

Circuit Court for Baltimore City
Case No. 119210003

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1999

September Term, 2023

CHARLES ANDERSON

v.

STATE OF MARYLAND

Arthur,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: March 11, 2026

*Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of stare decisis. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Baltimore City found Appellant Charles Anderson guilty of two counts of first-degree murder and various other offenses, all relating to the early morning murder and robbery of a couple on a street in Baltimore City. In this appeal, Mr. Anderson raises two issues concerning certain evidence admitted against him at trial.

First, several police officers familiar with Mr. Anderson identified him as the shooter in photos and videos derived from recordings by street surveillance cameras at the time of the murders. In a line of questioning that challenged those identifications, the defense cross-examined the lead detective as to whether the officers were under pressure from the police department to close cases quickly. The prosecution then adduced testimony from the lead detective that the department, as a matter of policy, required its officers to be cooperative and truthful with one another in connection with an investigation. In this appeal, Mr. Anderson challenges the admissibility of that testimony by the lead detective.

Second, the prosecution introduced into evidence several photographs of Mr. Anderson with handguns that had been taken, or posted on the internet, close in time to the murders. On appeal, he argues that the admission of those photographs was unfairly prejudicial.

As to the first question, we conclude that the defense did not preserve an objection to the detective's testimony about the content of the policy and the possible ramifications of violating it. In any event, the court did not abuse its discretion in admitting it. As to the second question, we hold that the defense objections to some of the photographs were waived and that, in any event, all of the photographs were admissible.

Accordingly, we affirm the judgment of the Circuit Court.

I

Background

At about 2:00 a.m. on July 2, 2019, two men followed Brittany Foster and Julien Rosaly as they walked down a sidewalk in Baltimore City. Nearby surveillance cameras recorded the incident and captured images of the two men as they followed the couple. Mr. Rosaly was shot, and Ms. Foster was robbed and then also shot at close range. They both died. The lead detective obtained video recordings from several surveillance cameras in the neighborhood and circulated screenshots from one of those recordings within the police department. Other officers in the department identified Mr. Anderson and Donyell Morris as the two men. They were arrested separately the day after the murders and charged with various offenses related to the murders. At the time of his arrest, Mr. Anderson was alone in Mr. Morris' car.

Mr. Anderson was tried before a jury in the Circuit Court for Baltimore City over several days in August 2023.¹ The evidence at trial consisted primarily of clips from surveillance camera recordings that showed two men stalking and murdering the victims, a recording of a 911 call from a witness reporting the murders, testimony by police officers as to how those men came to be identified as Mr. Anderson and Mr. Morris, testimony by the medical examiner and by the forensic technicians and experts who recovered and analyzed evidence recovered at the scene of the crime and from the car in which Mr.

¹ The trial of Mr. Anderson was delayed during a period in which he had been found incompetent to stand trial. *State v. Anderson*, Case No. 119210003 (Cir. Ct. Balto. City). By the time of Mr. Anderson's trial, Mr. Morris had pled guilty to two murder counts. *State v. Morris*, Case No. 119210004 (Cir. Ct. Balto. City).

Anderson was arrested,² photos depicting Mr. Anderson with handguns that were posted on social media or dated near the time of the murders, and a recording of a shouted conversation between Mr. Anderson and Mr. Morris while detained in separate rooms after their arrests. The defense cross-examined the prosecution’s witnesses, but otherwise did not present any evidence. Mr. Anderson elected not to testify.

On August 29, 2023, the jury returned its verdict finding Mr. Anderson guilty of two counts of first-degree murder as well as one count each of armed robbery; the use of a firearm in the commission of a crime of violence; the unlawful wearing, carrying, or transporting of a firearm; and conspiracy to commit those crimes. The Circuit Court later sentenced Mr. Anderson to consecutive life sentences for the two murder convictions, as well as an additional consecutive sentence of 20 years for the conviction relating to use of a firearm, while merging or imposing concurrent sentences on the remaining counts.

Mr. Anderson filed this timely appeal. We describe portions of the testimony and evidence at trial in greater detail below as they relate to the particular questions raised by Mr. Anderson on appeal.

II

Discussion

In his brief, Mr. Anderson poses the following two questions:

² In particular, a fingerprint analyst testified that fingerprints matching those of Mr. Anderson, Mr. Morris, and a third person were found on a vehicle belonging to Mr. Morris that had been observed in a recording from a surveillance camera and that was later seized by police.

1. Whether the court erred under *Spain* [*v. State*, 386 Md. 145 (2005)] in allowing a detective to improperly bolster police witness credibility by telling jurors there is a “departmental policy” requiring police to tell the truth and that detectives are “subject to termination” if they lie.
2. Whether the court erred under *Smith* [*v. State*, 218 Md. App. 689 (2014)] when, despite the gun used in this case being neither found nor identified, [the court] allowed jurors to view numerous photographs of Mr. Anderson brandishing firearms.

He argues that the Circuit Court erred in both respects and that his convictions should be reversed as a result.

We first discuss the scope of our review of the two questions posed by Mr. Anderson and the appropriate standard of appellate review. We then apply those principles in light of the particular trial testimony and exhibits that relate to each question.

