Circuit Court for Charles County
Case No. C-08-CR-17-0011

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2170

September Term, 2019

ANTONIO KA'JUAN OWENS

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Wells,

JJ.

Opinion by Wells, J.

Filed: April 26, 2021

A jury empaneled in the Circuit Court for Charles County heard evidence that appellant, Antonio Owens, participated with two others in the killing Lydell Wood. At the close of the State's case and at the close of the evidence, Owens moved for a judgment of acquittal on the basis that the State failed to identify Owens as a perpetrator of the crime. The trial court denied both of Owens' motions.

The jury convicted Owens of first-degree murder, use of a firearm in a felony/crime of violence, conspiracy to commit murder and handgun on person. At sentencing, Owens' trial counsel filed a motion for a new trial arguing that the State committed a *Brady*[1] violation when it failed to disclose that one of the lead detectives was charged with driving under the influence of alcohol and was subsequently demoted while investigating the murder. The court denied the motion. The court sentenced Owens to life without the possibility of parole for murder, consecutive sentences of twenty years for the use of a firearm in a crime of violence and thirty years for conspiracy to commit murder.

Owens' trial counsel failed to file a timely appeal. On December 23, 2019, the trial court granted Owens' motion for leave to file a belated appeal. Owens then filed a timely appeal to this Court. Owens presents four questions for our review, which we have rephrased for clarity[2]:

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

[2] Appellant's verbatim questions are:

I. Whether the State violated Appellant's due process right not to be convicted based on false evidence, where the prosecutor elicited false or misleading testimony from the accomplice, Rashaad Brawner, that he was not promised anything for his incriminating statements that implicated him and Appellant, and where the prosecutor had disclosed the falsity of the accomplice testimony to the Appellant but not the jury.

I. Did the State elicit false or misleading testimony from accomplice, Rashaad Brawner, to secure Owens' convictions?

II. Did the State commit a *Brady* violation by failing to disclose that the lead investigator, Jack Austin, was arrested for an alcohol-related driving offense and was subsequently demoted from homicide detective to patrol officer?

III. Did the trial court err when it denied Owens' motion for a judgment of acquittal when the only identification evidence of Owens at the scene came from Rashaad Brawner's accomplice testimony?

IV. Did the trial court abuse its discretion in admitting photographs of Owens in "saggy" pants and pointing "finger guns"?

For the reasons that we discuss, we hold that the issue of whether the State elicited false or misleading testimony from accomplice Rashaad Brawner regarding the terms of his plea agreement was not preserved. But even if the issue was preserved, we conclude that the State did not elicit false testimony from Brawner because the State disclosed the terms of Brawner's plea agreement to both the jury and the defense. The court did not err when it denied the motion for a new trial based on an alleged *Brady* violation after the State did not disclose that the chief investigating officer suffered a demotion after he pled guilty

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II. Whether the trial court erred when it found that the State did not violate *Brady v. Maryland*, 373 U.S. 83 (1963), where the State suppressed the DUI arrest, prosecution, probationary status, and demotion of Detective, then Officer, Jack Austin, whose testimony—as a hybrid fact-expert witness—was central to the State's theory of the case?

III. Whether the trial court erred by concluding there was sufficient evidence of Appellant's identification as a perpetrator of Mr. Wood's murder, where the sole identification evidence was the uncorroborated testimony of the accomplice, Rashaad Brawner?

IV. Whether the trial court erred by admitting photographic evidence of Appellant in "saggy" pants and pointing "finger guns," where the evidence was irrelevant, incompetent and unfairly prejudicial?

to an alcohol-related driving citation and received probation before judgment. Owens' claim about the sufficiency of corroborating identification evidence was not preserved. Finally, the trial court did not abuse its discretion in admitting the photograph depicting Owens with "saggy pants" and "finger guns" because the court properly balanced the photograph's prejudicial and probative values. We, therefore, affirm.

FACTUAL BACKGROUND

The State alleged that Antonio Owens and Miguel Angel Santana shot and killed Lydell Wood. The State's theory was that Santana enlisted Owens' help to find a man known as "Mali G" because Mali G had shot at Santana earlier that same day. Owens and Santana killed Wood after they could not find Mali G., believing Wood to be Mali G's associate.

Events Leading Up to Wood's Shooting

On the morning of January 6, 2016, Wood and Donald Savoy were headed towards Wakefield Circle to visit Wood's cousin, Treyvon Douglas. On the way to Douglas's home, Savoy and Wood ran into Mali G near a parking lot on Rooks Head Place, another street within Wakefield Circle.

According to Savoy, while he and Wood were talking to Mali G in the parking lot, Mali G saw some men who he said had jumped him on an earlier occasion, one of whom was Santana. During an ensuing scuffle, Mali G fired four shots at Santana and the other men.

After the shooting, Wood and Savoy walked to at Douglas's home. Wood and Douglas got into an argument, so Wood and Savoy left and headed to Rooks Head Place to visit Wood's mother, Gail Fenwick. Soon thereafter, Douglas began walking to Rooks Head Place to meet back up with Wood. While Douglas was walking, a stranger approached him and asked where Mali G and Wood were. Douglas responded that he was unaware of Mali G's whereabouts and denied knowing where Wood was.

Wood's Shooting

Fenwick testified that while she was outside with Wood and Savoy, she saw a man pacing back and forth. The State contended that man was Santana. As Wood walked back from across the street, Fenwick testified that the pacing man reappeared with another man, who the State contended was Owens. Wood signaled "what's up" to both men who then pulled out guns. Fenwick told Wood to run; she ran into the house. After she heard gunshots, Fenwick came back outside and saw Wood lying on the porch of a nearby home. Wood, who had been shot in the torso, died.

Fenwick could not identify the shooters by name but provided the police with a description of them. One of the shooters was a taller, light-skinned African American man who wore a gray jacket, gray hat, and had a gray gun. The other man was shorter, wore a dark-colored jacket with a fur-lined hood and carried a black gun.

At trial, Savoy gave a similar account to Fenwick. Savoy added that he saw a gold car driving around as he and Wood were heading to see Fenwick on Rooks Head Place.

Police Investigation

Police and forensics experts arrived at the scene around 2:05 p.m. Sergeant Clarence Black of the Charles County Sheriff's Office testified that he saw Santana walking on Wakefield Circle and stopped him. Although it was the middle of January, Santana was wearing a shirt and pants, but no coat. With no reason at that time to detain Santana, Sergeant Black allowed him to go on his way.

