Circuit Court for Dorchester County
Case No. 09-K-16-015858

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2068

September Term, 2016

KRYSHONNA CHARMISE JONES

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Graeff,
Thieme, Raymond G. Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: April 12, 2018

After a jury trial in the Circuit Court for Dorchester County, Kryshonna Jones, the appellant, was found guilty of first- and second-degree murder, first- and second-degree assault, reckless endangerment, and carrying a dangerous weapon openly with the intent to injure another. She was sentenced to life imprisonment for first-degree murder and the remaining convictions were merged for sentencing purposes. This timely appeal followed.

The appellant presents three issues for our consideration, which we have rephrased as follows:

I. Did the trial court err by declining to admit certain statements made by the victim shortly before he died?

II. Did the trial court err by admitting text messages sent and received weeks prior to the homicide?

III. Did the trial court err by admitting 26 "selfie" photographs taken by the appellant hours after the homicide?

For the reasons set forth below, we shall affirm the judgments.

FACTS AND PROCEEDINGS

On the morning of January 19, 2016, Justin Barney died from a stab wound to his chest. Barney and the appellant had one child together, a daughter, whom we shall refer to as J.J. J.J. was a little over two months old when Barney was killed. In addition to J.J., Barney had five sons with four other women. Barney lived in Easton with one of those women, Tykeisha Parker. The appellant was aware that Barney was seeing other women while he was involved with her and that he had children with several other

women. According to the appellant, she was sometimes upset about that, "but not really" because she was "just used to it."

The appellant offered one version of the events leading to Barney's death in statements she made to law enforcement officers and another in her testimony at trial. At 11:32 p.m. on January 18, 2016, police officers were dispatched to the appellant's house at 5144 Rhodesdale Vienna Road, in Dorchester County, in response to a 911 call for a stabbing. When Corporal Kevin Messick of the Dorchester County Sheriff's Office arrived at the appellant's house, he saw her in the front yard leaning over Barney and holding something over his left chest area. Emergency medical personnel arrived and transported Barney to the Peninsula Regional Medical Center, in Salisbury. Corporal Messick then spoke with the appellant. She told him that she and Barney had been arguing for a few days over custody of J.J., and that Barney showed up at her house in his car. The appellant got in his car and they spoke for about 3 to 4 minutes. After he asked about her new boyfriend, she got out of his car and told him he would never see his daughter again. As the appellant was walking to her house, Barney got out of his car, ran toward her, and suddenly collapsed in the front yard.

After being advised of her *Miranda* rights, the appellant agreed to give a statement to Detective Corporal Priscilla Rogers of the Dorchester County Sheriff's Office. She told Detective Rogers that she had invited Barney to her house to discuss having him give her full custody of J.J. Barney arrived in a maroon Buick. The two sat in that vehicle and spoke for about 45 seconds before Barney started asking questions about her boyfriend. She did not want to talk about that, so she got out of the car. Barney got out

of the car, came up behind her, and pushed her. She turned around, pushed Barney, and said, "get off me yo." As the two were pushing each other, the appellant noticed something she thought was alcohol, because she and Barney had been drinking, but that she later realized was blood. When Detective Rogers again asked the appellant what happened, the appellant said she did not have anything else to say.

In her statements to the police, the appellant claimed to have had nothing to do with the stabbing, which must have happened elsewhere, before Barney arrived at her house. In her trial testimony, the appellant offered the following, contrary version of events. On January 18, 2016, she saw a screenshot of a Facebook page belonging to "Sharnise," another woman with whom Barney had a child. It was apparent from the screenshot that Barney had been with Sharnise the day before. The appellant texted Barney, and he acknowledged that he had been with Sharnise the previous day. Barney asked if he could come to the appellant's house, and she responded that she "didn't really care what he did." Later, Barney texted her to say that he was outside her house. She went outside and got into his maroon Buick.

According to the appellant, Barney attempted to kiss her, but she refused. Barney then accused her of cheating on him. She told Barney that J.J. "was going to call another man dad and that he was never going to see her again." The appellant tried to get out of the car, but Barney grabbed her by the hair and choked her. The open cup holder beneath the radio in Barney's car interfered with his moving toward the passenger side of the car, however, causing him to loosen his grip on her hair and neck. Once his grip was loosened, she was able to get out of the car. Barney then exited from the passenger side

of the car. The appellant attempted to enter her house, but Barney chased her around her own car. The appellant testified, "we play ring around the rosie around my car you might as well say." Barney called her "whores and tramps and b's and stuff like that," but, according to the appellant, "it wasn't so much as what he said or how he said it but it was the look on his face and the look in his eyes when he said it[.]"

As they ran around her car, the appellant tried to open each door, but all of them except the driver's door were locked. At one point, she opened the driver's door, reached inside, and grabbed a kitchen knife that was on the seat. Her uncle had used the knife earlier that day to let air out of one of the tires. Barney came toward her, saying, "you going to f---ing stab me." He then grabbed her and started choking her again. The appellant "kept telling" Barney that she could not breathe. When she no longer could get the words out, she used her left hand to "try to dig in his eyes." Barney still would not stop choking her, so she stabbed him once in what she thought was his shoulder. She then pushed him away and ran to her front door. Before entering her house, she heard Barney fall. She turned around and saw him on the ground. She ran over to him, applied pressure to the stab wound, and called 911. When the ambulance arrived and took Barney to the hospital, she thought he would recover. At about 6 a.m. on January 19, 2016, she learned that Barney had died.

The appellant testified that she did not tell the truth to the law enforcement officers she spoke with because she "didn't want to be taken away from [her] daughter."

Dorchester County Sheriff's Deputy Robbie Larimer responded to the appellant's house on the night of January 18, 2016. He examined Barney's maroon Buick and noted

that there was no blood in it and that it was very clean, "almost spotless." From 1:36 a.m. to about 6:30 a.m. on January 19, 2016, the appellant's house was not secured by law enforcement. On the morning of January 19, Deputy Larimer returned to the house to secure it for the execution of a search warrant. The appellant was present. At 10:57 a.m., during the course of the search, two cell phones were recovered from the appellant. According to Deputy Larimer, the appellant had been using them before they were seized. After the search of the appellant's house was completed, she was transported to the Sheriff's Office. There, she was escorted to the bathroom by Detective Rogers. While in the bathroom, she told Detective Rogers that "if I told you all the truth from the jump I wouldn't still be here."