A. *Scope and Standard of Appellate Review*

1. Scope of Review – Preservation of Objection

This Court will generally “not decide any ... issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Maryland Rule 8-131(a). In general, an issue is deemed to have been “raised in or decided by the trial court” when “[the] party, at the time the ruling or order is made or sought, [has made] known to the court the action that the party desires the court to take or the objection to the action of the court.” Maryland Rule 4-323(c). If a party does not make either an objection or the desired action known to the court when the evidence is offered for admission (or as soon as the grounds for objection become apparent), the claim or issue has not been preserved for appellate review. Maryland Rule 4-323(a); *see also Lopez-Villa v. State*, 478 Md. 1, 12 (2022); *Huggins v. State*, 479 Md. 433, 446 (2022). These rules ensure fairness to all

parties and promote the orderly administration of the law by providing a trial court with the opportunity to consider the merits of the objection at a time when any necessary curative measures can be taken. *See Vangorder v. State*, 266 Md. App. 1, 37 (2025).

An objection is also waived “if the same or similar evidence is admitted without objection at another point in the trial.” *DeLeon v. State*, 407 Md. 16, 31-33 (2008) (objection to a witness’ improper expert testimony was waived after multiple similar questions were asked without objection); *see also Yates v. State*, 429 Md. 112, 120 (2012) (“Our appellate courts will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury without objection through the prior testimony of other witnesses.”) (internal quotation marks and citation omitted); *Jackson v. State*, 230 Md. App. 450, 462-64 (2016) (an objection to testimony about the detective’s position within a homicide unit was waived because she had testified twice without objection that she worked in the homicide unit); *Benton v. State*, 224 Md. App. 612, 627-29 (2015) (an objection to an informant’s hearsay statement was waived where the subject matter of the statement was admitted without objection through a different witness).

In a criminal case, “[t]he grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs.” Maryland Rule 4-323(a); *see also Bazzle v. State*, 426 Md. 541, 560 (2012). However, in furtherance of the principle that the trial court should be apprised of the grounds of an objection in time to address it on its merits and take any curative measures, a party that specifies its reasons for objecting to the evidence is deemed to have waived any grounds that it has not stated. *See, e.g.,*

Klaunberg v. State, 355 Md. 528, 541 (1999) (where the defendant specified that his objection related “to the broadness of the question and not as to the content,” his contention that the testimony was inadmissible “bad acts evidence” was waived for appeal).

Rule 8-131 does not necessarily confine this Court’s review of a trial court’s ruling to the grounds on which the trial court relied. When the record “adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm. In other words, ““a trial court’s decision may be correct although for a different reason than relied on by that court.”” *State v. Sewell*, 463 Md. 291, 316 n.7 (2019) (quoting *Robeson v. State*, 285 Md. 498, 502 (1979)).

2. Standard of Review – Evidentiary Rulings

A trial court’s assessment that evidence is admissible is comprised of two determinations, each subject to its own standard of appellate review. First, the evidence must be “relevant.” *See* Maryland Rule 5-402. “Relevant evidence” is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Maryland Rule 5-401. A trial court’s determination on relevance presents a legal question, so an appellate court addresses that component of a trial court’s ruling *de novo*. *Akers v. State*, 490 Md. 1, 24 (2025).

If the trial court finds the evidence to be relevant, it must then determine whether the probative value of the evidence is not “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue

delay, waste of time, or needless presentation of cumulative evidence.” Maryland Rule 5-403. The trial court’s determination on that question is subject to review for abuse of discretion. *Akers*, 490 Md at 25. An abuse of discretion occurs only when “no reasonable person would take the view adopted by the circuit court.” *Williams v. State*, 457 Md. 551, 563 (2018).

B. Whether Testimony Referring to a “Truth-Telling Policy” Was Admissible

The first issue raised by Mr. Anderson pertains to testimony adduced by the prosecution from the lead detective on redirect examination that the police department required its officers to cooperate truthfully with one another in investigations. Mr. Anderson asserts that the lead detective’s testimony improperly “bolstered” officer testimony identifying Mr. Anderson as one of the assailants shown in surveillance video recordings of the murders. To place the challenged testimony in context, we first describe the surveillance recording evidence and the testimony identifying Mr. Anderson.

1. The Surveillance Videos

The prosecution introduced surveillance video recordings through its first witness – Detective McCoy, the lead detective assigned to the case.³ Detective McCoy testified that he was dispatched to the location of the murders on July 2, 2019, that he arrived after the victims had been transported to the hospital, and that patrol officers directed him to the crime scene and to bullet casings that they had gathered. He stated that bystanders were at the scene, but that the police could not identify any eyewitnesses among them. The police

³ With the trial court’s permission, the prosecution later also called Detective McCoy as its last witness – when the allegedly improper testimony occurred.

then canvassed nearby businesses to see whether any had surveillance cameras. Their canvass yielded recordings from cameras at four nearby locations: a health clinic, a CitiWatch closed-circuit TV camera, a corner store, and a pizza parlor.

Clips from the health clinic and CitiWatch recordings were admitted into evidence and played for the jury. Also admitted and played for the jury was a compilation of excerpts from all four recordings in chronological sequence. Detective McCoy narrated the videos as they were played for the jury.