The police found evidence of the first shooting involving Mali G. The State recovered shell casings near an electrical box that substantiated the earlier shooting. Additionally, Lloyd Turner, a neighbor on an adjacent street provided police with the surveillance footage from the two security cameras outside his house. The security cameras captured some portion of the first shooting involving Mali G. The State argued that the word "Mali" was audible in the footage and that it confirmed that on the day of the shooting, Mali G. was on Wakefield Circle.

Police recovered surveillance footage from Oakley Drive, which provided the police with a view of the scene directly across from Rooks Head Place. The video showed two men walking through the neighborhood as well as Brawner's gold Mercury Sable automobile. The video also showed someone, whom State contended was Owens, walking to the Mercury after the car turned onto Wakefield Circle after the shooting.

Officers were unable to locate any witnesses who could identify the shooters. A search of the area did not reveal any weapons. The case went cold over the next few months.

Brawner's Interviews with Police

Almost three months later, on March 28, 2016, the police arrested Rashaad Brawner in connection with an unrelated murder that occurred on March 23, 2016. Police interviewed Brawner three separate times: June 16, 2016, August 5, 2016, and April 18, 2018. Over the course of the three interviews with the police, Brawner implicated Santana and Owens in Wood's death. The lead investigating officer, Jack Austin, testified that in the final interview on April 18, he informed Brawner that additional information had been uncovered that implicated him in Wood's death and that Brawner needed to be truthful. Brawner only admitted to the full extent of his involvement after he was confronted with the Oakley Drive video footage that showed his gold Mercury Sable near the scene of Wood's shooting.

In January 2017, Brawner pled guilty to manslaughter in the unrelated murder. Under the plea agreement, Brawner received a sentence of ten years' incarceration with all but five years suspended. Brawner's plea agreement also required him "to testify truthfully, if called to do so, in any case brought by the State of Maryland against Miguel Angel Santana."

Brawner's Testimony

Brawner testified against both Owens and Santana, despite his plea agreement only requiring him to testify against Santana. The State tried Owens first.[3] Brawner testified at Owens' trial that on the day of the shooting he was at Santana's townhouse on Rooks Head

[3] The State tried Owens in April 2018. Santana was tried approximately one year later in March 2019.

Place when Owens walked in and showed Brawner a silver and black handgun with an extended clip. Owens left shortly thereafter.

After Owens left, Santana had an altercation with three men who Brawner identified as "Mookie (Wood), Mali G., and some crack head." As Santana and the men went around a corner, Brawner heard gun shots. Santana ran from the corner, went into his home, got a gun, and came back out to Brawner's car. Brawner and Santana then drove around looking for Mali G. Santana called Owens and asked him to join them in looking for Mali G.

Brawner and Santana picked up Owens and the three men drove around looking for Mali G and found him on Red Lion Court. Owens got out of the car to shoot him, but his gun jammed. According to Brawner, the three men drove onto Piney Church Road, which is a more remote back road. Owens checked his handgun and fired two shots into the ground.

Brawner then drove back to Wakefield Circle where they saw Wood and Douglas arguing. Afterwards, they saw Wood walking towards Rooks Head Place. Brawner dropped Santana and Owens off on Wakefield Circle behind Santana's townhouse.

Brawner waited, heard shots, and pulled his car up to where Owens was. Owens ran to the car and said, "he dead." Santana ran towards Red Lion Place. Brawner dropped Owens off and drove away. Santana called Brawner around 2:20 p.m. and asked him to come pick him up. Brawner could not pick him up because his car "was in the air" at a repair shop. Brawner called Darius Connor to pick up Santana, but Connor could not find Santana. Santana called Brawner again and asked him to retrieve his jacket and handgun

from a garbage can that was behind Brawner's former residence on Yarmouth Court. Connor took Brawner to retrieve those items and Brawner returned them to Santana.

The Trial

The State called twenty-nine witnesses over seven days of trial. Only Brawner's testimony directly placed Santana and Owens at the crime scene. Further, Brawner's testimony corroborated the State's theory that Owens was one of the shooters.

The State also produced a gun that had been found during the execution of a police search of an apartment in Southeast, D.C. in 2017. An expert testified that this gun fired some of the bullets found at the scene of Wood's shooting. The expert also testified that the shell casings found at Wood's shooting were unrelated to the earlier shooting involving Santana and Mali G because the shell casings located near the earlier shooting came from a different gun than the two guns that had been used in Wood's shooting.

At the close of the State's case, Owens' trial counsel moved for a judgment of acquittal on the ground that the State failed to prove as a matter of law that Owens participated in Wood's murder. The trial court denied the motion. The jury convicted Owens of first-degree murder, use of a firearm in a felony/crime of violence, conspiracy to commit murder and handgun on person.

At sentencing, Owens' trial counsel filed a motion for a new trial arguing that the State committed a *Brady* violation in failing to disclose that months after the shooting, but before trial, Officer Austin had been charged with driving under the influence, received probation before judgment, and was subsequently demoted from detective to patrol officer. Owens' trial counsel argued that disclosure of the incident could have led to impeachment

evidence. The court denied the motion for new trial. The court sentenced Owens to life without the possibility of parole for murder, consecutive sentences of twenty years for the use of a firearm in a crime of violence and thirty years for conspiracy to commit murder. Owens filed a motion for leave to file a belated appeal, which was granted and timely filed.

DISCUSSION

I. The State Did Not Present False or Misleading Testimony Concerning Brawner's Plea Agreement Because the State Disclosed the Plea Agreement and all Interviews with Brawner to the Defense.

A. Parties' Contentions

Brawner testified that he had received no benefits, promises, or inducements from the police in return for his testimony about Wood's shooting. But, Owens contends, Brawner got a sweetheart deal from the State and was not prosecuted for his role in Wood's death. Thus, Owens argues that the State used "false testimony" to obtain Owens' convictions because Brawner's credibility and testimony were central to the case. On this basis, Owens argues his conviction must be reversed.

The State contends that at trial Owens failed to raise let alone address any potential violations of the type discussed in *Napue v. People of State of Illinois*, 360 U.S. 264 (1959). Consequently, the State argues, Owens has waived his right to challenge whether the State elicited false or misleading testimony on appeal. Further, the State asserts that even if Owens' claims about false testimony were not waived, the State did not present false testimony. The plea agreement between Brawner and the State was disclosed to Owens' trial counsel, was introduced at trial, and was the subject of Brawner's direct and cross-examination.