Detective Rogers recovered a Samsung cell phone and an iPhone from Barney's car. Like Deputy Larimer, she noted that there was no blood in the car and that it was immaculate and "very clean."

Richard Fennern, a special agent on the FBI's Cellular Analysis Survey Team, testified that there was no indication that Barney's cell phone had been used in the Salisbury area on the day of the stabbing. Twenty-six photographs were recovered from the appellant's cell phone, 13 of which were taken between 6:30 and 9:37 a.m. on January 19, 2016, the morning after the stabbing.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

A. Past Recollection Recorded

The appellant contends the trial court erred by not admitting into evidence as past recollection recorded handwritten notes and a report prepared by Salisbury Police Officer James Hicks that set forth statements Barney allegedly made to nurse Deborah Burrell at Peninsula Regional Medical Center.

Before trial, the appellant filed a motion seeking to admit into evidence statements Barney allegedly made that tended to show that he had been stabbed in Salisbury, *i.e.*, not at her house. At the hearing on that motion, Debra Wheedleton, one of the paramedics who responded to the call for the stabbing and provided medical assistance to Barney as he was transported to the hospital, testified that Barney had lost "a lot of blood," was in "hyperemic shock" from low blood volume, and was "not really conscious." Just before they got to the hospital, however, Barney's blood pressure started to rise and he opened his eyes and mumbled. Wheedleton told him that he was on his way to the hospital in Salisbury and asked if he knew what had happened to him. Barney responded that his "baby's momma stabbed" him. After that, Barney did not say anything for a couple of minutes. Then, "out of the blue," he said, "Salisbury." That was Wheedleton's last conversation with Barney.

Deborah Burrell was the charge nurse on duty at Peninsula Regional Medical Center when Barney arrived and was responsible for coordinating security. She testified that "[w]e had gotten that [Barney] was stabbed elsewhere and then he drove to the scene

where they found him. So we had to find out where he was stabbed at so we knew which agency to contact." Burrell asked Barney if he knew where the stabbing had occurred, and he responded that it occurred at his "baby momma's house." When asked where his baby's mother lived, Barney did not respond, so Burrell attempted "to narrow down the field." She asked Barney if the stabbing occurred in Cambridge, and he said no. She then asked if it occurred in Salisbury. She could not remember Barney's response, however.

Burrell acknowledged that she had spoken to police officers but could not identify any particular officer. Defense counsel showed Burrell Salisbury Police Officer James Hicks's handwritten notes, which stated, in part, that the stabbing "happened at baby momma house in Salisbury MD" and "[a]dvised to medical staff that he was stabbed at his baby momma house in Salisbury, MD then drove back to Vienna, MD Dorchester County, MD and collapsed in the yard." When asked if those notes helped to refresh her memory as to what Barney had told her with respect to Salisbury, Burrell replied "no." She did state, however, that she would have made every effort to give accurate information to the police and that she "would think" that what she told an officer would have been correct at the time.

Officer Hicks was a new officer in field training in January 2016. He was dispatched to Peninsula Regional Medical Center in response to the call about Barney's stabbing. By the time he arrived, Barney was intubated and medically sedated. At the motions hearing, Officer Hicks could not recall details of the incident. When testifying,

he referred to a report he had written on the morning after the stabbing. That report, which he had prepared based on his handwritten field notes, stated, in part:

> Officers met with Deborah Burrell, a white female and Clinical Supervisor at PRMC. Burrell told Officers that Barney arrived at PRMC at approximately 0005 hours on the above listed date. Burrell told Officers that before Barney was medically sedated, he advised that he was at his "baby momma's house," (unknown name and address in Salisbury, MD) when he was stabbed. Burrell stated that Barney told medical staff that after he was stabbed in the chest, he drove himself to 5144 Rosedale Vienna Rd, Rosedale, MD, 21655, where he collapsed in the front yard of the residence. Officers made contact with Deborah Ann Wheedleton an employee of Dorchester County EMS and operator of vehicle 200, which transported Barney to PRMC. Wheedleton told Officers that she arrived at 5144 Rosedale Vienna Rd and discovered Burrell [sic] collapsed in the front yard. Wheedleton advised that while Burrell [sic] was being treated in the ambulance and transported to PRMC, he stated that he was stabbed by his unknown baby momma in Salisbury, MD. Wheedleton advised that Burrell [sic] was unable to provide an address or location of where he was stabbed. Barney had no in house contact with SPD that would lead officers to a possible stabbing location in Salisbury, MD.

The defense acknowledged that all the statements were hearsay but argued that Barney's statements to Burrell and Wheedleton were admissible as either dying declarations or excited utterances and that Officer Hicks's report of what Burrell had said was admissible as past recollection recorded. In a written opinion and order, the motions judge ruled that Barney's statements to Burrell were admissible as dying declarations and that his statements to Wheedleton were admissible as excited utterances. The court deferred until trial ruling on whether Burrell's statements concerning Salisbury as the location of the stabbing, as set forth in the notes and report of Officer Hicks, were admissible as past recollection recorded.

At trial, the defense sought to introduce Officer Hicks' handwritten field notes and written report as past recollection recorded under Rule 5-802.1(e).[1] The trial court ruled that the notes and report were not admissible:

> There was never any testimony from [Officer Hicks] that the Nurse [Burrell] adopted his report, adopted it as true what he wrote down. I mean what happened here is we have a – we have certainly an urgent situation. I can recollect there was literally six or seven people attending to the decedent. This Nurse is the Charge Nurse. She's sort of coordinating those activities. She has no recollection of telling [Officer Hicks] about Salisbury. I think she indicated that she either didn't remember – this was in the motions hearing, she either didn't remember or what Mr. Barney said was unintelligible his response.
>
> We have a Police Officer who is undergoing training. He's fresh out of the academy. I believe he indicated he had been a police officer for seven months. I assume that of that seven months the academy encompasses six months of it. He was with a Sergeant and he wrote down a story as to what he remembered. And like I said in the motions hearing it's akin to the kindergarten exercise where you put twenty kids in a circle and you whisper something into one kid's ear and they whisper what they

[1] Rule 5-802.1(e) provides:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> * * *
>
> (e) A statement that is in the form of a memorandum or record concerning a matter about which the witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, if the statement was made or adopted by the witness when the matter was fresh in the witness's memory and reflects that knowledge correctly. If admitted, the statement may be read into evidence but the memorandum or record may not itself by received as an exhibit unless offered by an adverse party.

