she saw Mr. Richardson running down Belwood Avenue toward Belair Avenue with what she assumed was a gun in his hand and that she did not see a gun around Mr. Johnson's body as he was lying on the ground.

Law Enforcement Testimony

Officer James Wynne was the first law enforcement officer on the scene of the shooting. At trial, the body camera footage of Officer Wynne's first seven-and-a-half minutes on the scene was admitted into evidence. It showed that he received a call for service in the 4000 block of Belwood Avenue between 3:00 and 4:00 in the afternoon and, immediately upon arrival, began "rendering [medical] aid" to Mr. Johnson. After the paramedics arrived, Officer Wynne conducted a "cursory look" of the scene to try and identify physical evidence. He marked several items, including spent shell casings and a "hat or mask." Officer Wynne did not identify any weapons in the vicinity of Mr. Johnson nor did he spot any blood trails. After the physical evidence was identified, Officer Wynne turned the investigation over to the Homicide Unit.

Detective Michael Moran, a Baltimore homicide detective, arrived at the scene around 4:25 p.m. After a quick briefing from Officer Wynne, Detective Moran expanded

the crime scene to include the alley behind Belair Road. Detective Moran spoke with Mr. Richardson's sister, Sylvia, who was sitting on the front steps of her grandmother's home on Belair Road. He observed that Sylvia "didn't seem to be injured," and she told him that she had not been shot.

Detective Moran testified that no firearms were found when Mr. Johnson's personal property was inventoried at Johns Hopkins Bayview hospital. According to Detective Moran, this inventory occurred within thirty minutes of the shooting. Additionally, Mr. Johnson's hands were not swabbed for gunshot residue because, "At no time was there any evidence that he was in possession of a handgun." Rather, Detective Moran testified that the evidence suggested that, "There was only . . . one shooter[.]"

Through his investigation, Detective Moran discovered several security cameras affixed to the rear of a funeral home adjacent to Mr. Richardson's grandmother's residence. Three of the four identified cameras were functional and continuously recorded different viewpoints of the alley abutting the rear of the Richardson home. The Baltimore Police Department was able to splice footage of the different cameras together to capture the majority of Mr. Richardson's movements in the minutes before the shooting.

Detective Moran explained that the security footage showed Mr. Richardson talking to his brother Darius in an alley behind his grandmother's house before the shooting. Mr. Richardson briefly went into the house before returning to the alley. The footage showed Mr. Richardson pacing around and then pointing what Detective Moran believed was a handgun in the direction of 4000 Belwood Avenue. Thereafter, Mr. Richardson, wearing

a full-face mask, proceeded to walk down the alley towards Belwood Avenue. Seconds later, Darius ran down the alley toward Belwood Avenue while Mr. Richardson's grandmother was "jumping up and down, pretty much hysterical" on the second-floor balcony of her home.

Forensic Expert Testimony

Around 3:50 p.m. on the day of the shooting, the Forensic Laboratory Section of the Baltimore Police Department was dispatched to the scene. Approximately one hour later, Ms. Zoe Krohn, then a crime lab technician in the Crime Scene Unit, arrived at the 4000 block of Belwood Avenue to process the evidence. At trial, Ms. Krohn described the crime scene through various pictures she had taken of Belwood Avenue and the adjacent alley, chronicling for the jury the locations of various pieces of evidence. She explained the various items that were collected, including a black beanie hat, a sweet tea bottle, a swab of blood, and various cartridge casings. Ms. Krohn testified that, although latent prints were found on the sweet tea bottle, she did not know the results of tests conducted on the prints nor did she know who the swabbed blood belonged to.

Dr. James Locke of the Maryland Medical Examiner's Office testified as an expert in the field of forensic pathology. He explained that Mr. Johnson's autopsy was performed by a fellow under his supervision. The cause of Mr. Johnson's death was determined to be homicide by eight gunshot wounds. Dr. Locke testified that the gunshots to the back of Mr. Johnson's head and neck and to the left side of his body were "rapidly fatal" meaning that death occurred "within seconds to minutes." Of the seven bullets extracted from Mr.

Johnson's body, Dr. Locke categorized two of them as "old" as they were oxidized, and had scar tissue around them, and no corresponding entrance wounds were located. He also noted that there were several abrasions and lacerations on Mr. Johnson's scalp, upper body, and elbows.

Mr. Christopher Faber, a firearms examiner in the Firearms Analysis Unit of the Baltimore Police Department, analyzed the firearm evidence related to Mr. Johnson's shooting. He was qualified as an expert in the field of "firearms examination, comparison and operability" and testified that this case had two categories of firearm evidence: (1) fired cartridges recovered from the crime scene, and (2) bullet specimens extracted from Mr. Johnson's body. Mr. Faber noted that he reached different conclusions regarding the two categories of evidence as it is not possible to match ammunition casings back to a bullet specimen. The four fired cartridge casings, Mr. Faber concluded, were fired from a .25 caliber automatic weapon. He was not able to conclude whether the four casings were fired from the same weapon but noted that this is not unusual because .25 caliber weapons often do not generate enough pressure to create "strong enough impressions to . . . impress against the breach face of the firearm."

Of the ten pieces of firearm evidence recovered from Mr. Johnson's body, Mr. Faber concluded that six were .25 caliber automatic bullets, two (older specimens) were .32 caliber automatic bullets, and two were bullet fragments. Mr. Faber was able to confirm that five of the .25 caliber bullets and one of the bullet fragments were fired from the same

.25 caliber weapon. He was not able to determine whether the .32 caliber bullets were fired from the same.32 caliber weapon because they "were oxidized and worn."

After the State rested its case, the circuit court denied Mr. Richardson's motion for judgment of acquittal.