Health clinic clips. The health clinic cameras captured images of the immediate area on multiple channels, each from a different angle. The State introduced an exhibit containing six clips from those cameras. The first clip showed two men, one dressed in a red hoodie and blue shorts, the other dressed in dark clothing, walking down an alley leading from Poplar Grove Street to Bloomingdale Road. The second clip showed the two men approaching the intersection of the alley with Bloomingdale Road and observing Brittany Foster and Julien Rosaly walking along Bloomingdale Road. The third clip showed the victims still walking, Ms. Foster carrying a red pocketbook across her shoulder, and the two men now walking behind her and Mr. Rosaly on Bloomingdale Road at some distance. The fourth clip showed Ms. Foster and Mr. Rosaly walking down the street, followed by the two men. It then showed the man in the red hoodie running back up the street towards the alley with the red pocketbook and, a little later, the other man in dark clothing running in the same direction with a gun in his hand. The fifth clip showed the two men following Ms. Foster and Mr. Rosaly more closely. After a brief pause in which no one was visible on the recording, Mr. Rosaly appeared to run into the street and then

fall to the ground, followed by Ms. Foster, who dropped to her knees. The clip then showed the man in the red hoodie take the pocketbook from Ms. Foster and run back towards the alley. Next, the camera captured the man in the dark clothing coming towards the camera and apparently shooting Ms. Foster in the head before she fell to the ground. That man also ran back towards the alley, holding a handgun.

CitiWatch excerpt. The CitiWatch recording showed the victims coming into the picture, the man in the red hoodie snatching the pocketbook from Ms. Foster's shoulder, and Ms. Foster struggling with him and then falling to the ground. Detective McCoy also identified and described a still photograph from that camera that showed a silver Acura traveling on a nearby street and away from the scene.

Compilation video. The jury was shown a compilation video that the prosecution had created by splicing clips from all four sets of recordings, thus adding clips from the grocery store and pizza parlor cameras, into a timeline. The compilation video lasts approximately six minutes. It shows the two men enter the alley that connects Poplar Grove Street to Bloomingdale Road. They peer down the alley as the victims crossed it on Bloomingdale. The two men then go down the alley and the man in the dark clothing pulls up a hood. The video shows Ms. Foster and Mr. Rosaly walking along the sidewalk on Bloomingdale Road, facing the camera, under some lights on a building. It shows the two men emerge from the alley and turn the corner onto Bloomingdale Road. They also face the camera under the lights. Both men's faces are clearly visible; the man in the dark clothing is not wearing a hood in that clip. The men then follow Ms. Foster and Mr. Rosaly. At longer range, the video shows the four figures at the end of the block. A struggle occurs

there as the man in the red hoodie takes Ms. Foster’s pocketbook from her shoulder. Mr. Rosaly collapses onto the street and Ms. Foster partially collapses. The man in red, with the pocketbook, runs back toward the alley alone, again facing a camera under the lights, while the man in the dark clothing doubles back to the victims, bends over Ms. Foster for several seconds and then runs away as she falls to the pavement. The man in dark clothing runs back up the street, facing the camera, under the lights, holding his hood up as he did so, with a gun in one hand. Finally, the video shows a light-colored car driving on Poplar Grove, past the alley.

2. Identification of Mr. Anderson and Mr. Morris as the Men in the Recordings

Detective McCoy’s Flyer

The prosecution called several witnesses to testify about how the police came to identify Mr. Anderson as the man in the dark clothing and Mr. Morris as the man in the red hoodie in the surveillance camera recordings. Detective McCoy testified that he did not recognize the men himself, so he circulated throughout the police department a flyer that showed two screenshots from the health clinic camera and asked whether anyone recognized the men. Two detectives responded that they recognized Mr. Anderson. Those detectives testified at trial.

Detective Simonyan’s Identification of Mr. Anderson

Detective Simonyan testified that he served as the police district’s “intel officer” and that his tasks included gathering information on the district from social media and daily crime reports and helping officers identify individuals. At the time of the murders, he was involved in a support capacity in investigations of activities in crime “hot spots”, including

along Bloomingdale Road. In that capacity, he had become familiar with Mr. Anderson both from internet sources and in-person observation of him. By July 2019, Detective Simonyan had been monitoring Mr. Anderson’s Instagram account for about seven months.

Detective Simonyan testified that he received Detective McCoy’s flyer by email and immediately recognized both men in the photographs.⁴ He went to the homicide section, where he was shown a clip from the health clinic video that showed the men walking down the street under a light. He again identified both men. Detective Simonyan also identified Mr. Anderson in the courtroom at trial.

Detective McGrath’s Identification of Mr. Anderson

Detective McGrath, the intelligence officer in a neighboring police district, also had responded to Detective McCoy’s flyer and testified at the trial. As the intelligence officer for his district, he monitored the internet, kept aware of crime trends, and assisted in the identification of suspects. When he received the flyer, he immediately recognized Mr. Anderson and Mr. Morris. Without objection from the defense, Detective McGrath testified that on July 1, 2019, the day before the shooting, he had seen a “very clear” video posted on social media that depicted Mr. Anderson and Mr. Morris wearing the same clothes as in the photos in Detective McCoy’s flyer. The men were depicted in a vehicle and both were “displaying suspected firearms.” Detective McGrath then described a screenshot from that video as showing Mr. Anderson with a silver and blue handgun.