B. Preservation of the False Testimony Claim

a. Rule 8-131

Maryland Rule 8-131 governs the scope of review for this Court. The Rule states that the Court may only decide issues that appear plainly on the record or were "raised in or decided by the trial court," unless the Court determines on appeal that the issue must be decided to avoid the expense of another appeal or to properly guide the trial court. The purpose of the Rule is to ensure a fair and orderly administration of justice by "requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceeding." *Robinson v. State*, 410 Md. 91, 103 (2009). An appellant contesting a court's ruling or other error on appeal must have made a timely objection at trial otherwise the appellant is barred "from obtaining review of the claimed error as a matter of right." *Id.* at 104; *see also Basoff v. State*, 208 Md. 643, 650 (1956) (explaining that where the party has the option to object at the trial court the failure to object "while it is still within the power of the trial court to correct the error is regarded as a waiver" that prevents review on appeal).

This Rule necessarily requires that "the 'issue' must 'plainly appear' by the record to have been 'raised in' the trial court or 'decided by' the trial court." *Ray v. State*, 435 Md. 1, 20 (2013). In *Ray*, the Court explained that the petitioner did not "raise" the issue either before or during the motion to suppress hearing. *Id.* The Court highlighted that at no point did the defense contest whether the police had probable cause to arrest the defendant. *Id.* at 21. The Court noted that to address an issue on appeal that was not litigated in the trial court "depriv[ed] the State of any opportunity to introduce additional

evidence or advance a new theory in opposition" to the defendant's argument. *Id.* at 23. Appellate courts should rarely exercise discretion to hear issues that were not raised at trial. *Id.*

Here, Owens' trial counsel did not raise the issue of whether Brawner's testimony regarding the plea agreement was false. At no point during the trial did Owens' counsel advance an argument that Brawner was testifying falsely about supposed promises of leniency that he received from the State. Instead, on cross-examination, Owens' counsel specifically asked Brawner whether the State had charged him with conspiracy to commit murder, conspiracy to commit assault or handgun possession in relation to Wood's murder, all of which Brawner denied. Without raising the issue of false testimony during Brawner's cross-examination or in the motion for a judgment of acquittal, Owens necessarily deprived the State of the opportunity to respond to these arguments or to present countering evidence and further denied the judge the opportunity to address the issue. *See Ray*, 435 Md. at 23. Consequently, under Rule 8-131, we hold that Owens' contentions about Brawner's purported false testimony were not preserved for appeal.[4]

C. The State Did Not Procure False Testimony from Brawner

Although we have concluded that Owens' claim is unpreserved, because of the importance of the issue, we nonetheless examine whether the State obtained Owens'

[4] In his reply brief, Owens, for the first time, raises plain error. We decline to address the claim of plain error for this reason. *Wright v. State*, 247 Md. App. 216, 228 (2020). Nonetheless, the analysis we undertake in the next section of this opinion demonstrates that Owens' assertion of plain error is without merit.

convictions through false testimony. *See* Rule 8-131(c). The State's "knowing use of material, false evidence" in a criminal trial violates the defendant's right to due process under the Fourteenth Amendment and offends the "constitutional concept of fairness." *Giglio v. United States*, 405 U.S. 150, 153 (1972); *see also Mooney v. Holohan*, 294 U.S. 103, 112 (1935) (noting that where the State secures a conviction through testimony known to be perjured, the conviction "is . . . inconsistent with the rudimentary demands of justice"). The State may not produce false testimony and must "correct statements known to be false, even if unsolicited." *Hall v. Warden of Md. House of Correction*, 222 Md. 590, 593 (1960). The State's obligation to correct false testimony applies as equally to a witness's credibility as to a defendant's guilt. *See Napue*, 360 U.S. at 269 (highlighting that "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence").

Reversal of a conviction obtained through false testimony requires the petitioner to establish three elements: "(1) that the testimony at issue was false; (2) that the prosecution knew or should have known of the falsity; and (3) that a reasonable probability exists that the false testimony may have affected the verdict." *See United States v. Basham*, 789 F.3d 358, 376 (4th Cir. 2015); *see also United States v. Agurs*, 427 U.S. 97, 103 (1976) (stating that the testimony must relate to a material issue and a reasonable likelihood exists that the testimony could have affected the jury's verdict); *Napue*, 360 U.S. at 270 (noting that had the jury known of the plea agreement's existence, then it may have "concluded that [the witness] had fabricated testimony in order to curry the favor of the very representative of the State who was prosecuting the case in which [the witness] was testifying"); *Lyde v.*

Warden, 1 Md. App. 423, 427 (1967) (explaining that the appellant bears the burden of proving that the State "knowingly used perjured testimony" to secure a conviction).

a. Plea Agreement

In *Napue*, the United States Supreme Court held that the government's use of false testimony to secure the petitioner's conviction may have affected the outcome of the trial. 360 U.S. at 272. The petitioner alleged that the government's witness falsely testified "that he had received no promise of consideration in return for his testimony," despite the government promising consideration. *Id.* at 265. The government did not correct the witness's false testimony at trial. *Id.* The Court explained that Napue's convictions must be reversed because "[h]ad the jury been apprised of the true facts, however, it might well have concluded" that the witness was merely fabricating testimony "in order to curry the favor of the very representative of the State who was prosecuting the case in which [the witness] was testifying." *Id.* at 270. The witness may have believed that the State representative "was in a position to implement (as he ultimately attempted to do) any promise of consideration." *Id.*; *see also Giglio*, 405 U.S. at 151 (holding that "evidence of any understanding or agreement as to a future prosecution would be relevant to [the witness's] credibility and the jury was entitled to know of it); *Jones v. State*, 8 Md. App. 405, 413 (1970) (noting that where a co-defendant's plea agreement requires truthful testimony about the other defendant in exchange for leniency, "such promise or understanding should be fully, fairly and honestly disclosed." (citation omitted)).

Unlike in *Napue*, where the witness testified falsely and the government allowed the false testimony to permeate the trial, here, Brawner did not testify that he received a benefit or promise of consideration in Owens' case. Significantly, the State disclosed the plea agreement regarding the unrelated murder and entered a written copy of it into evidence. Brawner read aloud the conditions of his plea agreement, which included testifying truthfully in any case against Miguel Angel Santana. The plea agreement was silent on any sort of deal in Owens' case. He also read aloud the sentencing portion where he would receive 10 years, with all but 5 years suspended. Here, the jury was aware of the terms of the plea agreement, unlike in *Napue* where the jury was unaware of the terms of any such agreement. *See Napue*, 360 U.S. at 269.