B. Mr. Richardson's Case

Mr. Richardson first called his sister, Sylvia Richardson, to testify. Sylvia[1] recounted how she heard her brother and Mr. Johnson "fussing" from her grandmother's second story porch. To defuse the situation, she came down from the porch and proceeded toward Belwood Avenue. As she was trying to deescalate the verbal altercation, Sylvia claims that Mr. Johnson, who was standing behind her, grabbed her. Although she testified that she never saw him holding a gun, Sylvia claimed that Mr. Johnson subsequently shot her in her back. She testified that after being shot, she fell to the ground, began to feel pain in her back, and was bleeding. This all occurred, according to Sylvia, before Mr. Richardson shot Mr. Johnson. After hearing police sirens, Sylvia walked home, where she and her grandmother treated her wound. Although her grandmother advised her to go to the hospital, Sylvia did not seek any professional medical attention to manage her injuries. At trial, the defense published a scar on Sylvia's lower back as proof that she was shot.

According to Sylvia, minutes after being shot, Detective Moran approached her on the front steps of her grandmother's home and asked whether she was injured. After

[1] Because several members of the Richardson family testified at trial, we will refer to each by his or her first name, for clarity, and mean no disrespect thereby.

advising Detective Moran that she was not injured, she was taken to the police station for questioning.

Sylvia's testimony at trial conflicted with the statements that she made at the police station right after the shooting. At the station, Sylvia told Detective Moran that she did not know anything about a fight happening on the day of the shooting, that she never tried to break up a fight between her brother and Mr. Johnson, and that she had not seen Mr. Richardson outside near the scene of the shooting when it occurred. To the contrary, Sylvia advised Detective Moran that the shooter was wearing a mask and came out of nowhere to shoot Mr. Johnson. She testified that she lied during her interview at the police station because she was "afraid of what might happen to [her] brother."

Mr. Richardson's grandmother, Gloria Richardson, testified that on the day of the shooting, she was on her second-floor balcony when she saw a commotion between Mr. Richardson and Mr. Johnson. She recalled her granddaughter, Sylvia, going toward the crowd to defuse the situation. According to Gloria, when Sylvia confronted Mr. Johnson, he grabbed her and reached into his pocket, and then she saw both Mr. Johnson and Sylvia fall to the ground. After Sylvia "got up," Gloria noticed that Mr. Richardson had shot Mr. Johnson. When Sylvia returned to the house, Gloria cleaned Sylvia's wound and helped stop the bleeding.

Mr. Richardson testified in his own defense. He claimed that on the day of the shooting, he drove his green 2001 Buick Century from his residence in Owings Mills to his grandmother's house in Baltimore City. Later that afternoon, he had a "senseless

argument" with Mr. Johnson. Although he described Mr. Johnson as a "family friend," he was upset that Mr. Johnson had allegedly brought drugs into his grandmother's home. After approximately 35-40 minutes of arguing, Sylvia and another individual pulled Mr. Richardson aside and asked him to "walk away." Mr. Richardson testified that he was "willing to walk away as long as [he and Mr. Johnson came] to some type of agreement." Mr. Richardson stated that he simply "need[ed] clarity" and "need[ed] to know that [they] both ha[d] a full understanding." However, according to Mr. Richardson, Mr. Johnson had other things in mind, and the argument "escalated into something that nobody was prepared for." After the argument resumed, Mr. Richardson testified that Mr. Johnson grabbed Sylvia, shot her, and then turned his body in Mr. Richardson's direction. Because he was unsure of Mr. Johnson's intentions, Mr. Richardson "reacted" by shooting Mr. Johnson.

As will be explained in more detail below, on cross-examination, the State impeached Mr. Richardson with his 2007 second-degree murder conviction, and he admitted that he could not legally possess a firearm. He denied that he was the man caught on video pacing back and forth in the alley behind his grandmother's house and claimed that after the shooting he drove back to his residence in Owings Mills. He remembered calling Sylvia approximately twenty minutes after the shooting but does not remember where he discarded his firearm.

C. The Verdict

After the defense rested, the circuit court again denied Mr. Richardson's motion for acquittal. The jury subsequently deliberated for approximately two hours before

convicting Mr. Richardson of first-degree murder, use of a handgun in the commission of a crime of violence, and possession of a firearm with a disqualifying conviction. On September 18, 2019, Mr. Richardson was sentenced to life imprisonment for the first-degree murder conviction, a concurrent sentence of 20 years for the use of a firearm in the commission of a crime of violence conviction, and a consecutive sentence of 10 years, without the possibility of parole, for the possession of a handgun by a disqualified individual conviction. Mr. Richardson timely filed a notice of appeal on October 17, 2019.[2]

DISCUSSION

I. Impeachment by Prior Conviction

A. Background

Prior to *voir dire*, the State informed the circuit court of its intention to impeach Mr. Richardson, should he decide to testify, with his 12-year-old second-degree murder conviction. The State averred that the conviction was obtained "within the last 15 years" and that second-degree murder "is an impeachable offense." The defense argued that the danger of admitting a prior conviction so similar to the charges for which Mr. Richardson was about to stand trial far outweighed the conviction's probative value. Based on "human nature," the defense argued that the jury would speculate that Mr. Richardson was guilty of the charged crimes as he had previously been convicted of murder. The trial judge asked

[2] After filing a notice of appeal, on May 26, 2020, Mr. Richardson moved to have his appeal stayed because of the circumstances related to the COVID-19 pandemic. We granted the motion and stayed the appeal until Mr. Richardson moved to lift the stay on December 9, 2020.

the parties to try and "work it out" and noted that she would revisit the issue before Mr. Richardson elected whether he would, or would not, testify.