⁴ Mr. Morris was also identified by another detective and a sergeant as the man in the red hoodie depicted in Detective McCoy’s flyer; each confirmed that identification when shown an excerpt from the health clinic camera recording. Neither could identify the other man shown in the flyer; neither knew Mr. Anderson.

Detective McGrath testified that the clothing worn by the men in the screenshot in Detective McCoy’s flyer caught his attention because, after the murders, on July 2 or 3, he had seen images of them posted on their social media wearing the same clothes.

Detective McGrath further testified that he went to the homicide section to make a statement and was shown the recording from the health clinic camera. After seeing that video, he had no doubts about the identification of Mr. Anderson and Mr. Morris as the men in the video.

Defense counsel, in very brief, almost identical, cross-examinations of Detective Simonyan and Detective McGrath, simply obtained admissions from both detectives that neither was on Bloomingdale Road at the time of the murders and thus did not witness the crimes directly.

Detective McCoy’s Identification of Mr. Anderson during his Arrest

The police arrested Mr. Anderson at an intersection of Bloomingdale Road on the day after the murder, driving a silver Acura owned by Mr. Morris. Detective McCoy testified that the Acura looked like the one in the compilation video. Detective McCoy further testified that when he saw Mr. Anderson on the day of the arrest, he had no doubt that Mr. Anderson was the person in the health clinic video. Detective McCoy identified Mr. Anderson in the courtroom as the person who had been arrested.

3. Questioning of Detective McCoy About Department “Policies”

After Detective Simonyan, Detective McGrath, and several other prosecution witnesses had testified, the prosecution called Detective McCoy as its last witness. During each of his two appearances on the witness stand, the defense cross-examined Detective

McCoy at length on what it suggested were shortcomings in the investigation: why DNA or fingerprint analyses had not been conducted on items found at the crime scene or in Mr. Morris' car, why the police had not sought to find out where Mr. Anderson resided and seek a warrant to search that place, why the police did not investigate a third person whose fingerprints had been found in the car, what the police department's policies for interviewing juveniles provided and whether the investigating officers were evading those policies,⁵ and whether the police were under pressure to resolve cases quickly.

The testimony on which Mr. Anderson bases his first issue on appeal came during the prosecution's redirect examination of Detective McCoy during his second appearance on the stand. The prosecutor first asked several questions apparently in response to the portion of the defense cross-examination suggesting that the police had violated or evaded police department policies related to the questioning of juvenile suspects. The prosecutor then turned to the identification of Mr. Anderson and elicited the following testimony:

Q The four detectives who did the identifications, Detective Simonyan, Detective McGrath, Officer Scott and Officer Ragin, all four of them, how did they convey the information to you that they could identify one or both of these suspects of Mr. Anderson and Mr. Morris?

A They either contacted by phone. I had my contact information on the flyer. So they contacted us, the unit.

Q Okay. And after that, what, if anything, are they required to do when they're identifying somebody believed to have been involved in a homicide?

A They gave a tape, an interviewed statement.

Q Okay. Is there any departmental policy about the truthfulness of giving a taped interview by a member of your department to a homicide detective?

⁵ Mr. Anderson had just turned 17 at the time of his arrest.

A Say it again, I'm sorry.

Q Is there any policy within the department about the need to be truthful

[Defense Counsel]: Objection.

Q -- with the police –

The Court: Overruled.

By [Assistant State's Attorney]:

Q -- when a police officer gives a statement of identification to a homicide detective?

A Yes.

Q And what is that policy?

A That they ought to cooperate with the investigation.

Q Okay. And as for truthfulness, are they required to be truthful?

A Yes.

Q Are they subject to termination if they lie?

A Yes.

Q In fact, did all four of them come in and give recorded statements to you?

A Yes.

The prosecutor then turned to another line of questioning.

4. Admissibility of Testimony on the Department's "Truth-Telling Policy"

Mr. Anderson argues that the prosecution improperly "bolstered" the testimony of Detective Simonyan and Detective McGrath concerning their identifications of Mr.

Anderson in the still shots by eliciting Detective McCoy’s testimony that the Police Department has a policy requiring officers to tell each other the truth and that violating that policy can result in adverse employment consequences. Specifically, Mr. Anderson argues that a witness’ status as a police officer is irrelevant to the witness’ credibility, citing *Spain v. State*, 386 Md. 145 (2005). In response, the State notes that the defense did not object to the question that elicited the information about the policy. In addition, the State responds that the prosecution elicited the testimony on its redirect examination of the detective, that *Spain* does not control the question because that case involved improper closing argument, not evidence, and, that any error was harmless anyway.