And unlike the prosecutor in *Napue*, the Assistant State's Attorney here sought to establish on redirect that "no official source had promised consideration" to Brawner regarding Wood's murder. Consequently, the jury knew Brawner was not being prosecuted for his role in Wood's murder. As noted, Owens' trial counsel explicitly asked Brawner on cross-examination whether he was charged with anything in Wood's murder. On re-direct, the State asked Brawner why he even bothered telling the State the truth "if [he was not] promised anything in the front end[.]" Brawner replied, "Um . . . because they had, the State had came to me and told me that they knew that I was involved." Brawner's statements at trial are completely different from the statements in *Napue* where the government sought to emphasize a lack of consideration. Here, the State questioned Brawner regarding his plea agreement and why he came forward with the truth about his whereabouts on the day of the murder.

Even still, Owens maintains that an agreement exists between the State and Brawner because at the April 2018 proffer session, the State informed Brawner they could not charge him for his role in Wood's shooting because all of the information that Brawner had given was in the context of a proffer. This position, however, is not tantamount to a false claim because no false impression was created "before the jury that Brawner testified without any promises or inducements." Brawner only admitted to the full extent of his involvement in Wood's death after the police showed him video evidence that he was at the scene. Brawner candidly acknowledged on cross-examination that had he not been confronted with this evidence he had planned to testify that he was not present at the time of the shooting. The jury could gauge for itself Brawner's truthfulness. *See Napue*, 360 U.S. at 271 (noting that "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend"); *United States v. Payne*, 63 F.3d 1200, 1210-11 (2d Cir. 1995) (concluding that "under the rigors of the vigorous cross-examination by defense counsel, any bias or prejudice underlying [the witness's] testimony was surely demonstrated to the jury, thus the jury was able to weigh the truthfulness adequately"); *DeLoach v. State*, 308 Ga. 283, 294 (2020) (noting that the witness "amply demonstrated his questionable credibility at trial," thus there was "no reasonable likelihood that [the witness's] false testimony about his plea agreement could have affected the jury's assessment" as to the witness's credibility).

Owens relies on *Conyers v. State*, 367 Md. 571 (2002) and *Wilson v. State*, 363 Md. 333 (2001) to support his assertion that the State's disclosure of the plea agreement was insufficient to protect Owens' due process rights. However, Owens' reliance on these cases is misplaced.

In *Wilson*, the appellant alleged that the State allowed two witnesses to "mislead the jury by understating the favorable consideration in [the plea agreements] granted in exchange for their testimony." 363 Md. at 344. The State disclosed the existence of a plea agreement but "the specific terms of the agreement [were] unknown." The Court held that the actual terms of the plea agreement were suppressed because they had not been disclosed. *Id.* at 348. The Court explained that while the defendant was able to obtain some information about the plea agreements, "he could not effectively challenge their testimony regarding the content of those agreements, much less impeach their credibility, without a copy of the written agreements." *Id.* at 349.

Owens heavily relies on the fact that *Wilson* held that the petitioner's trial counsel could not effectively cross-examine the witness because the State suppressed the actual terms of the plea agreement, but that is not what happened in this case. Owens' trial counsel had a copy of the plea agreement and could effectively cross-examine Brawner as to the scope of the plea agreement. The jury was aware of the favorable terms of the plea agreement and that the plea agreement only required Brawner to testify truthfully in any matter against Miguel Angel Santana. *Giglio*, 405 U.S. at 155 (explaining that "evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it"). The jury was able to "assess whether

the deal would reasonably tend to indicate that his testimony ha[d] been influenced by bias or motive to testify falsely." *Wilson*, 363 Md. at 350.

Owens reliance on *Conyers* is even less compelling. In *Conyers*, the State failed to disclose a plea agreement between the jailhouse informant and the State until the postconviction hearing. 367 Md. at 602. The informant, however, refused to sign a written confession until he received a benefit from the State in exchange for his testimony. *Id.* at 601. The Court held that the State's failure to disclose the circumstances surrounding the plea agreement violated *Brady*. *Id.* at 609. The Court emphasized that the State took a deceptive approach by failing to disclose the request for the benefit. *Id.*

Unlike in *Conyers* where the State purposefully took a deceptive approach by failing to disclose the circumstances surrounding the plea agreement, here, the State did not take a deceptive approach as the State questioned Brawner as to why he initially minimized his involvement and what his plan for testifying was if the officers had never discovered that his car was at the scene. Further, at trial, the State even highlighted that Brawner received no benefit to testify and that he was not charged with anything in relation to Wood's murder, thus the State did not take a "deceptive approach." *See Conyers*, 367 Md. at 608.

b. Even if the State Did Present False or Misleading Testimony, Owens Has Not Established That It Would Have Affected the Outcome.

Even if the State did present false or misleading testimony regarding Brawner's plea agreement, there is no reasonable likelihood that it would have favorably affected the outcome for Owens. "A conviction obtained by the knowing use of perjured testimony is

fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Agurs*, 427 U.S. at 103. This standard is the strictest standard of materiality because it involves both "prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process." *Id.* at 104. Here, even if Brawner's testimony was somehow deemed misleading, that fact would not have altered the outcome of the trial.

The State presented eyewitness testimony that corroborated Brawner's testimony that Owens was a direct participant in Wood's slaying. Legally sufficient corroborative evidence consists of independent evidence that corroborates the accomplice's testimony "that the accused was in the vicinity of the crime at the time it was committed or that he was in the company of the perpetrator either shortly before or shortly after the crime." *Wise v. State*, 8 Md. App. 61, 63-64 (1969). *First*, Gail Fenwick's testimony corroborates Brawner's testimony that Owens and Santana were together at the time of the shooting. *Wright v. State*, 219 Md. 643, 650 (1959). Fenwick testified that she saw two men, one of whom was wearing a dark jacket with a fur-lined hood and carrying a black gun and the other man was wearing a grey jacket with a hat and carrying a gray or silver gun. Brawner testified that Owens and Santana were together at the time of the shooting in the vicinity of the crime. Fenwick's testimony as to the description of the shooters is independent evidence that relates to a "material fact" of the accomplice's testimony. *Wright*, 219 Md. at 650 (explaining that corroborative evidence "must support the accomplice's testimony as to some material facts tending to show that the accused was either identified with the perpetrators of the crime or had participated in the crime itself").