After the parties were unable to reach a decision, the court heard additional argument on the admissibility of Mr. Richardson's prior conviction immediately prior to his testimony. The State argued that despite the similarity of the convictions, admission was appropriate because much of the defense's case rested on the "credibility of Mr. Richardson[.]" The State also proffered that under *Jackson v. State*, 340 Md. 750 (1995), "the similarity of prior convictions does not require exclusion."

The defense reiterated that admission was not appropriate as the jury would be left with the impression that Mr. Richardson was guilty of murder because he has "in the past, killed someone, and been convicted of a murder." In lieu of impeaching Mr. Richardson with his prior homicide conviction, defense counsel averred that a stipulation acknowledging that Mr. Richardson had "been previously convicted of a crime under state law that would prohibit his possession of a regulated firearm" was sufficient to impeach his testimony. Additionally, defense counsel argued that the twelve years that had elapsed since Mr. Richardson's conviction diminished its probative value, but the trial judge noted that the conviction was obtained within the previous fifteen years, as required under Maryland Rule 5-609(b). After hearing argument, the trial judge ruled:

> [G]iven that the . . . murder took place, or the killing took place, ha[s] been conceded, and that this case turns on the factors that you raise in self defense, I'm going to allow the State to ask [about the prior conviction].

B. The Parties' Contentions on Appeal

Mr. Richardson argues that the circuit court abused its discretion by failing to articulate, on the record, that it considered the danger of unfair prejudice when ruling on the admissibility of his prior conviction. He also asserts, quoting *State v. Duckett*, 306 Md. 503, 511-12 (1986), that the conviction had "limited probative value" as it was a crime of violence, and therefore had "little or no direct bearing on honesty or veracity." In Mr. Richardson's view, the limited probative value was further diminished as the conviction was approximately twelve years old on the date of trial, which is "at the high end of the remoteness spectrum." Additionally, the similarity between the prior conviction and the crimes for which he was on trial, Mr. Richardson argues, greatly enhances the likelihood that the jury considered the prior conviction for an improper purpose. For these reasons, he posits that admission of his prior conviction "was [far] more prejudicial than it was probative." The prejudice of admitting his prior conviction, Mr. Richardson avers, was "intensified by the absence of a limiting instruction," as the jury was not instructed that the homicide conviction bore only on Mr. Richardson's credibility. Given that this case "boiled down to whether the jury believed that [Mr. Richardson] shot [Mr. Johnson] in self-defense or defense of others," Mr. Richardson claims that admission of his prior conviction was not harmless error.

The State counters that the circuit court "carefully considered all of the relevant factors" before ruling that Mr. Richardson's conviction was admissible. According to the State, the circuit court heard argument from both parties, including Mr. Richardson's

argument that the prior conviction was more prejudicial than probative." The court followed the arguments closely, interjecting questions, and heard the State's contention that admission of the prior conviction was proper as "credibility was key to the resolution" of this case as Mr. Richardson "was the only witness who testified that he saw the victim with a gun." In the State's view, admitting Mr. Richardson's prior conviction was not a "clear case of abuse" by the circuit court. Finally, although no limiting instruction was given, according to the State, the prejudice of this omission was diminished as "the prosecutor did not refer to [Mr. Richardson's] prior conviction . . . in closing argument."

C. Analysis

Our review of a circuit court's decision to admit a prior conviction for the purpose of impeaching a witness "is deferential." *King v. State*, 407 Md. 682, 696 (2009). If the record demonstrates that a circuit court exercised discretion under Maryland Rule 5-609, "appellate courts 'will not disturb that discretion unless it is clearly abused.'" *Brewer v. State*, 220 Md. App. 89, 107 (2014) (quoting *Jackson v. State*, 340 Md. 705, 719 (1995)). "Our determination of whether a trial court abused its discretion 'usually depends on the particular facts of the case [and] the context in which the discretion was exercised.'" *King*, 407 Md. at 696 (quoting *Myer v. State*, 403 Md. 463, 486 (2008)).

Maryland Rule 5-609 governs the admissibility of prior convictions to impeach a witness. It states, in relevant part:

> **(a) Generally.** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime

> or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.
>
> **(b) Time Limit.** Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.

Witness impeachment by prior conviction is intended "to assist the factfinder in measuring the credibility of the defendant." *Ricketts v. State*, 291 Md. 701, 703 (1981). However, Rule 5-609 is "designed to prevent a jury from convicting a defendant based on his past criminal record, or because the jury thinks the defendant is a bad person." *Jackson v. State*, 340 Md. 705, 715 (1995). The Rule establishes a three-part analysis which a circuit court must undertake prior to admitting a prior conviction:

> First, a conviction must fall within the eligible universe to be admissible. This universe consists of two categories: (1) infamous crimes, and (2) other crimes relevant to the witness's credibility. Md. Rule 5-609(a). Second, if the crime falls within one of these two categories, the proponent must establish that the conviction is less than fifteen years old. Md. Rule 5-609(b). Finally, the trial court must weigh the probative value of the impeaching evidence against the danger of unfair prejudice to the defendant. Md. Rule 5-609(c).

Id. at 712-13. When conducting this inquiry, the Court of Appeals has "urg[ed] trial judges to make such determinations after a hearing on the record . . . and to explicitly find that the prejudicial effect of the evidence to the defendant will be outweighed by its probative value." *Id.* at 717 (quoting *United States v. Mahone*, 537 F.2d 922, 929 (7th Cir. 1976)).

However, these hearings "need not be extensive" and trial judges are not "obliged to detail every step of their logic."[3] *Id.* at 717-18 (cleaned up).