> think they heard into the next kid's ear. And by the time it gets around the circle it's something completely different.
>
> So that's where we are. And I guess that's the point of that Rule is this has never been a statement adopted by Ms. Burrell. And because of that I don't think it can come in. I think it's hearsay.

The appellant maintains that Burrell communicated Barney's statement to Officer Hicks promptly after hearing it and, therefore, it was fresh in her mind. Officer Hicks recorded Burrell's statement contemporaneously in his field notes and then included it in the type-written report he prepared the next day. The appellant asserts that because the statement was made by Burrell to begin with, there was no need for her to have "adopted" it. Therefore, Officer Hicks's notes and report should have been admitted as past recollection recorded. We disagree and explain.

Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). A trial court has no discretion to admit hearsay unless it falls within a provision providing for its admissibility. *Bernadyn v. State*, 390 Md. 1, 8 (2005). A trial court's determination of whether evidence constitutes hearsay and, if so, whether it is admissible under an exception, is a legal conclusion that we review *de novo*. *Dulyx v. State*, 425 Md. 273, 285 (2012) (and cases cited therein); *Bernadyn*, 390 Md. at 8. We review any factual findings necessary to the trial court's determination for clear error because the trial judge is in the best position to evaluate the credibility of the witnesses. *Gordon v. State*, 431 Md. 527, 538 (2013); *In re Tariq A-R-Y*, 347 Md. 484, 488 (1997).

This issue concerns Rule 5-802.1(e), which allows for the admission of hearsay that falls within the past recollection recorded exception. As we explained in *Corbett v. State*:

> When a witness actually lacks memory of an event he once knew about, and thus is unable to testify about it, the past recollection recorded exception to the rule against hearsay will apply, if it is established through the witness that when the writing was made, the events were fresh in his mind, and that the written statement is authentic and accurately reflects the knowledge he once had.

130 Md. App. 408, 426 (2000) (citing *Baker v. State*, 35 Md. App. 593, 598 (1977)). "[W]hen a writing (or dictated recording) is provable as recorded recollection, the contents of the *writing* are admitted as the substantive evidence." 6A Lynn McLain, Maryland Evidence, State & Federal, § 803(5):1 (May 2017 update) (footnotes omitted). As pertinent, the following foundation must be laid to the court's satisfaction under Rule 5-104(a),[2] however:

> (1) The witness had first-hand knowledge of the matters recorded in the writing . . . ;
>
> (2) The witness's present recollection is impaired and cannot be fully refreshed, so that the writing will provide more complete and accurate information than the witness's testimony to her present recollection;

[2] Rule 5-104(a) provides:

> **Questions of Admissibility Generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of section (b). In making its determination, the court may, in the interest of justice, decline to require strict application of the rules of evidence, except those relating to privilege and competency of witnesses.

> (3) The writing was made *or adopted by the witness* at or near the time of the event recorded (in the words of the Rule, when the matter was "fresh in the witness's memory");
>
> (4) At that time, the witness or another recorded the facts correctly or the witness recognized as correct the facts recorded.

6A McLain *supra* § 803(5):1 (emphasis added) (footnotes omitted).

With regard to the fourth foundational requirement, Professor McLain explains:

> On the fourth point, a witness's testimony that he made or adopted the writing and would not have done so if it were not accurate will suffice. If the witness told the facts to another person who recorded them, the witness must testify to having stated the facts accurately; then the other person must testify to having recorded them accurately (or having read them to the witness and verified them), unless the witness can testify to having read (or having have read to him) the record and having recognized it as correct at a time at or near the event recorded.

Id. (footnotes omitted).

Jones on Evidence contains a similar explanation of the "made or adopted" requirement, commenting, in part, that

> [q]uite often, however, percipient witness W1 does not examine W2's memorandum of what W1 told her until weeks or months later – by which time W1 no longer recalls the underlying incident well enough to confirm that W2's memorandum accurately reflects what W1 told her. Most jurisdictions agree that this is no bar to admissibility: Memoranda have . . . been admitted based on the observations of one person which were transcribed by another where from their combined testimony the court could be satisfied that what was written was an accurate transcription of what was observed or then known.

5 Clifford S. Fishman and Anne T. McKenna, Jones on Evidence § 32.29 (7th ed., December 2017 update) (footnote omitted) (quotation marks omitted).

In support of her argument that the trial court erred by excluding Officer Hicks's notes and report from evidence, the appellant directs our attention to *Clark v. State*, 140

Md. App. 540 (2001). Clark was convicted of the second-degree murder of Michelle Dorr, a six-year-old girl whose body had not been located by the time of trial. Before trial, O'Neil Cammock testified that, at around the time Michelle last was seen, he went to Clark's residence to use the telephone and saw Clark with a "small white female" who was not Michelle. *Id.* at 566. At trial, Cammock acknowledged that he had had a conversation with Clark the day he went to his residence but could not remember whether a young girl was with Clark at the time. Cammock remembered speaking to a police detective several days after Michelle's disappearance and was confident that what he told that detective was accurate. The detective testified, authenticating his report of his interview with Cammock. That report included that Cammock had told him that he had seen a young girl with Clark. The detective could not recall whether he had shown Cammock the written notes of the interview but testified that, after he had written his notes, "'we went back over it again verbally to make sure we had everything right.'" *Id.* at 566. In light of that testimony, the trial court ruled that the detective could read his report to the jury, under Rule 5-802.1(e). On appeal, we held that the combined testimony of the detective and Cammock "showed clearly that the out-of-court declarant (Cammock) '*made*' the statement ten days after Michelle disappeared—when his memory was still clear and accurately set forth his earlier knowledge." *Id.* at 566–67 (emphasis in original).

The appellant's reliance on *Clark* is misplaced. In the case at bar, the hearsay in question—the information in Officer Hicks's notes and report—was not adopted by Burrell. Although Burrell acknowledged that whatever she had said on the day she

encountered Barney at the hospital would "[m]ost likely" have been more fresh in her memory than it was by the time of trial, there was no evidence that Burrell adopted the statement recorded by Officer Hicks in his notes or report. Unlike in *Clark*, there was no evidence here that Officer Hicks read aloud or otherwise went over his notes or report with Burrell or that Burrell signed them or otherwise adopted them. As the State notes, Rule 5-802.1(e) does not make Burrell's statement to a police officer admissible simply because the officer put the statement in writing. It must be shown that Burrell actually adopted the statement contained in the officer's notes or report.