Second, video footage from a home on Oakley Drive showed a gold Mercury Sable, identified as Brawner's vehicle, driving onto Wakefield Circle around the time of the shooting. The video footage also showed an individual pacing back and forth, who the State identified as Santana, and Fenwick testified she saw an individual pacing back and forth before the shooting. The video footage and Fenwick's testimony go to a "material fact" of Brawner's testimony by placing Santana in the vicinity of the crime. *Wright*, 219 Md. at 650. More importantly, the video showed Owens making his way to Brawner's vehicle after the shooting. Brawner testified that after the shooting Owens got into Brawner's vehicle and said, "He's dead, bro." The circumstantial identifications of Owens near the scene and at the time of the crime sufficiently corroborated Brawner's testimony and related to substantial facts that tended to connect Owens with the crime. *Wright*, 219 Md. at 649; *see also Jeandell v. State*, 34 Md. App. 108, 112 (1976) (stating that non-accomplice testimony must identify the defendant with the accomplices at or near the time of the crime).

Finally, the jury could judge Brawner's credibility. He admitted that he had purposefully minimized his own involvement and was planning on lying on the stand as to the extent of his involvement. He only admitted the full extent of his involvement after the video evidence of him driving Owens around in his car had come to light. The State disclosed the recorded interviews with Brawner and questioned him on the terms of his plea agreement. Owens' trial counsel also questioned Brawner as to the extent of the agreement and whether he was facing charges. Consequently, we cannot say that the conviction was obtained by "knowingly use of perjured testimony" because there was no

"corruption of the truth-seeking function." *Agurs*, 427 U.S. at 103; *Ware*, 348 Md. at 54 (explaining that where information is not disclosed "the potential impact on cross-examination . . . is sufficient to undermine confidence in the outcome of the proceeding"); *Wilson*, 363 Md. at 350 ("Where a witness has a deal with the State, the jury is entitled to know the terms of the agreement and to assess whether the 'deal' would reasonably tend to indicate that his testimony has been influenced by bias or motive to testify falsely.").

We hold that even if Owens' argument was preserved, his argument cannot succeed because there is no *Napue* violation where the State disclosed the full extent of the terms of the plea agreement, and the defense was able to thoroughly cross-examine Brawner. *See Giglio*, 405 U.S. at 153. The State did not knowingly present false testimony about Brawner's plea agreement. *Napue*, 360 U.S. at 265. Instead, the State fully complied with the demands of justice by "fully, fairly and honestly disclos[ing]" the extent of the plea agreement to both Owens and the jury. *Jones*, 8 Md. App. at 413. Further, even if the State did present false or misleading testimony, there is no reasonable likelihood that it affected the outcome of the trial. *Agurs*, 427 U.S. at 103. Therefore, Owen's conviction need not be reversed.

II. The Trial Court Properly Denied Owens' Motion for a New Trial Because the State Did Not Commit a *Brady* Violation When it Did Not Disclose Officer Austin's DUI Citation.

A. Parties Contentions

Owens contends that the State committed a *Brady* violation by failing to disclose that during the investigation of Wood's murder, Officer Austin received a citation for Driving Under the Influence of Alcohol (DUI) while he was off duty. Owens' counsel

argues that even if the disclosure did not lead to per se admissible evidence, it could have led to impeachment evidence. Consequently, Owens contends that his conviction should be reversed. The State contends that it did not violate *Brady* by failing to disclose Officer Austin's DUI arrest because the officer's conduct could not have produced impeachable evidence.

B. Standard of Review

A *Brady* violation occurs when the prosecution suppresses "evidence favorable to an accused upon request . . . where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. Under *Brady*, both impeachment and exculpatory evidence must be disclosed as there is no distinction between the two. *Id.*; *Ware*, 348 Md. at 37. Maryland Rule 4-263 is consistent with *Brady* and requires the State to disclose evidence "that tends to impeach a State's witness." Md. R. 4-263(6). The State must disclose "prior criminal charges, pending charges, or probationary status that may be used to impeach the witness" as well as "evidence of prior conduct to show the character of the witness for untruthfulness." *Id.* at (6)(A);(C).

A defendant contending that the State committed a *Brady* violation must establish that the State withheld evidence that was both favorable and material. *Ware*, 348 Md. at 38; *Williams v. State*, 416 Md. 670, 692 (2010) (noting that the petitioner must establish that the State suppressed favorable evidence that was material to the case). The evidence must be favorable to the accused. *Ware*, 348 Md. at 40. Favorable evidence "includes not only evidence that is directly exculpatory, but also evidence that can be used to impeach

witnesses against the accused." *Id.* at 41. The suppressed evidence "must be material to the guilt or punishment of the accused in order to violate due process and entitle the defendant to a new trial." *Id.* at 44. Evidence is material "if 'there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Id.* at 46. (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985)). Had the evidence been known and used by the defense, then it "would truly have made a difference to the outcome of the case." *Adams v. State*, 165 Md.App. 352, 425 (2005).

C. Owens Did Not Establish that Evidence of the DUI Citation was Favorable or Material to the Outcome.

Owens contends that the State's failure to disclose that Officer Austin received a DUI citation, probation before judgment, and a subsequent demotion prevented Owens' trial counsel from effectively examining Austin as to his self-interest and bias "to testify favorably for his employer" to regain his former position as a detective. We conclude that the trial court correctly denied the motion for a new trial. There was no *Brady* violation or violation of Md. Rule 4-423 because Owens did not establish that testimony about Officer Austin's DUI citation was favorable or that it constituted material evidence.

Suppressed evidence must be favorable and material to the outcome. *Ware*, 348 Md. at 38. We agree with the State that Owens would have appreciated knowledge of Austin's probation before judgment for the DUI arrest. But the DUI arrest would not have been admitted into evidence because a probation before judgment is not a conviction, nor

is a DUI citation an impeachable offense so it cannot be material and there is no reasonable probability it would have affected the outcome of the trial. *Adams*, 165 Md. App. at 425. We look at each factor to support our conclusion.

a. Favorability

First, Owens did not establish that the evidence would have been favorable because the DUI citation could not be used to impeach Officer Austin. Because Maryland Rule of Evidence 5-609 only applies to convictions, Officer Austin's DUI arrest is not admissible because he received probation before judgment, which is not a conviction. *Molter v. State*, 201 Md. App. 155, 173 (2011) ("So under Maryland law, unless something has changed that I am not aware of, probation before judgment is not considered a conviction for any purpose under Maryland law.");*Schmitt v. State,* 140 Md. App. 1, 41 (2001).