Mr. Richardson's principal argument on appeal challenges the circuit court's application of the third step of the analysis, namely, whether it properly considered if "the probative value of admitting [the prior murder conviction] outweigh[ed] the danger of unfair prejudice to [Mr. Richardson]." Md. Rule 5-609(c). Before addressing this contention, we briefly explain why Mr. Richardson's prior conviction satisfies the first two steps of the analysis. Under Rule 5-609(a)(1), "infamous" crimes fall within the "eligible universe" of impeachable crimes. Md. Rule 5–609(a). The crimes considered "infamous" are "treason, common law felonies, and other crimes classified as *crimen falsi*." *King*, 407 Md. at 699. At common law, felony offenses included "*murder*, rape, manslaughter, robbery, sodomy, larceny, arson, mayhem, and burglary." *Jones v. State*, 217 Md. App. 676, 705 (2014) (emphasis added). Therefore, Mr. Richardson's second-degree murder conviction falls within Rule 5-609(a)(1)'s eligible universe as murder was a felony at common law, qualifying it as an "infamous crime." Additionally, Mr. Richardson was

[3] The Court of Appeals has endorsed the following guidance from the Seventh Circuit on how Rule 5-609 hearings should proceed:

> Bearing in mind that Rule [5-609] places the burden of proof on the government, the judge should require a brief recital by the government of the circumstances surrounding the admission of the evidence, and a statement of the date, nature and place of the conviction. The defendant should be permitted to rebut the government's presentation, pointing out to the court the possible prejudicial effect to the defendant if the evidence is admitted.

Jackson, 340 Md. at 718 (quoting *Mahone*, 537 F.2d at 929) (footnote omitted).

convicted in 2007, which was less than fifteen years before his 2019 trial. Md. Rule 5-609(b).

i. Consideration of Unfair Prejudice under Maryland Rule 5-609(a)(2)

Returning to the third step of the analysis, Mr. Richardson relies on the oft cited case of *Beales v. State*, 329 Md. 263 (1993), to support his argument that the circuit court did not assess the unfair prejudice of admitting his prior murder conviction. In *Beales*, the appellant, Mr. Beales, was tried and convicted in the Circuit Court for Baltimore City for battery and carrying a deadly weapon with intent to injure. *Id.* at 267. As part of its cross-examination, the State wished to impeach Mr. Beales with a prior theft conviction. *Id.* at 268. Interestingly, this trial occurred only one week after the Maryland Court of Appeals adopted Maryland Rule 1-502, the predecessor to Maryland Rule 5-609.[4] Prior to the adoption of Rule 1-502, witness impeachment by prior conviction was governed by Maryland Code (1973, 1989 Repl. Vol.), Courts and Judicial Proceedings Article, § 10-905, which established that "infamous crimes" were "admissible per se for impeachment purposes." *Beales*, 329 Md. at 269. In stark contrast to its predecessor, Rule 1-502 required "a preliminary determination of probativeness and potentially unfair prejudice for *all* convictions used to impeach credibility." *Id.* at 270 (emphasis in original). Instead of

[4] Former Rule 1-502, which was rescinded on July 1, 1994, and current Rule 5-609 are "nearly identical." *State v. Woodland*, 337 Md. 519, 521 n.1 (1995). Rule 5-609 replaced Rule 1-502 as part of the Court of Appeals's effort to consolidate Maryland's evidence law, as it had previously "consisted of a grab bag of statutory provisions, rules of practice and, primarily, common-law precedent." Alan D. Hornstein, *The New Maryland Rules of Evidence: Survey, Analysis and Critique*, 54 Md. L. Rev. 1032, 1032–34 (1995).

conducting the balancing test required by the new rule, the trial judge in *Beales* found that the State "ha[d] a right" to ask Mr. Beales about his prior conviction and for "the answer [to be] before the Jury." *Id.* at 268.

The Court of Appeals reversed and held that "viewed as a whole, the trial court's elliptical remarks [did] not sufficiently demonstrate that it assessed the relative weights of probative value and prejudicial danger." *Id.* at 273. The circuit court erred in finding that the State had a "right" to introduce Mr. Beales's prior conviction as "Rule 1-502[], by design, differ[ed] from earlier Maryland law in that it abandon[ed] every vestige of per se admissibility regarding evidence of prior convictions for the purposes of impeachment." *Id.* at 273. Further, the circuit court's failure to ascertain the remoteness of the prior theft conviction, which was fourteen years old on the date of trial, "indicate[d] strongly that it adhered to the former law of impeachment permitting per se use of convictions of infamous crimes no matter how remote." *Id.* at 274. Therefore, the Court of Appeals determined that the circuit court "was not yet familiar with, and did not appropriately apply, the new rule that had gone into effect only the week before." *Id.*

We view *Beales* as inapposite to the present case. Unlike the trial judge in *Beales*, here, the trial judge never insinuated that Mr. Richardson's prior homicide conviction was *per se* admissible. Rather, both before and during Mr. Richardson's trial, the circuit court heard argument on the admissibility of the prior murder conviction. During these arguments, defense counsel was given multiple opportunities to argue that introduction of the prior conviction would be "highly prejudicial" given its similarity to the murder charges

for which Mr. Richardson was on trial. During defense counsel's presentation, the court interposed several questions concerning what unfair prejudice could result from the admission of Mr. Richardson's prior conviction. Specifically, the court highlighted that the parties stipulated that Mr. Richardson has a prior conviction that prohibits him from possessing a firearm. The circuit court also heard argument from the State positing that the probative value of admitting Mr. Richardson's conviction was great, as Mr. Richardson's credibility was central to the resolution of the case. For example, he claimed that he had to shoot Mr. Johnson in self-defense or the defense of others. Also, there was no evidence that Mr. Johnson had a gun, and Mr. Richardson was the only person to testify that Mr. Johnson had a gun. Therefore, although the trial judge did not use the words "unfair prejudice" on the record, she admitted the prior conviction only after allowing both sides to argue what unfair prejudice may result from admission. Keeping in mind our "strong presumption that trial judges know the law," *Taylor v. State*, 473 Md. 205, 229 (2021), we hold that the record demonstrates that the court balanced the probative value of admitting Mr. Richardson's prior conviction against the danger of unfair prejudice, as required under Maryland Rule 5-609(a)(2).