Additionally, here the court recognized that Officer Hicks's notes and report contained inaccuracies akin to the game of "telephone," and, as a result, it could not find that they accurately reflected Burrell's knowledge of where Barney was when he was stabbed. Indeed, Officer Hicks's notes and report substituted Burrell's name for Barney's name in several places and included detailed facts, such as the appellant's full address, that Barney could not have communicated himself given his physical condition and inability to make verbal statements. The instant case is more akin to *Ringgold v. State*, in which we wrote:

> When the recollection of a witness is not refreshed by reference to the memorandum, but he recalls the memorandum and recalls that it was accurate when made or he recognizes the signature on the statement as his and testifies positively that he would not have signed the statement had he not believed it to be true at the time, he may testify from the memorandum or it may be received into evidence in connection with his direct examination or in cross-examination. 82 A.L.R.2d 473 (1962). In this case, however, the witness professed to have no recollection of the statements allegedly made by her to the officer. While it seems clear that this was a deliberate prevarication by the witness, there still was no adequate

> foundation upon which the statement could be admitted into evidence as past recollection recorded.

34 Md. App. 286, 293–94 (1976).

For all these reasons, the trial court did not err in ruling that the recording in Officer Hicks's handwritten notes and report concerning statements made by Burrell about Barney were not admissible.

B. Fundamental Fairness

The appellant argues alternatively that Officer Hicks's notes and report should have been admitted as a matter of fundamental fairness. The appellant did not raise this argument below, nor was it decided, and therefore it is not properly before us. *See Colkley v. State*, 204 Md. App. 593, 614 (2012) (hearsay exception argued by appellant on appeal "was not the exception urged before [the trial court] and admissibility pursuant to it has not, therefore, been preserved for appellate review."), *rev'd on other grounds sub nom.*, *Fields v. State*, 432 Md. 650 (2013); *Goldman, Skeen & Wadler, P.A. v. Cooper, Beckman & Tuerk, LLP*, 122 Md. App. 29, 50 (1998) (argument waived because party failed to bring to trial court's attention the hearsay exception relied upon on appeal).

Even if the fundamental fairness argument had been raised below, the appellant would not prevail. In support of her argument, the appellant relies on *Foster v. State*, 297 Md. 191 (1983), a case decided before the Court of Appeals adopted the Maryland Rules of Evidence that contain the residual exception for hearsay. The defendant was sentenced to death for murdering the manager of a motel in which the defendant and her husband resided. The defense proffered that a friend of the victim's would testify that the victim

told her shortly before the murder that the defendant's husband had threatened to kill the victim. The court excluded the evidence on hearsay grounds and because it was "not sufficiently reliable to be admitted." *Id.* at 201. The Court of Appeals disagreed. Relying in part on *Chambers v. Mississippi*, 410 U.S. 284 (1973), and *Green v. Georgia*, 442 U.S. 95 (1979), the Court reasoned that when an extrajudicial statement carries an indicia of reliability, the fundamental right of a defendant to call a witness requires that a mechanistic application of the hearsay rule yield to the defendant's right to a fair trial. The Court concluded that the friend's testimony about the husband's threat to kill the victim was admissible because it was critical to the defense and bore indicia of reliability in that it was made spontaneously and was corroborated by other evidence. *Id.* at 210–12.

In the case at bar, the trial court determined that Officer Hicks's notes and report concerning Barney's statements to Burrell did not contain indicia of reliability. Accordingly, even if this issue had been preserved, we would find no error in the court's decision to exclude Officer Hicks's notes and report.

C. Barney's Consciousness of Guilt

The appellant also argues that Officer Hicks's notes and report were admissible for a non-hearsay purpose: to show that Barney was lying about having been stabbed in Salisbury, which evidenced consciousness of guilt. Specifically, Barney would have had "a motive to lie to hospital staff when asked where he was stabbed because a false location would mislead investigators and hide his own crime against" the appellant, *i.e.*, that he had attacked her (which then resulted in her stabbing him in self-defense).

We reject this convoluted argument because it does not address both levels of hearsay in the statements at issue. Under Maryland law, each level of hearsay must satisfy an exception to the rule of exclusion before it may be admitted. *See Bernadyn*, 390 Md. at 19 n.6 ("[E]ach level of hearsay must satisfy an exception to the rule of exclusion before it is admissible."). With respect to the first level of hearsay, the statements made by Barney to Burrell, the court determined that Barney's statement was admissible under the hearsay exception for a dying declaration. Regardless of whether Barney's statement to Burrell was offered for its truth or for a non-hearsay purpose, it is clear that a second-level of hearsay existed with respect to Officer Hicks's notes and report about what Barney told Burrell and then about what Burrell told him. The appellant failed to establish that the officer's notes and report fell within any exception to the rule of exclusion. As a result, the trial court did not err in excluding them.

D. Harmless Error

Finally, even if the trial court's decision not to admit Officer Hicks's notes and report was error, the appellant would fare no better. An error is harmless if a "'reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict[.]'" *Dionas v. State*, 436 Md. 97, 108 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). We recognize that, as a legal matter, there was no bar to the appellant's decision to put forth different and inconsistent theories of defense. *Sims v. State*, 319 Md. 540, 550 (1990); *Adams v. State*, 192 Md. App. 469, 501–02 (2010). But our review of the record convinces us, beyond a reasonable doubt, that any failure to admit those portions of Officer Hicks's

notes or report stating or implying that Barney was stabbed in Salisbury was harmless because the appellant admitted in her trial testimony that she stabbed Barney outside her home in Dorchester County and there was no other evidence presented connecting Barney to Salisbury. There was no evidence that any of Barney's children or their mothers lived in Salisbury, there was no blood in Barney's car, which would have been present if he had driven to the appellant's house after being stabbed in Salisbury, and cell phone data from Barney's phone showed that it had not been used in the Salisbury area on the night in question. For these reasons, even if the trial court erred in failing to admit statements from Officer Hicks's notes and report indicating that Barney was stabbed in Salisbury, we would find such error harmless beyond a reasonable doubt.

II.