Nonetheless, Owens argues that evidence of the DUI arrest could have been introduced through Maryland Rule 5-608(b), which provides:

> (b) Impeachment by examination regarding witness's own prior conduct not resulting in convictions. The court may permit any witness to be examined regarding the witness's own prior conduct that did not result in a conviction but that the court finds probative of a character trait of untruthfulness.

This Rule requires that the judge "balance the actual probative value of the inquiry in the case at hand against the prejudice impacting on the character of the witness being impeached." *Molter,* 201 Md. App. at 173. Rule 5-608(b) grants a trial judge wide discretion to decide whether to allow the use of prior bad act conduct that did not result in a conviction. A judge does not abuse their discretion when "the inquiry has probative value and may tend to impeach the witness' credibility but its relationship to the issue on trial is

less direct and does not present so substantial risk of a miscarriage of justice, the trial judge *may* permit the inquiry; however, he does *not* abuse his discretion *if he does not*." *Ogburn v. State*, 71 Md. App. 496, 510 (1987) (emphasis supplied).

Here, the trial court appropriately denied Owens' motion for a new trial based on the alleged *Brady* violation because Officer Austin received probation before judgment for the DUI citation. This Court has recognized that DUI is an offense that is not probative of "untruthfulness." Rule 5-608(b); *Brown v. State*, 76 Md. App. 630, 639 (1988). Alcohol-related driving convictions "are not within the categories of those convictions that are admissible for the purpose of impeaching the credibility of a witness." *Brown*, 76 Md. App. at 639 (noting that drunk driving convictions are not "of the ilk of lesser crime to indicate that the witness is unworthy of belief"). Owens has not demonstrated why the evidence would be favorable when it is inadmissible under Rule 5-609 or Rule 5-608(b). Therefore, the evidence is not favorable as it cannot be used as either direct exculpatory evidence or for impeachment purposes.

b. Materiality

Second, Owens must establish that Officer Austin's DUI citation, probationary status, and demotion would have been material "to the guilt or punishment of the accused." *Ware*, 348 Md. at 44. Material evidence is evidence that "would truly have made a difference to the outcome of the case." *Adams*, 165 Md. App. at 425.

Owens argues that the evidence could have been material because it could have led to evidence demonstrating any bias that Officer Austin may have to the police department.

We disagree. Owens' trial counsel only abstractly referred to the potential bias that Officer Austin may have had but could not point towards any evidence other than the fact Officer Austin had received a probation before judgment for the DUI citation and had been demoted. The sentencing court was correct that Owens' claim involved "a little too much speculation." Without more, there is no "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Ware*, 348 Md. at 46; *Wood v. Bartholomew*, 516 U.S. 1, 5 (1995) (noting that the failure to disclose material evidence under *Brady* "justifies setting aside a conviction, only where there exists a reasonable probability that had the evidence been disclosed the result at trial would have been different" (internal quotations omitted)); *see also Kyles v. Whitley*, 514 U.S. 419, 433 (1995); *Bagley*, 473 U.S. at 682.

Accordingly, we hold that the State did not violate *Brady* when it failed to disclose Officer Austin's DUI citation. *First*, Owens could not establish that evidence of the DUI arrest was favorable. An alcohol-related driving offense is not a crime probative of untruthfulness, thus the DUI citation could not be introduced as impeachment evidence. *Second*, the disclosure was not material because Owens failed to identify any bias that Officer Austin may have had to testify favorably for the State. There is no reasonable probability that disclosure of the DUI arrest would have been material to the outcome of the case. Thus, no *Brady* violation occurred.

III. Owens Did Not Preserve the Issue of Whether the Accomplice Corroboration Rule was Satisfied

A. Parties' Contentions

Owens contends that the State's evidence is insufficient as a matter of law under the accomplice corroboration rule because no independent evidence corroborated Brawner's accomplice testimony. Owens emphasizes that Brawner is the only person who linked Owens to the crime and that the State failed to independently corroborate Brawner's testimony. Therefore, Owens argues that the trial court erred when it did not enter a judgement of acquittal. The State counters that in the motion for a judgment of acquittal, Owens' trial counsel did not specifically argue that the State failed to satisfy the accomplice corroboration rule, thus this issue is not preserved for appellate review. The State also contends that it presented evidence that established Owens presence at the scene of the crime, independent from Brawner's testimony.

B. Standard of Review: Motion for a Judgment of Acquittal

Maryland Rule 4-324(a) states that a defendant may move for a judgment of acquittal "at the close of the evidence offered by the State, and, in a jury trial, at the close of all the evidence." The defendant must "state *with particularity all reasons why* the motion should be granted." *Id.* (emphasis added). "A claim of insufficiency of evidence is ordinarily not preserved if the claim is not made as part of the motion for judgment of acquittal." *Graham v. State*, 325 Md. 398, 417 (1992). Under Rule 4-324, a defendant must specifically and precisely argue "the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient."

Starr v. State, 405 Md. 293, 303 (2008) (quoting *Fraidin v. State*, 85 Md. App. 231, 244-45 (1991)); *Muir v. State*, 308 Md. 208, 219 (1986) (concluding that the defendant's failure to specify with particularity the reasons for a motion for judgment of acquittal necessarily resulted "in a failure to preserve the issue for appellate review"); *State v. Lyles*, 308 Md. 129, 135 (1986) (noting that the defendant "was required to state with particularity all reasons why his motion for judgment of acquittal should be granted").

C. Owens' Claim of Insufficient Accomplice Corroboration is Not Preserved

Owens has not preserved the issue of insufficient accomplice corroboration for appellate review. Md. R. 4-324; *Starr*, 405 Md. at 302 (explaining that an appellant is not entitled to "appellate review of reasons stated for the first time on appeal"); *McIntyre v. State*, 168 Md. App. 504, 526-27 (2006) (refusing to decide whether evidence was insufficient when trial counsel did not make that argument in the motion for a judgment of acquittal). The record shows that at no point during the motion for a judgment of acquittal did the defense argue that the State failed to satisfy the accomplice corroboration rule. Instead, defense counsel agreed with the judge that if the jury found Brawner's testimony truthful, then that "would have covered the elements of handgun on person." And, the defense conceded that the State met each element of each offense by explicitly stating during argument for the motion, "The State has . . . *I will concede* that the State has made *prima facie showing of the minimum allegation of at least every element*" (emphasis supplied).