We next evaluate whether the circuit court abused its discretion in finding that the probative value of Mr. Richardson's prior murder conviction outweighed the danger of unfair prejudice.

ii. Maryland Rule 5-609(a)(2)'s Mandatory Balancing Test

Our Court of Appeals has identified five factors that may serve as useful aids to circuit courts tasked with weighing the probative value of a past conviction against the danger of unfair prejudice. These factors are:

> (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the defendant's credibility.

Jackson, 340 Md. at 717 (citing *Mahone*, 537 F.2d at 929). These factors "should not be considered mechanically or exclusively" and a single factor should not be viewed "in isolation."[5] *Id.* at 717-18. Although no single factor is determinative of a prior conviction's admissibility, "[w]here credibility is the central issue, the probative value of the impeachment is great, and thus weighs heavily against the danger of *unfair* prejudice." *Id.* at 721 (emphasis in original).

In *Summers v. State*, this Court evaluated whether a circuit court properly admitted a prior conviction for possession of a controlled and dangerous substance with intent to distribute while the defendant was on trial for possession of cocaine and heroin. 152 Md. App. 362, 367-69 (2003). There, the trial judge noted that the remoteness of the prior conviction and the similarity to the crimes for which the defendant was currently on trial both weighed against admission. *Id.* at 369. However, the trial judge noted that "credibility

[5] In accordance with these precepts, courts in this State have long held that "the similarity of the prior conviction to the offense charged does not, absent other considerations, require exclusion." *Jackson*, 340 Md. at 718.

[was] a central issue" and, therefore, exercised his discretion to admit the prior convictions. *Id.* at 369. On appeal, we noted that a central facet of the defense strategy was to challenge the credibility of the officers involved in arresting the defendant. *Id.* at 371. The defendant testified that "the officers 'fibbed' . . . and that they made a mistake in arresting him." *Id.* Although several of the relevant factors, including the remoteness of the prior conviction and the similarity of the prior conviction to the crimes charged, weighed against admission, we found no error in "in the court's ruling that the probative value of admitting the evidence outweighed the danger of unfair prejudice" as the defendant's "credibility was central to the case, and . . . the jury's verdict would depend on whether it believed [the defendant] or the police officers." *Id.*

Likewise, in *Brewer v. State*, Mr. Brewer appealed after the circuit court admitted several prior drug possession and manufacturing convictions in his trial for possession with intent to distribute cocaine and heroin. 220 Md. App. 89, 94, 104 (2014). Mr. Brewer's counsel argued that "the prior convictions, which were unrelated to the accusations at hand, 'added very little to the State's case while engendering grave prejudice to [Mr. Brewer.]'" *Id.* at 106. The State, on the other hand, argued that credibility "was a central issue in the case, and its resolution 'boiled down to whether the jury believed the testimony of the police officers or the contradictory testimony' of appellant." *Id.* As in *Summers*, we agreed and noted that "[b]ecause [a]ppellant's testimony directly contradicted the State's witnesses' version of the events, credibility was an issue in the case." *Id.* at 109. Therefore, we held that "the trial court, to the extent the convictions were admitted for impeachment

purposes, would not have abused its discretion by denying appellant's motion to exclude." *Id.* at 108.

We agree with Mr. Richardson that the similarity of the prior conviction to the charges for which he was on trial and the remoteness of the prior conviction weigh against admission. However, given that his credibility was unquestionably central to this case, we cannot say that the trial court abused its discretion by admitting Mr. Richardson's prior second-degree murder conviction. We explain.

At trial, Mr. Richardson advanced theories of self-defense and defense of others to justify his killing of Mr. Johnson. To succeed on these theories, the jury would have to believe that Mr. Richardson had "an *objectively reasonable* belief" that someone "was in apparent imminent danger of death or serious bodily harm from" Mr. Johnson, "requiring the use of deadly force." *Wallace-Bey v. State*, 234 Md. App. 501, 531 (2017) (emphasis in original) (quoting *State v. Peterson*, 158 Md. App. 558, 586 (2004)); *Lee v. State*, 193 Md. App. 45, 58 (2010). To find that Mr. Richardson reasonably believed that he and Sylvia were in "imminent danger" that required "the use of deadly force," the jury would have to accept Mr. Richardson's testimony that Mr. Johnson grabbed Sylvia, shot her, and was turning his body and gun toward Mr. Richardson. Similar to *Summers* and *Brewer*, where the appellants' "testimony directly contradicted the State witnesses' version of events," Mr. Richardson's testimony contradicted several State witnesses, as well as the forensic evidence suggesting that "[t]here was only . . . one shooter[.]" *Brewer*, 220 Md. App. at 109. Given that the jury's verdict depended on whether it believed Mr. Richardson

or the State, Mr. Richardson's credibility was central to the case, making the probative value of his prior conviction great, while weighing "heavily against the danger of *unfair* prejudice." *Summers*, 152 Md. App. 362 at 370 (emphasis in original) (quoting *Jackson*, 340 Md. at 721). Additionally, Mr. Richardson's testimony was extremely important as he, Sylvia, and their grandmother Gloria were the only eyewitnesses to testify, and Mr. Richardson was the only witness to state that he saw Mr. Johnson with a gun. In these circumstances, we hold that the trial court did not abuse its discretion by admitting Mr. Richardson's prior murder conviction.[6]

[6] On appeal, Mr. Richardson argues that the circuit court erred by not issuing an instruction directing the jury that his prior conviction should be considered exclusively for its impeachment value, and not as substantive evidence of his guilt. This Court has previously held that "[w]hen a former conviction is admitted for the purpose of impeachment, the party against whom it is admitted is generally entitled to a limiting or cautionary instruction, advising the jury that the evidence may only be considered on the issue of credibility[.]" *Whitehead v. State*, 54 Md. App. 428, 430 (1983). Here, however, Mr. Richardson concedes that his trial counsel "did not request such a limiting instruction." Maryland Rule 4-325(f) is clear that "[n]o party may assign as error the giving or failing 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." Therefore, because it was not properly preserved, we do not address this contention. Additionally, in a case that presented almost identical circumstances, we declined to find plain error. *See Fischer v. State*, 117 Md. App. 443, 459 (1997) (declining to find plain error after appellant failed to object to the circuit court's omission of an instruction directing the jury to consider his prior conviction only for impeachment purposes).