The appellant next contends the trial court erred by admitting text messages that the appellant and her friend, Monae Heath, exchanged weeks prior to the night Barney was stabbed. The appellant maintains that the text messages involved other people and prior bad acts that were highly prejudicial, had nothing to do with Barney's murder, and were not relevant to her actions on January 18, 2016. She further asserts that the text messages were unfairly prejudicial because they showed that she used "violent and angry" language, had committed violent acts, and had a propensity for violence. In addition, she argues that the text messages contained inadmissible evidence of prior bad acts, specifically, that she had put Windex glass cleaner in Barney's food and that, on one occasion, she had hit him in the head with a canned good. We disagree and explain.

The text messages at issue were exchanged between the appellant and Heath between November 9, 2015 (a few days before J.J. was born) and January 13, 2016 (about a week before Barney was killed). They included the following exchange on November 9, 2015:

> [The Appellant]: I think I'm going jail 4 murder
>
> [Heath]: Why what happened
>
> [The Appellant]: [sends 4 screenshots to Heath]
> [The Appellant]: She tried it Mo on Jayonna I'M A FCKING BEAT HER! & I mean that shit
>
> [Heath]: What's wrong with her?
>
> [Heath]: What's wrong with him?! I'm confused asf
>
> [The Appellant]: Idk, & idc & I asked Justin "are you back talking 2 her" they both beat & I fcking mean it. That's a charge I'll gladly take!
>
> [The Appellant]: They BOTH beat! I'm not going back & 4th no more, I'm not asking nomore questions!! They're DONE & I mean it.
>
> [Heath]: You GOTTA be nice and lower them to you. She a child. But I would be petty and let dusty[3] send all the dirty shit of her to you and make her feel stoopid
>
> [The Appellant]: I don't want dusty send me NOTHING! I'ma spit right in his mf face, a lying btch!
>
> [Heath]: Oh god!
>
> [The Appellant]: Bc I asked him! As a fcking adult, woman to man, I was calm, cool & collected. All I wanted was the truth! & he gon fcking lie 2 me?? That's disrespectful af! I'ma show em tho. I been 2 fcking nice, 4real. Jst wait on it…

[3] It was undisputed that "Dusty" was Barney's nickname.

[Heath]: No hospital visiting for him.

[The Appellant]: HELL FCK ASS NO!!!!!!!!!!! Btch bttr stay far tf away 4rm me & my daughter!

[Heath]: He tried to call you.

[The Appellant]: Yupp but he on call reject list & when my aunt get off she changing my #.

[Heath]: He done fucked up now

[The Appellant]: Exactly!

[Heath]: Something told you too look on her ig

[The Appellant]: I had that feeling, that's y I asked him the other night. Shit was going TOO smooth, I knew something wasn't right.

[Heath]: Smh damn he just don't know that we find out everything

[The Appellant]: I gotta fcking degree in LURKOLOGY!!!!!!!! I hope he have a heart attack & die a old btch.

The court also admitted text messages exchanged between Heath and the appellant between January 3 and 13, 2016, in which the appellant expressed anger and frustration over Barney and Tykeisha Parker, the woman with whom he was living and the mother of one of his other children. Those included the following messages exchanged on January 3, 2016:

[Heath]: Lol why wassup I home trying to track my package!

[The Appellant]: What package? Lol & nothing I'm bored! I need go flea market & find this knife since walmart didn't have 1.

[Heath]: Wtf Lol what knife

[The Appellant]: The switch kinda like it's hard 2 explain I'm gonna cut ty It might not be 2day or 2mar maybe next week, next month or next year

[The Appellant]: I'ma gut er like a fish

[Heath]: Stfu Buh why what else happened? She too big

[The Appellant]: Nope I jst wanna make sure she 4ever remembers Justins lilgf she screenshot Jayonna picture & sent it 2 sharnice, that's foul

[The Appellant]: & I'm serious

[Heath]: Did you at least give girl a warning that she is on your most wanted list

[The Appellant]: Nope I told Justin I'm pretty sure he told her, I'ma cut his ass 2! Btch didn't even come home last night his mom call me asking questions like btch bye

[Heath]: Wtf Wherr was he? Why couldn't his mom call him

[The Appellant]: He was there at his mom's she talking bout some jay said, I said look ms I don't give a fck what Jay said tell jay come home I got something 4 his ass

[The Appellant]: He a fcking crybaby talking bout some why you taking it out on me lol. I said shut up btch I'm a still beat you tf up.

[Heath]: Shid when you was pregnant didn't you beat him up

[The Appellant]: Yesss!!! & I'm not now, so it'll be 10x worse

[Heath]: Oh he dumb

[The Appellant]: Duhhhh

[Heath]: Smh fucking terrible

[The Appellant]: He'll learn 1 day That's y when I cook & make his plate I spray windex in it. He gon die soon. watch.

> [The Appellant]: I sware, he get diarrhea, a headache & his stomach be hurting. He goes str8 2bed. But soons I find this knife I'ma cut cut ty, kick the bitch door right in!
>
> [Heath]: This is the one in easton right
>
> [The Appellant]: Yea the retarded 1 lol. "roommate" Jr mom.

On January 4, 2016, the appellant and Heath again exchanged numerous text messages including the following exchange concerning the appellant striking Barney in the head with a canned good:

> [The Appellant]: Btch I think he gon press charges. I never seen a n*gg* run like that in my fcking life! Lmfao I hit em right in the fcking face w/ a canned good & if Jayonna was on my bed sleep I woulda ran after em & busted the windows outta KAY car, a ugly btch
>
> [Heath]: And I was just about to ask if you was ok
>
> [The Appellant]: I tried 2 kill em, I asked him nicely not 2 touch my fcking daughter he thought I was playing I punched em in his face & spit on em & b4 he got a chance
>
> [The Appellant]: 2 open the door I hit his block head ass in the head w/ a can good
>
> [The Appellant]: I I told that btch bout fcking playing w/me
>
> [Heath]: Omfg! Why why why
> Did you hit his face or back of the head
>
> [The Appellant]: His head but he said "you made me fcking bleed btch I'ma kill u" I said y u running then?? Come here I gotcha btch Now next on my list is ty!!! Soons I get this fcking knife I'ma make that btch remember me forever they all keep saying I'm crazy, I'ma show them btches what crazy is! Do what you do & say what you want about me, but when you involve my child btch all bets are OFF! If I see her mom 1 day I'll punch that btch in the face. If I catch her kids getting off the bus I'll run one of them btches over they want crazy, THEY FCKING GOT IT!