Owens belatedly raises in his Reply Brief that trial counsel "raised the functional equivalent of the accomplice corroboration rule."[5] As this argument was only raised only in the Reply Brief, we need not consider it. But even if we did, Owens' argument is untenable on the merits. Owens argument is that when trial counsel said one thing, he meant something else. Specifically, at the motion for judgment of acquittal defense counsel argued that the "defense [was] one of identity." Before this Court, Owens argues that his trial counsel was making "an apparent reference to counsel's previous discussion." Owens argues that the parties engaged in an off-the-record discussion and agreed that because Brawner was an accomplice Owens could not be convicted based solely on Brawner's testimony. Significantly, the record is devoid of any reference to an agreement of this sort and will not be considered. *See Claybourne v. State*, 209 Md. App. 706, 751 (2013) (explaining that a defendant cannot argue "in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal"); *Taylor v. State*, 175 Md. App. 153, 159 (2007) ("Under Maryland rules and precedent, 'review of a claim of insufficiency is available only for the reasons given by appellant in his motion for judgment of acquittal'" (quoting *Whiting v. State*, 160 Md. App. 285, 308

[5] While *Jones v. State* recently changed the state of law as to accomplice corroboration, the prevailing law at the time of Owens' trial was "that an accused may not be convicted on the uncorroborated testimony of an accomplice" and while "only slight corroboration is necessary, the corroborative testimony must tend either: (1) to identify the defendant with the perpetrators of the crime, or (2) to show the defendant's participation in the crime." *Foxwell v. State*, 13 Md. App. 37, 39 (1971). Owens' argument that trial counsel argued the "functional equivalent of the accomplice corroboration rule" has no merit because multiple, independent pieces of evidence served to place Owens at the scene with Santana at the time of the murder.

(2004))). We cannot impute the meaning to defense counsel's comment that Owens wants. After reviewing the trial transcript, we conclude that counsel was referring to the admissibility of photographs depicting Owens, not whether Brawner's testimony was corroborated.

Maryland Rule 4-324 requires counsel to state "with particularity" all the reasons for a motion of a judgment of acquittal because it is not the role of the trial court to speculate on all the possible meanings of an argument. Owens' trial counsel conceded that the State made prima facie showing of every element for the crimes related to Wood's murder. Not only did trial counsel fail to state with particularity the reasons for the motion but trial counsel did not argue how the "evidence should be found wanting." *Starr*, 405 Md. at 303. Owens' attempt to raise the issue of insufficient corroboration of the accomplice corroboration rule for the first time on appeal cannot succeed. *See Graham*, 325 Md. at 417; *McIntyre*, 168 Md. App. at 526-27. We decline to address this argument as it was not properly preserved.

IV. If Considered, the Trial Court Did Not Abuse its Discretion in Admitting the Photograph of Owens and Santana Pointing "Intimidating Finger Guns" Because the Trial Court Properly Balanced the Probative Value with the Danger of Unfair Prejudice

A. Parties Contentions

Owens contends that the introduction of the photograph (State's exhibit 243-F) depicting him in "saggy pants" and pointing "intimidating finger guns" with Santana was irrelevant, and even if it was relevant, it was cumulative, or the probative value was not substantially outweighed by the danger of unfair prejudice. Owens claims that the trial

court abused its discretion in admitting the photograph because it failed to undertake the required balancing under Maryland Rule of Evidence 5-403. Owens contends a new trial is required because the error was not harmless.

In response, the State puts forth a preservation argument. It contends that Owens conceded the probative value of the photograph and so, the issue is not preserved for review. Even if preserved, the State argues that the photograph was relevant as it was only one of two photos showing Owens with Santana. The State contends that the trial judge did not improperly admit the photograph because the judge properly balanced the probative and prejudicial effect. Finally, the State asserts that even if the photograph was improperly admitted, the error was harmless beyond a reasonable doubt.

B. Analysis

a. Relevancy

Maryland Rule 4-323 requires a party to object to the admission of evidence at the time it is offered. Otherwise the objection is waived. A party is held to the grounds that they objected on at trial "and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *see also Anderson v. Litzenberg*, 115 Md. App. 549, 569 (1997) ("If counsel provides the trial judge with specific grounds for an objection, the litigant may raise on appeal only those grounds actually presented to the trial judge. All other grounds for the objection including those appearing for the first time in a party's appellate brief, are deemed waived."); *Brecker v. State*, 304 Md. 36, 39-40 (1985) ("[O]ur cases have consistently stated that when an

objector sets forth the specific grounds for his objection, although not requested by the court to do so, the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified."); *Jackson v. State*, 288 Md. 191, 196 (1980) (noting that "where specific grounds are delineated for an objection, the one objecting will be held to those grounds and will ordinarily be deemed to have waived grounds not specified").

Here, Owens' trial counsel specifically stated that their reasons for objecting to the photographs were the prejudicial and cumulative nature of Exhibit 243-F—not relevancy. Allowing Owens to advance an argument as to whether the photograph was relevant on appeal would require "trial courts to imagine all reasonable offshoots of the argument actually presented to them before making a ruling on admissibility." *Sifrit v. State*, 383 Md. 116, 136 (2004). Given that Owens' trial counsel did not object to the relevance of the photograph, we need not address his claim on the merits. *Klauenberg*, 355 Md. at 541.

b. Prejudicial Versus Probative Value of Exhibit 243-F

Even if we were to address this claim of error, reversal would not be required. The thrust of Owens' argument is that the trial court abused its discretion when it admitted the photograph because it was unduly prejudicial and had no probative value. The trial court maintains discretion "to weigh the degree of relevance against any unfair prejudice which might arise from the admission of the photograph." *Mason v. Lynch*, 388 Md. 37, 48 (2005). A trial court's ruling on admissibility will not be overturned "absent a clear abuse of discretion. *Id.*; *see also Carter v. State*, 374 Md. 693, 705 (2003) (explaining that "a

decision to admit relevant evidence over an objection that the evidence is unfairly prejudicial will not be reversed absent an abuse of discretion"); *Johnson v. State*, 303 Md. 487, 502 (1985), *cert. denied*, 474 U.S. 1093 (1986) (explaining that admissibility of photographs "is a matter best left to the sound discretion of the trial judge" and that the "court's determination . . . will not be disturbed unless plainly arbitrary").