As is evident in the testimony quoted above, the defense objected in the middle of the prosecution’s question to Detective McCoy about whether the police department had a policy “about the need to be truthful.” The court overruled the objection. The prosecution then completed its question, which, in its entirety, was, “Is there any policy within the department about the need to be truthful ... with the police ... when a police officer gives a statement of information to a homicide detective?” The defense did not object to the question as completed. Detective McCoy answered the question in the affirmative. The defense also did not ask that the answer be stricken or that a curative instruction be given. The prosecution then followed up: “And what is that policy?” The defense did not object to that question, either. Nor did the defense object to the next two questions, which collectively elicited Detective McCoy’s testimony that the policy requires officers to tell the truth to homicide detectives and that they risk their jobs if they do not. Again, the defense did not ask the court to strike either the answer to those two questions or to give a

curative instruction.⁶ Under the principles governing preservation of objections to evidence outlined above, the issue raised in this appeal concerning this portion of Detective McCoy’s testimony was not preserved for our review.

In any event, the trial court did not err in admitting Detective McCoy’s testimony that the police department has a policy of requiring its officers to tell the truth to its homicide detectives. As a general rule, a trial court may not ““permit to go to the jury a statement, belief, or opinion of another person to the effect that a witness is telling the truth or lying.”” *Tyner v. State*, 417 Md. 611, 617 (2011) (quoting *Bohnert v. State*, 312 Md. 266, 277 (1988)). That rule does not apply to the circumstances of this case: Detective McCoy did not opine either on the other officers’ adherence to the policy when communicating with the homicide detectives or on his own view as to their credibility. Relatedly, a prosecutor may not argue to the jury that a witness’s status as a police officer

⁶ Perhaps the lack of an objection reflects the fact that a statement that a law enforcement agency requires its officers to be truthful and cooperative with one another in carrying out an investigation seems neither surprising nor controversial. What might be controversial, of course, is whether an officer complied with such a policy in particular circumstances. The defense cross-examination of Detective Simonyan and Detective McGrath, and the defense closing argument concerning their identifications, focused on the *perception* of the two intelligence officers rather than their *truthfulness* with Detective McCoy – *i.e.*, that the two intelligence officers had not personally been at the scene of the crime when it happened. To the extent the defense challenged the truthfulness of the officers who testified, its challenge related to the lead detective’s testimony about compliance with department policies concerning juvenile defendants and whether another officer perceived pressure from the department to close cases.

lends credibility to the witness’s testimony. *Spain*, 386 Md. 145. The prosecution did not make that argument in this case.⁷

C. Whether Photos of Mr. Anderson with Handguns were Admissible

Five exhibits introduced by the prosecution – Exhibits 19, 20, 31, 32 and 33 – contained screenshots from video recordings posted on social media or photographs from Mr. Anderson’s cell phone showing him with handguns. Mr. Anderson argues that these exhibits were irrelevant because the prosecution did not connect the guns shown in the photos to the murder weapon, that the exhibits were prejudicial, and that they were not admissible under Maryland Rule 5-404(b), which addresses the admissibility of evidence of “other crimes, wrongs or acts” – often referred to collectively as “other bad acts.”

1. Maryland Rule 5-404(b)

Maryland Rule 5-404(b) was derived from a similarly-numbered Federal Rule of Evidence, but it also “embodies” the Maryland common law of evidence that existed prior to its adoption in the 1990s by the Supreme Court of Maryland, then known as the Court of Appeals.⁸ *Odum v. State*, 412 Md. 593, 610 (2010); *Merzbacher v. State*, 346 Md. 391,

⁷ The prosecution did assert in its closing argument that the adverse consequences to the officers if they were to lie about Mr. Anderson’s identity lent credibility to their testimony. That argument might have implicated *Spain* had the defense objected to it. Even then, a careful reading of *Spain* shows that the argument in that case, unlike the argument in this case, was improper because it lacked a foundation in any evidence to the effect that those officers’ conduct was subject to a policy and because the argument “invok[ed] unspecified, but assumed, punitive consequences” that might befall a police officer who testified falsely. *Spain*, 386 Md. at 155-158.

⁸ The language of the rule was based on Federal Rule of Evidence 404(b) and was adopted effective July 1994 as part of Title 5 of the Maryland Rules of Evidence. Rules Order (December 15, 1993).

406 (1997). The principles set forth in the rule apply only to evidence of “other” acts – that is, evidence that is separate from the offense for which the defendant is on trial, as opposed to bad acts “that arise during the transaction and are intrinsic to the charged crime or crimes.” *Odum*, 412 Md. at 611; *see also State v. Faulkner*, 314 Md. 630, 634 (1989).

Rule 5-404(b) provides, as an initial general principle, that “[e]vidence of other crimes, wrongs, or acts ... is not admissible to prove the character of a person in order to show action in the conformity therewith.” The rule qualifies that principle by permitting the admission of such evidence for purposes other than propensity to commit crimes: “Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.”⁹

As is evident from the language of the rule, the list of “other purposes” in the rule, often referred to in the case law as “exceptions,” is not exclusive. Rather, the “so-called exceptions are helpful as classifications of those areas where evidence has most often been found admissible even though it discloses other bad conduct.” *Harris v. State*, 324 Md. 490, 497-98 (1991). By the same token, the admission of evidence bearing on an exception is not automatic: “[T]he party offering the evidence has a hurdle to overcome and must shoulder the burden of demonstrating relevance other than criminal character, as well as the burden of demonstrating that the probative value substantially outweighs the potential for unfair prejudice.” *Id.* at 500-01.