On January 9, 2016, the appellant and Heath exchanged text messages that included the following:

[The Appellant]: Is jasmine sister baby shower 2day??

[Heath]: I believe so.

[The Appellant]: Mhm. okay

[Heath]: Lol what is your evil plan

[The Appellant]: Shanice & Jasmine sister are friends & she's supposed to be there BUT it's not at the hotel anymore it's at Jasmine Mom's house. I don't wanna disrespect her house but I need Jasmine 2 tell me if she's there or not bc I'ma pop up & follow her 2 a gas station or something I haven't forgot!!!!

[Heath]: Bitch wtf lol. You gotta text jasmine

[The Appellant]: LURKOLOGY degree in full effect! Btch I aint 4got next is ty Soons I get my mf knife

Lastly, on January 13, 2016, in the following text exchange, the appellant again expressed her desire to purchase a knife:

[The Appellant]: So uhm ty been on snap 2day?

[Heath]: No.

[Heath]: No.

[The Appellant]: I hate her bug eye btch she get on my nerves I can't wait buy a knife

At a motions hearing, defense counsel argued that the text messages from November 9, 2015, were too remote in time to be relevant and that any alleged threats against Tykeisha Parker or anyone else were irrelevant. The court disagreed and ruled that the text messages were relevant, stating:

> I'm going to allow the text messages as proposed in your motion in limine, State, to come in provided that you have to lay the foundation, have some authentication. I guess what I'm telling you all is that I find them relevant.
>
> Now part of the text messages deals with Ms. Jones' I guess her thoughts regarding causing harm to Mr. Barney's other girlfriend. And I looked at parsing those out, but I actually think that parsing out that related to Mr. – that which is related to Mr. Barney only actually is more prejudicial given that it – the discussion about buying a knife and things such as that a lot of that is directed to the girlfriend not Mr. Barney. So my concern would be that if I would parse that out the jury could take it – if I took it out of context the jury could take it out of context that that was all intended for Mr. Barney. I also think that if you balance the Defense certainly can still make the argument, well, she made these plans, she threatened the person named as Ty, but Ty is still living and breathing. So I actually I think it would be more prejudice to the Defendant if I just parsed out the stuff related to Mr. Barney.
>
> As far as the timing goes the Sifrit case [*Sifrit v. State*, 383 Md. 116 (2004)] is mentioned. Although it goes back to November maybe 9 or something like that it – and that is two months before the homicide it's a logical timeframe because it relates to the birth of the child that apparently was the issue between the decedent and the Defendant that caused there to be this friction. So that goes to motive, perhaps intent and therefore I think it's relevant to this case. The Appellate Court might tell me differently. And I think it needs to come in, in the complete way which was set for – now, when I say complete way I know the State I believe was careful to pull out only that which related to this incident not talking about, you know, any other events, any other people that the Defendant might have had an issue with that it's related to this circle of events that I believe it's the State's theory led to the dispute between the Defendant and the decedent and ultimately may have led to his death. I mean we know that he died, but may have been a reason for his death.

It is well established that the decision to admit evidence is committed to the sound discretion of the trial court. *State v. Simms*, 420 Md. 705, 724 (2011); *Ruffin Hotel Corp. of Maryland, Inc.. v. Gasper*, 418 Md. 594, 619 (2011). With some exceptions not applicable to the instant case, "all relevant evidence is admissible," while "[e]vidence that is not relevant is not admissible." Md. Rule 5-402. A trial court ordinarily considers

"first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403." *Simms*, 420 Md. at 725. Evidence is relevant if it has "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." Md. Rule 5-401. We conduct a *de novo* review on the issue of whether evidence was relevant. *Simms*, 420 Md. at 724–25. Under Md. Rule 5-403, relevant evidence may be excluded "if its probative value is 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." We review a court's balancing of probative value versus unfair prejudice and other countervailing concerns for abuse of discretion. *Simms*, 420 Md. at 725.

We find no merit in the appellant's arguments that the text messages were irrelevant or unduly prejudicial. In reaching its decision to allow the text messages to be admitted in evidence, the trial court relied upon *Sifrit*. In that case, Benjamin Sifrit and his wife were convicted, in separate trials, of crimes relating to the murders of Martha Crutchley and Joshua Ford. Evidence revealed that the bodies of Crutchley and Ford had been dismembered and disposed of in various trash dumpsters. At Benjamin Sifrit's trial, Michael McInnis testified about a conversation he had had with Sifrit about three years before the murders in which Sifrit described how he would dispose of a body if he ever killed someone. Sifrit had said that he would lay down plastic in an open area, remove

the arms, legs and head with a knife, and then place the body parts in separate bags and dispose of them in either the same dumpster over the course of a month or in different dumpsters throughout the area in a single trip. According to McInnis, he and Sifrit were "simply talking trash with guys over a few beers" and the conversation was not to be taken seriously. *Id.* at 129–30.

The Court of Appeals held that Sifrit's statement "was relevant and admissible" "as circumstantial evidence tending to prove that he later committed the murder." *Id*. at 131. In support, the Court relied upon the so-called *Hillmon* doctrine, which provides that when the performance of a particular act by a defendant is at issue in a case, that person's intention to perform that act may be offered as circumstantial evidence that he or she later acted in accordance with that intention. *See Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285 (1892). *See also Kirkland v. State*, 75 Md. App. 49, 54, *cert. denied*, 313 Md. 506 (1988) (affirming that "the *Hillmon* doctrine provides that when the performance of a particular act by an individual is an issue in the case, his intention (state of mind) to perform that act may be shown"). The Court observed that McInnis's testimony

> did more than suggest to the jury that Benjamin [Sifrit] was either a bad person or had a propensity to commit violent crimes. . . . [it] tended to show that Benjamin's participation in the homicide was not necessarily limited to the disposal of the bodies. Whether the three-year-old conversation was a joke or a serious statement and whether Benjamin participated in the killing as a principal or only as an accessory to homicide, were questions left to the jury for resolution.

Sifrit, 383 Md. at 132.