II.

Sufficiency of the Evidence

After the State rested its case in Mr. Richardson's trial, defense counsel moved for a motion for judgment of acquittal. Counsel noted that he was making a "general argument at [that] point, or general motion and submit[ed] without argument in terms of whether or not the State ha[d] made a prima facie case at th[at] point in time." The State chose not to respond and submitted on the "testimony and evidence presented." After noting that it considers the evidence in the light most favorable to the State when ruling on motions for judgment of acquittal, the circuit court briefly recounted the evidence presented by the State before denying the motion. The court recounted that:

> The State has put on evidence through the testimony of Dr. Locke that Mr. Elijah Johnson was killed by multiple gunshot wounds, so that is the cause of death, and that the manner of death was homicide. That evidence has come in. It has been uncontradicted.
>
> The State has also put on evidence through the testimony of witnesses and through body camera footage and through video footage from the area that Mr. Johnson was shot in the street in the afternoon of October the 26th, 2017, that it was somewhere between 3:00 and 3:30 in the afternoon when he was shot. The medical personnel and police personnel responded, attempted to aid but that he succumbed to his injuries. That earlier in the day Mr. Johnson [was] with some other people, including the Defendant had been in and about the area. That Mr. Johnson had a loud, verbal conversation with one or more people on that day, and between video evidence and testimony, there are people who put Mr. Richardson on the scene at the time and place of the incident and who put an object in Mr. Richardson's hand which is believed to be a handgun, and the manner of death is multiple gunshot wounds from a firearm. So considering the evidence in the light most favorable to the State, given that the State has established the cause and manner of death, the date and time of the death, the location of the death and has a suggestion that Mr. Richardson was involved in that death, the Defense Motion is respectfully denied.

After Mr. Richardson concluded his case, defense counsel again moved for judgment and noted that this motion would be "similar to the initial motion." He argued that Mr. Richardson, through his testimony as well as the testimony of Sylvia and his grandmother, had proven that Sylvia was shot. Defense counsel argued that the testimony established that after Sylvia was shot, Mr. Richardson was forced to react, as it appeared that Mr. Johnson was turning his attention toward Mr. Richardson. Defense counsel chose to "submit without any further argument" as it was his "understanding" that this case presented issues that were proper "for the Jury to establish." After a brief rebuttal from the State, the circuit court ruled that Mr. Richardson was not entitled to judgement as a matter of law, and noted that the issues presented in this case "go[] to the trier of fact, which is not me; which is the Jury, in terms of what evidence they believe or what they don't believe."

A. The Parties' Contentions

Mr. Richardson contends that the State failed to disprove, beyond a reasonable doubt, that he acted in self-defense or defense of others. In his view, a review of the evidence presented at trial demonstrates that the shooting of Mr. Johnson was "justified under the circumstances."

In response, the State argues that Mr. Richardson's sufficiency claim was not preserved, as his counsel did not "'state with particularity all reasons' why a motion for judgement of acquittal should be granted," as required by Maryland Rule 4-324(a). In the State's view, even if defense counsel did preserve the sufficiency issue, he abandoned it by

conceding "that the State had generated issues of fact that required the case to be decided by the jury."

On the merits, the State avers that Mr. Richardson's self-defense and defense of others claims raised questions of fact to be decided by the jury. Given that the jury was free to disbelieve the testimony that Mr. Richardson shot Mr. Johnson in self-defense or defense of Sylvia, the State claims that the evidence presented was sufficient to support a conviction for first-degree murder.

B. Preservation

We agree with the State that Mr. Richardson did not properly preserve his sufficiency challenge for appellate review. Maryland Rule 4-324 governs motions for judgment of acquittal in jury trials and provides, in relevant part:

> **(a) Generally.** A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment of acquittal shall be necessary. A defendant does not waive the right to make the motion by introducing evidence during the presentation of the State's case.
>
> * * *
>
> **(c) Effect of Denial.** A defendant who moves for judgment of acquittal at the close of evidence offered by the State may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the defendant withdraws the motion.

The language of Rule 4-324 "is mandatory, and review of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal." *Whiting v. State*, 160 Md. App. 285, 308 (2004) (citations omitted). A

defendant must specify "the ways in which the evidence should be found wanting and the particular elements of the crimes as to which the evidence is deficient." *Starr v. State*, 405 Md. 293, 303 (2008) (quoting *Fraidin v. State*, 85 Md. App. 231, 244-45 (1991)). "Choosing to 'submit' without articulating reasons to support acquittal is a waiver of any appellate challenge to the sufficiency of the evidence." *Peters v. State*, 224 Md. App. 306, 353 (2015). These requirements are designed toto "enable the trial judge to be aware of the precise basis for the defendant's belief that the evidence is insufficient." *Warfield v. State*, 315 Md. 474, 487 (1989). No Maryland case has ever "utilized the plain error doctrine to reverse a trial judge's denial of a motion for judgment of acquittal when the ground raised on appeal was never advanced before the trial court[.]" *McIntyre v. State*, 168 Md. App. 504, 528 (2006).