⁹ Rule 5-413, not pertinent here, concerns evidence of sexually assaultive behavior.

Accordingly, a trial court addressing a timely objection to “other bad acts” evidence must determine (1) whether the evidence is “relevant to the offense charged on some basis other than mere propensity to commit crime”; (2) whether “there [is] clear and convincing evidence that the defendant participated in the alleged acts”; and (3) whether “the probative value of the evidence substantially outweighs its potential for unfair prejudice.” *Skrivanek v. State*, 356 Md. 270, 291 (1999) (internal quotation marks and citations omitted); *see also Browne v. State*, 486 Md. 169, 178 (2023). Only the first and third requirements are at issue here, as Mr. Anderson does not contest that the photos in question depicted him with the handguns. On appeal, a trial court’s ruling on relevance is subject to review *de novo*, and its assessment of the probative value of the evidence versus the potential for unfair prejudice is subject to review for abuse of discretion. *Faulkner*, 314 Md. at 634-35.

2. Testimony Concerning the Exhibits

a. Photos posted on Social Media: Exhibits 19 & 20

Exhibit 19

As noted above, Detective Simonyan testified that, in his role as district intelligence officer, he had monitored Mr. Anderson’s Instagram account during periods both before and after the murders. According to Detective Simonyan, one of the reasons he had been monitoring Mr. Anderson’s account in the months preceding the murders was that Mr. Anderson “had posted several firearms.”

Without objection from the defense, the prosecution asked Detective Simonyan to identify a document that the prosecution had pre-marked as State Exhibit 19 that was displayed on the courtroom document viewer. Detective Simonyan identified it as a photo

that Mr. Anderson posted on his Instagram account of himself with five firearms. Exhibit 19 depicts the man whom Detective Simonyan identified as Mr. Anderson posing in front of a gate to a chain-link fence, holding a blue and silver handgun near his head with four more handguns in his waistband and pockets, wearing blue jean cut-offs and a white t-shirt with a large bird and green lettering.

In response to further questions, Detective Simonyan explained, still without objection by the defense, that the photo had been “merged” on the Instagram post with a song by a “well-known rapper in Baltimore City currently [inaudible] time” and described that song as referring to killing and pistols. The prosecution then moved for admission of the document. At that point, the defense objected.

At a bench conference, the court asked the defense for the basis of the objection. In response, the defense counsel stated that the image was unclear and that there was too much “extraneous” information about the rapper. The trial court found that the blurriness of the image “[went] to its weight, not to its overall admissibility.” On the relevance of the image, the court stated: “But as for [the detective] identifying it as a picture that your client posted on his Instagram account ... of himself carrying five guns the day after the shooting when he’s charged with carrying a gun seems to have some relevance.” The trial court then offered to instruct the jury that the relevance of the exhibit was that it was on Mr.

Anderson’s social media account, “not what happened to [the rapper].”¹⁰ The defense stated, “That’s perfect.”

The bench conference ended and the court told the jury: “State’s 19 is admitted. The objection is sustained as to whatever happened to [the rapper.]”

Exhibit 20

State Exhibit 20 was a screenshot from a video posted on Mr. Morris’s social media account on July 1 – the video that Detective McGrath described when he explained how he came to recognize Mr. Anderson and Mr. Morris in the flyer circulated by Detective McCoy. The screenshot shows Mr. Anderson and Mr. Morris in a car together; Mr. Anderson is holding a blue and silver handgun. When the prosecution moved the admission of Exhibit 20, the defense objected to it without stating a basis. The court overruled the objection and admitted Exhibit 20. There was no further elaboration.

b. Photos on Cell Phone Seized During Mr. Anderson’s Arrest: Exhibits 31, 32 &

33

The police executed search warrants for the Acura that Mr. Anderson was driving when he was arrested and for the contents of a cell phone found in the car at that time. Sergeant Miller testified that he searched the cell phone. Because the murders had occurred during the early morning of July 2, 2019, he looked at messages dated July 1 and July 2, 2019. He testified that he had extracted two photographs that had been captured on July 1,

¹⁰ In the inaudible portion of the transcript, the detective apparently referred to the rapper being incarcerated in a federal prison – *i.e.*, “doing federal time” – as the trial court stated that “certainly we don’t care about [the rapper] doing federal time.”

2019 at 6:37 p.m.¹¹ and that he described as showing Mr. Anderson “holding firearms.” The defense did not object to that testimony but did object when the prosecution introduced a printout from the cell phone extraction report that contained both photographs – Exhibit 31 – as well as enlargements of each photo – Exhibits 32 and 33.

The trial court reviewed all three exhibits and concluded that they were relevant, particularly in light of the facts that Mr. Anderson was charged with unlawful possession of a handgun and that the photos were captured by his cell phone close in time to the alleged offenses. Specifically alluding to Maryland Rule 5-404(b), the court further concluded that the relevance of the photos went beyond proof of a propensity for criminal behavior and outweighed the risk of unfair prejudice.