Sifrit had admitted to dismembering the bodies and disposing of the body parts in dumpsters but blamed the murders on his wife. The Court held that his prior conversation with McInnis was not solely relevant to the crime of accessory after the fact but also "was relevant circumstantial evidence of his intent or plan as well as evidence of the identity of the perpetrator." *Id.* at 135. The jury could reasonably infer that Sifrit's role was more extensive than he indicated, that he was involved in the actual killing, that his participation was not impulsive, and that he either planned or contrived a scheme to murder the victims. Accordingly, McInnis's testimony was relevant beyond offering it to show either Sifrit's propensity to commit crime or that he was a bad person.

Similarly, in the instant case, the appellant's text messages were relevant to show that she acted consistently with her stated intentions when she stabbed and killed Barney. The text messages demonstrated the appellant's motive to keep Barney away from J.J.; and they showed premeditation. Moreover, as the trial court recognized, the appellant's statements of intention to harm Tykeisha Parker were inseparable from her statements about Barney. If the statements pertaining to Parker had been redacted, that would have weakened the appellant's argument that she was just "blowing off steam" and did not intend her language to be understood in a literal manner, thereby prejudicing her.

With respect to the appellant's challenge to the admission of the text messages concerning spraying Windex in Barney's food and hitting him in the head with a canned good, it is clear from the record that the statements were not offered to establish the truth of those actions but instead to establish the appellant's growing hostility toward Barney

and her intent and motive to kill him. The admission in evidence of prior bad acts is governed by Rule 5-404(b), which provides:

> (b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

This rule is designed to protect the person who committed the "other crimes, wrongs, or acts" from an unfair inference that he or she is guilty not because of the evidence in the case, but because of a propensity for wrongful conduct. *Hurst v. State*, 400 Md. 397, 407 (2007). A three-part analysis is required before other crimes evidence is admitted. First, the court must determine whether the evidence fits into one or more of the exceptions. *Sifrit*, 383 Md. at 133 (citing *State v. Faulkner*, 314 Md. 630, 634 (1989)). This is a legal determination. *Id.* (citation omitted). Second, it must be shown by "clear and convincing" evidence that the defendant engaged in the alleged criminal acts. *Id.* In this regard, "[w]e review the trial court's decision to determine if there is sufficient evidence to support" its finding. *Id.* (citation omitted). Third, the court must find that the probative value of the evidence outweighs any unfair prejudice. *Id.* (citation omitted). "This determination involves the exercise of discretion by the trial court." *Id.* (citation omitted).

As already noted, the evidence at issue was relevant to the appellant's motive, intent, and premeditation, so the first part of the required analysis was satisfied. As for the second part of the required analysis, the appellant correctly points out that the trial

court did not expressly consider whether there was clear and convincing evidence that the Windex and canned good incidents occurred. The court did not need to make that consideration here because the probative value of the evidence did not depend upon proof that the incidents actually occurred. In *Whittlesey v. State*, the Court of Appeals held that when the statements at issue indicate that the defendant participated in bad acts but "the probative value of the evidence does not depend upon proof that the misconduct actually took place, the court should not apply the clear-and-convincing requirement in assessing the admissibility of the testimony." 340 Md. 30, 61 (1995), *cert. denied*, 516 U.S. 1148 (1996). In this case, the text messages concerning the appellant's spraying Windex on Barney's food and her hitting him in the head with a canned good were offered to show the appellant's hostility toward him, her motive, and her intent to kill. Last, with respect to the third part of the analysis, the court did not err in concluding that the risk of unfair prejudice did not outweigh the probative value of showing the appellant's hostility toward Barney in the weeks leading up to his death, particularly because the "prior bad acts" were allegedly violent acts that the appellant said were directly targeted at Barney. For all these reasons, the trial court did not abuse its discretion in admitting the text messages.

III.

The appellant's final contention is that the trial court erred by admitting in evidence 26 "selfie" photographs that she took between 1:47 a.m. and 9:37 a.m. on January 19, 2016, just hours after Barney was stabbed. The photographs include images of the appellant alone and of her posing with her baby, J.J.

The appellant argues that the photographs were not relevant because they were taken hours after Barney was stabbed, were "ambiguous" and "equivocal," invited the jury to speculate, and did not have a tendency to prove her guilt. She maintains that by admitting the photographs, "the court authorized the jury to speculate and infer [her] guilt from irrelevant evidence." In addition, she argues that any possible probative value the photographs might have had was substantially outweighed by the danger of unfair prejudice, that the photographs were needlessly cumulative, and that they also were cumulative with respect to other photographs taken of her before she was arrested and booked. The appellant asserts that the admission of the photographs was not harmless because the prosecutor argued that they demonstrated heartlessness or callousness on her part and invited the jurors to speculate that she was "celebrating a victory in the killing of Mr. Barney by posing with her child[.]" Again, we disagree and explain.

At trial, State's Exhibit 26A was identified as pages of an extraction report regarding photographic data obtained from the appellant's cell phone. On July 26, 2016, after the jury had been dismissed for the day, counsel and the trial judge discussed State's Exhibit 26A, which consisted of the photographs extracted from the appellant's cell phone. Defense counsel stated that the photographs "in and of themselves they seem fairly benign." He then stated, "I take it that the State's inference is that because of the time that they were taken shows some lack of (inaudible)[,]" to which the judge responded, "Right." Thereafter, counsel and the court engaged in a conversation about

time stamps that appear on the photographs.[4] The prosecutor explained that the State only was seeking to admit those photographs taken from the time Barney was transported to the hospital to the time the appellant's cell phone was seized by the police. The following exchanged occurred:

> [PROSECUTOR]: So the State believes that the photographs taken by the Defendant during that time period between the victim having been transported to the hospital and then the next morning when the police returned and ultimately take that phone back from her is properly or something that would be properly for the jury consider in a case among the other charges are depraved heart second degree murder and certainly would be inconsistent with the care having been shown allegedly shown by this Defendant in that time (inaudible) call.
>
> [DEFENSE COUNSEL]: It's depraved heart second degree murder topic because that's the first I've heard of that.
>
> [THE COURT]: Well, I think that the State is (inaudible) what a jury does when it gets to the end of its case.