At the conclusion of the State's case-in-chief, Mr. Richardson moved for judgment of acquittal but made only a "general argument" or a "general motion" and submitted, in defense counsel's words, "without argument in terms of whether or not the State has made a prima facie case at this point in time." By submitting without argument, defense counsel did not meet Rule 4-324(a)'s instruction to "state with particularity all reasons why the motion should be granted." Defense counsel did not state which charges the motion included and did not cite specific elements of the charges as to which the State had presented insufficient evidence.

At the close of all the evidence, Mr. Richardson again moved for judgment of acquittal. Defense counsel noted that this motion would be "similar to the initial motion."

Although he argued that the evidence showed that Mr. Johnson shot Sylvia and that Mr. Richardson "reacted" to Mr. Johnson "turning his attention towards him with a loaded weapon in his hand," he did not argue with particularity that the State's evidence was insufficient to disprove that Mr. Richardson acted in self-defense or defense of Sylvia. Rather than particularizing his argument, defense counsel chose to "submit without any further argument" as it was his "understanding" that this case presented issues that were proper "for the Jury to establish." Thus, this second motion for judgment of acquittal was likewise deficient as it did not state with particularity which charge(s) it addressed, nor did it identify the elements on which the State allegedly presented insufficient evidence. Without specifying which of the three charges against Mr. Richardson the motion referenced, or which elements lacked sufficient evidence, defense counsel did not enable "the trial judge to be aware of the precise basis" for the motion. *Warfield*, 315 Md. at 487. Given that neither of Mr. Richardson's motions for judgment of acquittal particularized why the circuit court should find the State's evidence insufficient as a matter of law, as required by Maryland Rule 4-324(a), we hold that his sufficiency of the evidence argument was not properly preserved for our consideration.

C. The Merits

Had Mr. Richardson preserved his sufficiency of the evidence argument, we would not reverse his convictions. When reviewing the sufficiency of the evidence, we ask "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." *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)). We "do not second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010). This "deferential standard recognizes the trier of fact's better position to assess the evidence and credibility of the witnesses." *State v. McGagh*, 472 Md. 168, 194 (2021) (citing *Smith*, 415 Md. at 184-85).

The State charged Mr. Richardson with first-degree murder. A murder is committed in the first degree if it is "a deliberate, premeditated, and willful killing[.]" Md. Code (2002, 2012 Repl. Vol., 2018 Supp.), Criminal Law Article, § 2-201(a)(1). Mr. Richardson relies on theories of self-defense and defense of others to justify his killing of Mr. Johnson. In Maryland, self-defense comes in two varieties: perfect or imperfect (partial).[7] *Wallace-Bey v. State*, 234 Md. App. 501, 530 (2017) (citing *State v. Smullen*, 380 Md. 233, 251 (2004)). A claim of perfect self-defense requires of the following elements:

> (1) The accused must have had reasonable grounds to believe himself in *apparent* imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
>
> (2) The accused must have in fact believed himself in this danger;

[7] While perfect self-defense is "a complete defense to murder," imperfect self-defense "mitigates the offense from murder to voluntary manslaughter." *Wallace-Bey*, 234 Md. App. at 530-32. The elements of imperfect self-defense are similar to those of perfect self-defense except that they do not require that the defendant had "an *objectively reasonable* belief that [the defendant] was in apparent imminent danger of death or serious bodily harm from the assailant, requiring the use of deadly force." *Id.* at 531 (emphasis in original) (quoting *State v. Peterson*, 158 Md. App. 558, 586 (2004)). Rather, imperfect self-defense requires that the defendant had an "honest but unreasonable belief" that he or she was in imminent danger. *Id.* at 531 (quoting *Porter v. State*, 455 Md. 220, 235 (2017)).

> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
>
> (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

Id. at 531 (emphasis in original) (citing *State v. Smullen*, 380 Md. 233, 252 (2004)). Similarly, Maryland law recognizes perfect and imperfect defense of others. *Lee v. State*, 193 Md. App. 45, 59 (2010). To establish perfect defense of others, a defendant must have "held a subjectively genuine and objectively reasonable belief that he had to use force to defend another against immediate and imminent risk of death or serious harm *and* the level of force he used was objectively reasonable to accomplish that purpose[.]"[8] *Id.* at 55 (emphasis in original) (citing Judge Charles E. Moylan Jr., *Criminal Homicide Law*, 194 (2002)).

In homicide cases, the State enjoys an initial presumption that the killing was "not justified, not excused and not mitigated." *Gilbert v. State*, 36 Md. App. 196, 200 (1977). Therefore, to raise a self-defense or defense of others defense, the invoking party has the "burden of initially producing 'some evidence'" to overcome the initial presumption. *Wilson v. State*, 422 Md. 533, 541 (2011). After "some evidence" is produced, "the State [] assumes the burden of disproving, beyond a reasonable doubt, the defensive issue which

[8] Like a perfect defense of others defense, to establish imperfect defense of others, the invoking party must have "held an actual belief that he had to use force to defend another." *Lee*, 193 Md. App. at 59. However, under a theory of imperfect defense of others the "belief was not objectively reasonable and/or the level of force he used was not objectively reasonable." *Id.* Similar to imperfect self-defense, imperfect defense of others mitigates "what might otherwise be murder down to the manslaughter level." *Id.* (citing Judge Charles E. Moylan Jr., *Criminal Homicide Law*, 193 (2002)).

has been generated," *Gilbert*, 36 Md. App. at 200, and "the defendant is entitled to a jury instruction explaining the elements of perfect or imperfect self-defense [or defense of others]," *Porter*, 455 Md. at 240 (citing *Dykes v. State*, 319 Md. 206, 215-16 (1990)).