Exhibit 32, like Exhibit 19, depicts Mr. Anderson posing in front of a gate to a chain-link fence, dressed in the same clothes, wearing multiple handguns in his waistband and pockets, including one with a blue handle. The depiction of Mr. Anderson in Exhibit 32 is so similar to that in Exhibit 19 that the court initially thought they were the same. Exhibit 33 depicts Mr. Anderson and an unidentified person sitting together on a curb or step in front of a chain link fence. Mr. Anderson, dressed in the same clothes he was wearing in Exhibit 19, is shown holding two handguns in the air.

After Exhibit 31 had been admitted through Sergeant Miller’s testimony, the prosecution asked Detective McCoy to look at it and showed it on the courtroom display

¹¹ More precisely, the extraction report shows that one photo was taken at 6:37:43 p.m. and the other at 6:38:10 p.m. on July 1, 2019. The shootings occurred at about six and one-half hours later, at about 2:15 a.m. on July 2.

screen, without objection from the defense. Detective McCoy testified that the longitude and latitude shown on that report for the two photos indicated that they were taken a few blocks from the murders.

The murder weapon was never found. No evidence connected the handguns that Mr. Anderson was holding in the five exhibits to the murders. Conversely, no evidence excluded the possibility that one of those handguns was the handgun seen in the health clinic video of the man running from the location of the shootings.

3. Analysis

Exhibit 19

Mr. Anderson’s challenge to the admission of Exhibit 19 lacks merit for several reasons. First, Detective Simonyan had already described the photograph in detail and without objection from the defense to that “same or similar” evidence. *DeLeon*, 407 Md. at 32-33. Second, when the defense did object, the trial court granted the relief that the defense requested when it objected to that exhibit – that is, an instruction to the jury to ignore information about the rapper – so there was no adverse ruling to appeal. *See, e.g., Rush v. State*, 403 Md. 68, 95 (2008) (stating that a party “cannot appeal from a favorable ruling.”). Third, the defense did not raise at trial, and thereby waived, the argument that the admission of this exhibit violated Maryland Rule 5-404(b). Specifically, had the defense asserted the rule, the court would have had the opportunity to assess whether the photograph was “clear and convincing” evidence of Mr. Anderson holding guns and then to weigh its relevance against any unfair prejudice. *See Skrivanek*, 356 Md. at 291. The trial court did not address those requirements of the rule as to Exhibit 19 as it was not asked

to do so. Finally, even if an objection based on Rule 5-404(b) had been presented to the court with respect to Exhibit 19, it would have lacked merit for the same reasons as discussed below with respect to the objection as to the similar photos in Exhibits 31-33.

Exhibit 20

Mr. Anderson’s challenge to the admission of Exhibit 20 also faces several hurdles. First, Detective McGrath had already described the exhibit as being a screenshot taken from a “very clear” video on social media on July 1 that showed Mr. Anderson and Mr. Morris in a vehicle, with both “displaying suspected firearms,” and, more specifically, with Mr. Anderson holding a silver and blue handgun. The defense had not objected to that “same or similar evidence,” *DeLeon*, 407 Md. at 32-33, and therefore waived its objection to the exhibit.

In any event, Detective McGrath’s testimony that the screenshot enabled him to identify Mr. Anderson and Mr. Morris met both the definition of “relevant evidence” in Maryland Rule 5-401 and the “exceptions” in Rule 5-404(b) for evidence introduced for the purpose of proving “identity” and a “common scheme or plan” – that is, a conspiracy. The basis of Detective McGrath’s ability to identify Mr. Anderson as one of the men shown on Detective McCoy’s flyer tended to prove facts of consequence to the determination of whether Mr. Anderson was one of the men shown in the surveillance videos of the murders and of whether he had conspired with Mr. Morris in the commission of the murders and robbery.

Exhibits 31, 32, and 33

The two photos extracted from Mr. Anderson’s cell phone, which show him dressed in the same clothes as Exhibit 19 and again posing with multiple handguns, were taken close in time and location to the murders. Given those circumstances, they were relevant to the murder, armed robbery, and handgun possession crimes for which he was being tried. A review of the similar cases applying the principles of Rule 5-404(b) supports the trial court’s conclusion that they were not unfairly prejudicial.

In a number of cases preceding the adoption of Maryland Rule 5-404(b), but applying the same principles that animate the rule, this Court concluded that evidence that a defendant possessed a weapon was admissible at a trial concerning other, possibly related, offenses involving a similar weapon. In *Reed v. State*, 68 Md. App. 320 (1986) – a case cited by the trial court in its ruling in this case – this Court held that a trial court properly admitted testimony that the defendant had possessed a handgun two years before the victim was murdered with a handgun. The *Reed* Court explained that “the testimony was probative to show that the [defendant] possessed the type of weapon employed in killing the victim” and that the fact of the years-long gap between the possession and the crime “went to the weight of that evidence.” *Id.* at 527; *see also Hayes v. State*, 3 Md. App. 4, 8 (1968) (affirming admission of evidence of defendant’s possession of a handgun four days prior to murder and stating that “[i]t is always relevant to show that the defendant before the date of the crime had in his possession the means for its commission”); *Doye v. State*, 16 Md. App. 511, 518, *cert. denied*, 268 Md. 747 (1973) (defendant’s possession of weapon similar to that used to commit rape properly admitted because of its relevance “to show

that the defendant owned or had access to any article with which the crime was or could have been committed”); *Brooks v. State*, 24 Md. App. 334, 344, (1975) (same).¹² The principles described in the case law that pre-dated Rule 5-404(b) have carried through to cases decided after the rule took effect in 1994. *See, e.g., Francois v. State*, 259 Md. App. 513, *cert. denied*, 486 Md. 243 (2023) (summarizing and applying the pre-Rule 5-404(b) case law on the admissibility of other bad acts evidence connecting defendant to type of weapon used to commit offense in question).