Thereafter, the court determined that the "selfie" photographs had been properly authenticated, "could carry some relevance," and could be admitted in evidence, explaining:

> All right. Well, here is my thought that a little bit of research and I'll hear – and you can do more research after we leave today if you wish. The little bit of research that we were able to do Alston versus State which 101 Md. App. 47, it's a 1994 case, so it's the question for determining existence of actis [sic] reus requires depraved heart murder and whether the

[4] At the request of Sergeant Keith Benton and Detective Corporal Priscilla Rogers, both of the Dorchester County Sheriff's Office, Detective Sergeant George Paugh, III of the Easton Police Department, extracted the photographs from the appellant's cell phone. At trial, Detective Paugh explained that the appellant's phone used "U.T.C. time" to record the time that a photograph was taken and that "U.T.C. time" could be converted into Eastern Standard Time by subtracting 5 hours, or 4 for daylight savings time.

Defendant engaged in conduct that created a very high risk of death or serious bodily injury. That would seem to indicate that taking of a photograph after the fact doesn't seem to point to a difference during the act unless you took the picture, you know, while he was bleeding or before calling 911 without regard to saving him.

That being said if the theory of the State part of the motive is to alleviate any dispute, custody dispute or his ability to lodge a custody dispute I guess some trier of fact can see her posing with the baby in at least a couple of the cases sort of presenting the baby in the pose and smiling may certainly speak to motive which is an altogether different issue.

So the pictures in and of themselves are not such that they shock the conscience. They don't enrage. It's not a picture of her with a bloody knife. It's not anything. It's pictures of her either maybe one or two alone it's her posing, the baby is in the background, some with her feeding the baby. Certainly it may go to what she was thinking immediately after this took place regarding, you know, her – now that she would not have to worry about Mr. Barney. I will say this the testimony that we have indicates that Mr. Barney was pronounced dead about 4:30 a.m. Some of the photographs are before that event took place. It could also be interpreted that the baby's daddy is in bad shape and, you know, just like after a traumatic event you hug your loved ones. So it can go anywhere. And I'm not sure that it is overly prejudicial to the Defendant. It may be probative of motive, but I think it can also be interpreted by the trier of fact that it's benign or maybe better than benign for her.

So I guess my thought is unless you find some sort of law that changes it is I would allow them because I think it's up to the trier of fact to decide. They're relevant in that in my mind in that they were taken I mean we're talking about a traumatic event. You could hear the upset whether it's upset from having inflicted an injury or whatever it is but I think Ms. Jones appears to be upset. And the State played the 911. We know that, you know, Mr. Barney was taken to the hospital at 11:33 and two hours later she's taking these photographs. I think the jury can take it for what it is and make their own decision, but I don't think that it's necessarily irrelevant. It shows her thoughts, her behavior after this can help them perhaps assess her credibility with respect to the report made on the 911. It can perhaps help the jury determine what motive she may have had or it may put her in a more sympathetic light to the jury. I'm not sure. Juries are hard to read. But from an admissibility standpoint it's been properly authenticated. I think it could carry some relevance. The weight to be given to that is up to the jury. So I'll let that come in.

After State's Exhibit 26A was admitted, the following exchange between the prosecutor and the court occurred:

> [PROSECUTOR]: And just to be clear (inaudible) to the deprave charge earlier, Your Honor, but it's (inaudible) said was generally the Defendant's state of mind which is relevant we believe under any number of theories (inaudible) this case. So I don't want to pigeonhole (inaudible).
>
> THE COURT: The state of mind I guess then it goes to a motive as part of that I suppose.
>
> [PROSECUTOR]: Correct.
>
> THE COURT: Those are relevant matters for the jury's consideration. So that's why I think it may have probative value with respect to that.
>
> [PROSECUTOR]: Thank you.
>
> THE COURT: And the pictures are not shocking. They're not gruesome. They're not naked pictures. It's just pictures of she or she and her baby. All right.

The following day, the State showed Detective Rogers State's Exhibit 26A, a redacted version of the "selfie" photographs extracted from the appellant's cell phone, and the following colloquy occurred:

> [PROSECUTOR]: And what are those contents that are contained? Are those images extracted from the Defendant's phone?
>
> [DETECTIVE ROGERS]: These are images extracted from the Defendant's phone. They are images of [the appellant and J.J.] her baby.
>
> [PROSECUTOR]: Okay. When were those photographs taken?
>
> [DEFENSE COUNSEL]: Objection. Can we approach?
>
> THE COURT: Yes.
>
> (Counsel approached the bench and the following ensued:)

* * *

[PROSECUTOR]: What I provided was the two pages that had been redacted. You can see a before and after.

THE COURT: 25 and 26 are not in yet. They're for identification only. So the intention is you would offer 26-a?

[PROSECUTOR]: Yes, Your Honor.

THE COURT: Are we good?

[DEFENSE COUNSEL]: We're good.

* * *

(Counsel returned to the trial table and proceedings resumed in open Court.)

The State proceeded to question Detective Rogers about State's Exhibit 26A, which consisted of some of the photographs that were taken on January 19, 2017, with the appellant's cell phone. Thereafter, the following occurred:

[PROSECUTOR]: At this time, Your Honor, I'd move in State's exhibit 26-a.

THE COURT: All right. Any objection subject to our previous discussions?

[DEFENSE COUNSEL]: Subject to our previous discussion, Your Honor.

THE COURT: 26-a is admitted.

Although the "previous discussions" regarding the "selfie" photographs did not include an objection by the defense based on relevancy, the trial court's ruling decided that issue. Accordingly, the issue is preserved for review. Md. Rule 8-131(a).[5]

The photographs, which depicted the appellant individually and also smiling and posing with her infant daughter, were relevant to the appellant's motive and to her credibility. The photographs offered some evidence of a change in the appellant's demeanor and insight into what she was thinking in the hours immediately after the stabbing. The fact that the judge recognized that jurors might view the photographs as benign is of no moment, as it was within the jury's province to determine the weight to be given to the evidence. Moreover, the "selfie" photographs were not cumulative of booking photographs of the appellant taken later the same morning. Although both the booking photographs and the "selfie" photographs showed the appellant, the "selfie" photographs were taken while the police were not present in her home and served a different purpose than the booking photographs. The trial court did not abuse its discretion in determining that the probative value of the "selfie" photographs in State's Exhibit 26A outweighed any potential prejudicial effect. *Jackson v. State*, 230 Md. App. 450, 461 (2016) (to constitute abuse of discretion decision must be "well removed from

[5] Rule 8-131(a) provides, in pertinent part:

> Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable") (citations omitted); *Thompson v. State*, 229 Md. App. 385, 404 (2016) (stating same).

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED; COSTS TO BE PAID BY THE APPELLANT.