In *Gilbert*, we explained how the dissolution of the State's initial presumption that a killing was not "not justified, not excused and not mitigated" impacts the legal sufficiency of a homicide conviction. 36 Md. App. 196, 200 (1977). In *Gilbert*, the physical facts were undisputed: appellant intentionally shot her husband in the chest. *Id.* at 198. At trial, and on appeal, appellant contested "her state of mind as she pulled the trigger." *Id.* On appeal, we noted that appellant had produced "legally sufficient evidence to generate legitimate jury questions on the issues of both self-defense and provocation." *Id.* She argued that this showing entitled her to acquittal as a matter of law. *Id.* at 197-98. We disagreed and noted that dissolution of the initial presumption entitles the moving party to jury instructions on the defensive issues but does not, "generally speaking," entitle the defendant to "the total 'jackpot' of an acquittal as a matter of law." *Id.* at 197.

Judge Moylan, writing for the *Gilbert* Court, explained that "[a]bsent some legally sufficient indication to the contrary, [a] homicide will be presumed to be not justified, not excused and not mitigated." *Id.* at 200. Under the Due Process Clause of the Fourteenth Amendment, this presumption is constitutionally permissible as it shifts "to the defendant the burden of producing evidence sufficient to generate a genuine jury question as to one or more possible defensive issues" but does not "shift to the defendant the heavier burden of ultimate persuasion." *Id.* at 200. This presumption "dissipates or totally disappears . . .

as soon as the defendant has met his lesser burden of producing enough evidence to generate a genuine jury question." *Id.*

The *Gilbert* Court did note that there may be some exceptionally rare cases where the evidence on a defensive issue is so strong and uncontroverted that a defendant is entitled "to a directed verdict as a matter of law." *Id.* at 207. It explained that a directed verdict on a defensive issue is only appropriate only when

> all evidence points towards the existence of the defense and where nothing in the State's case, circumstantial or otherwise, controverts the defense in any regard, the evidence may be so clear and decisive as to leave no issue of fact and to generate a counter-presumption (not a mere jury issue)[.]

36 Md. App. at 206-07 (citing *Evans v. State*, 28 Md. App. 640, 728 (1975)). Absent these exceptional circumstances, the dissolution of a presumption simply "precludes a directed verdict in either direction and creates a genuine jury issue, which the fact finder may resolve in either direction (under appropriate instructions, in a jury case, and according to the appropriate burden of persuasion.)"[9] *Id.* at 203.

Ultimately, to convict a defendant, the factfinder "must be persuaded by all of the evidence that the defendant is guilty beyond a reasonable doubt." *Id.* at 206. On the facts in *Gilbert*, we held that "the trial judge, as fact finder, was entitled to disbelieve the evidence of both self-defense and hot-blooded provocation, as disbelieve he did." *Id.* at 210. Based on the evidence presented, namely that appellant clearly perpetrated the

[9] The *Gilbert* Court likened the dissolution of the initial presumption to "getting the ball out of [the defendant's] own 'end zone' and back onto the 'playing field.'" *Id.* at 203.

homicide, the trial judge was "permitted to infer both non-justification and non-mitigation." *Id.*

Mr. Richardson, through his own testimony, as well as the testimony of his grandmother and sister, carried his burden of presenting "some evidence" to overcome the initial presumption that the killing of Mr. Johnson was not justified, excused, or mitigated. Mr. Richardson testified that he shot Mr. Johnson after Mr. Johnson grabbed Sylvia, shot her, and turned his body and gun in Mr. Richardson's direction.[10] Much of this testimony was corroborated by his grandmother and Sylvia. As such, the trial judge instructed the jury on both self-defense and defense of others. While Mr. Richardson dissolved the initial presumption, viewing the entirety of the evidence in the light most favorable to the State, as we must when reviewing the sufficiency of the evidence, the evidence at trial was not "so clear and decisive as to leave no issue of fact and to generate a counter presumption" entitling Mr. Richardson to judgment as a matter of law. *Gilbert*, 36 Md. App. at 206-07.

Mr. Richardson admitted to shooting and killing Mr. Johnson, and Dr. James Locke testified that Mr. Johnson's death was a homicide by eight gunshot wounds. Additionally, two members of the neighborhood, Ms. Moore and Ms. Griffen, testified that they heard

[10] On cross examination, Sylvia acknowledged that she wanted the

> jury to believe that [she] sat and had a 25-minute conversation with Detective Moran and told him that there was no fight, [that she] didn't witness a fight and [she] didn't get shot and [her] brother was no[t] involved in the fight[.] And [she] want[ed] [the] jury to believe that [] there was a fight, [she] witnessed the fight. [Her] brother an[d] [Mr. Johnson] were arguing and [Mr. Johnson] is the one that shot [her].

Mr. Richardson arguing with Mr. Johnson and identified him as the person who shot Mr. Johnson. Through the testimony of Detective Moran, the State was able to introduce video of Mr. Richardson pacing around an alley abutting his grandmother's house, with what is believed to be a handgun, before proceeding to the scene of the shooting. Given this considerable evidence, had the issue been properly preserved, we would have held that the evidence, if believed, was sufficient to sustain Mr. Richardson's first-degree murder conviction. The trial judge correctly determined that the State and the defense had introduced competing evidence: the State asserting that Mr. Johnson's killing was not mitigated or justified; and the defense asserting that Mr. Richardson acted in self-defense or defense of others. Therefore, it was the province of the jury to determine which version of events to believe. *Gilbert*, 36 Md. App. at 205. The jury was well within its right to "to disbelieve the evidence of both self-defense and [defense of others], as disbelieve [it] did." *Id.* at 210. We will not second-guess the jury's determination that Mr. Richardson was not acting in self-defense or defense of others. *Smith v. State*, 415 Md. 174, 183 (2010).

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