In his brief, Mr. Anderson argues that the photos showing him in possession of handguns were “propensity evidence” that the trial court admitted in violation of Rule 5-404(b) and relies primarily on *Smith v. State*, 218 Md. App. 689 (2014). In *Smith*, the defendant was charged with the murder of his roommate, who had died from a gunshot wound to the head. From the outset, the defendant admitted to the police that the gunshot had come from a handgun owned by the defendant, but asserted that the roommate had committed suicide with that gun. Over the defendant’s objection, the trial court permitted the prosecution to introduce evidence that the defendant owned eight other firearms and ammunition. On appeal, this Court concluded that the defendant’s ownership of the other

¹² Federal courts have allowed introduction of evidence of a defendant’s prior possession of a weapon under the exceptions to Federal Rule of Evidence 404(b) even when that weapon is not linked to the crime for which the defendant is on trial. *See, e.g., United States v. Covelli*, 738 F.2d 847, 855-56 (7th Cir. 1984)(“[E]vidence of prior possession of a weapon can be used to prove opportunity and identification even where it cannot be directly identified as the weapon used in the crime”).

guns was “minimally relevant, at best, and highly prejudicial” and that the trial court had erred in admitting that evidence.¹³

The context of the trial court ruling in *Smith* was different from that of the ruling in this case. In *Smith*, the ultimate issue at trial was whether the roommate had died by suicide with the defendant’s gun or by homicide by the defendant with the same gun. Here, Mr. Anderson’s access to the type of weapon that was used in the murders was not a given. Thus, the introduction of the photos of Mr. Anderson with handguns close in time and location to the murders was relevant to proving that he had the opportunity and means to commit those offenses. The photos were also relevant to the unlawful handgun possession charge against him.

A similar distinction from *Smith* was noted by this Court in *Francois*. In *Francois*, the defendant was charged with assault and various firearms offenses. The disputed evidence consisted of text messages found on the defendant’s cell phone that demonstrated his familiarity with, and contemporaneous access to, firearms, despite a prior conviction that precluded him from possessing a firearm. The charges against the defendant in *Francois*, like the charges against Mr. Anderson here, included illegal possession of a firearm. In *Francois*, this Court upheld the trial court’s admission of the texts that evidenced the defendant’s illegal possession of a handgun “just days before” the assault from which the charges arose and his visits to a shooting range in the “days and weeks”

¹³ This Court reversed the defendant’s conviction because the trial court had failed to ask a mandatory *voir dire* question requested by the defendant, but went on to analyze the evidentiary question for the benefit of the trial court on remand.

before it. 259 Md. App. at 530. This Court explained that the evidence was “specially relevant to determining whether Mr. Francois possessed a handgun,” and that it had been admitted not to show his propensity to commit the charged acts but rather to “corroborate and bolster the testimony that on a specific date and place, he possessed a handgun and ammunition.” *Id.* Here, Mr. Anderson’s possession of five handguns within 24 hours of the murders near the location of those crimes was relevant not only to show that he had the means to commit the murders but also to prove that he illegally possessed a handgun.¹⁴

The next question is whether the trial court abused its discretion when it decided whether the relevance of the photos outweighed the risk of unfair prejudice. Referring to the holding in *Reed*, the trial court noted that the evidence held admissible there pertained to possession of a weapon two years prior to the events at issue in the trial, while the photos of Mr. Anderson in Exhibits 31-33 were captured within a day of the charged offenses.

In sum, the trial court applied the correct law to the facts in the record. It did not err in finding the exhibits to be relevant and did not abuse its discretion when it admitted the photographs into evidence.

¹⁴ Mr. Anderson argues that *Francois* was “wrongly decided” in light of the decision of the Supreme Court of Maryland in *Browne v. State*, 486 Md. 169 (2023). In that case, in which the defendant was charged with murder arising from child abuse, the Supreme Court analyzed certain issues under Rule 5-404(b) relating to the introduction in evidence of the defendant’s prior conviction for child abuse. While that decision states certain general principles related to Rule 5-404(b) outlined earlier in this opinion, nothing in that opinion is contrary to this Court’s analysis in *Francois*. We also note that the Supreme Court denied a petition for *certiorari* challenging this Court’s decision in *Francois* just three weeks after it issued its opinion in *Browne*. *Francois v. State*, Case No. SCM-PET-0247-2023.

III

Conclusion

For the reasons stated above, we hold that the Circuit Court did not err in making the evidentiary rulings that Mr. Anderson contests on appeal.

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