Maryland Rule of Evidence 5-403 states relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Under Rule 5-403, a trial judge must weigh the probative value against "the danger of unfair prejudice." *Newman v. State*, 236 Md. App. 533, 556 (2018). The balancing between the probative value against the danger of unfair prejudice "is something that is entrusted to the wide discretion of the trial judge." *Oesby v. State*, 142 Md. App. 144, 167 (2002). The abuse of discretion standard is "highly deferential," and a trial court's decision will not be overturned simply because the appellate court would have reached a different conclusion. *Id.* The appellate court may "approve many discretionary calls that we ourselves might not have made" and will "reverse only egregiously bad calls as abuse of discretion." *Newman*, 236 Md. App. at 557. Reversal occurs for "those rare and bizarre exercises of discretion that are, in the judgment of the appellate court, not only wrong but flagrantly wrong and outrageously so." *Id.* at 167-68; *Claybourne*, 209 Md. App. at 742 ("When the trial court determines that testimony offered into evidence is relevant to the case before it, '[w]e are generally loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.'" (quoting *Merzbacher v. State*, 346 Md. 391, 404-405 (1997) (alterations in original))).

i. "Saggy Pants"

Owens argues for the first time on appeal that the photograph was prejudicial because of the "saggy pants." We decline to address this argument on the merits as Owens did not object to the admission of the photograph on that ground during trial. Rule 4-323; *Klauenberg*, 355 Md. at 541. Furthermore, we decline to address this issue as the prejudicial impact of the "saggy pants" was not "raised in and decided by" the trial court. Md. R. 8-131; *Ray*, 435 Md. at 23 (explaining that to address an issue on appeal that had not been litigated in the trial court "depriv[ed] the State of any opportunity to introduce additional evidence or advance a new theory in opposition" to the defendant's argument).

ii. "Intimidating Finger Guns"

Owens' primary contention is that the photograph lacks probative value because the difference in Santana's and Owens's height was not a fact in dispute. In *Newman*, this Court addressed a similar argument where the defense argued that a photograph was not probative because the defendant's identity was not in dispute. 236 Md. App. at 558. The *Newman* Court explained that the Facebook photograph "corroborated the fact that there was a close and long-standing relationship between the appellant and at least two members of the [other] family." *Id.* at 559. As in *Newman* where the Facebook photograph was helpful in establishing the suspect's identity, here, the photograph of Santana and Owens was helpful in demonstrating their relative builds and height differences, which had been described by witnesses at the scene, such as Ms. Fenwick, who testified seeing a taller African-American male and a shorter African-American male. *Id.* at 559 (noting that

providing the police with the Facebook photograph "was obviously valuable to them to establish the identity of the suspect").

The second part of Rule 5-403 requires balancing the probative value against the danger of unfair prejudice. In a criminal trial, there is no purpose in introducing evidence, unless it is prejudicial, but it cannot be unfairly prejudicial. *Beales v. State*, 329 Md. 263, 273 (1993). Evidence is unfairly prejudicial when "it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime which [the defendant] is being charged." *Id.* (alteration in original); Joseph F. Murphy Jr., *Maryland Evidence Handbook* § 506(B), 181 (3d ed. 1999) (explaining that the probative value of evidence "is outweighed by the danger of unfair prejudice when the evidence produces such an emotional response that logic cannot overcome prejudice or sympathy needlessly injected into the case" (citing *Coburn v. Coburn*, 342 Md. 244 (1996))).

Owens argues that the photograph is prejudicial because of the finger-pointing gesture, which could be construed as "intimidating finger guns". Owens elaborates that while the State's purpose is to compare the relative builds of Santana and Owens, the photograph "portrays a negative African American stereotype of this thug-type character," thus clearly identifying the prejudicial nature of the photograph. *Cf. Newman*, 236 Md. App. at 560 (noting that the appellant did "not suggest in any way in which the picture of him would rouse or stir the emotions of the jurors against him" and so "the appellant utterly fails to identify what aspect of his defense might have been adversely affected by the photograph").

Here, the trial court concluded that the probative value of the photographs was not substantially outweighed by the danger of unfair prejudice. Like in *Newman* where the photograph demonstrated the "close" relationship of the parties, the photograph of Santana and Owens standing close together highlighted their familiarity with each other. This seemingly countered Owens' statement to the police that he barely knew Santana. The trial court highlighted this probative aspect of the photo's value when it noted, "he did try to downplay, I was actually surprised, but he did try to downplay his relationship with [Santana]. So that, means it has probative value."

Further, the photograph directly related to a key issue, namely whether the witnesses' descriptions of the men who shot Wood were similar to the physical attributes of Owens and Santana. The photograph had "independent, probative, relevant value" because they directly related to the issue of the identity of the shooters. *See Montague v. State*, 244 Md. App. 24, 48-49 (2019), *aff'd* 2020 WL 7636109, Sept. Term 2019 (Dec. 23, 2020) (allowing the introduction of rap lyrics that were factually connected to the murder because they were "properly viewed by the trial court as direct proof of [defendant's] criminal wrongdoing, whose probative value was not substantially outweighed by any danger of unfair prejudice").

Trial court judges "are not obligated to spell out in words every thought and step of logic," but here, the trial court articulated its rationale when admitting the photograph. *See Beales*, 329 Md. at 273. The trial court stated that the photograph had "probative value for multiple reasons," such as showing "the builds of people, the identities of people, the connections to people" as well as highlighting Owens and Santana's relationship.

Furthermore, the trial judge took care to balance the prejudicial harm, noting "someone could look at the photograph and say, 'Wow that's intimidating,' or 'That's menacing,' or whatever." At the same time, the trial judge noted that "[a]s I look at the photograph, again, it's two guys standing there next to each other, and they actually have no facial expression, they're just sort of standing there." The judge, however, noted that Owens and Santana had "poses that amount to, as [defense counsel] would call it, trigger pose, or trigger squeeze-type poses, so that's on the negative side." The court examined both the potential for unfair prejudice and the probative value and determined that the probative value was not substantially outweighed by the prejudicial value. *Montague*, 244 Md. App. at 49. We hold that the trial court did not abuse its discretion in admitting the photograph because the probative value was not substantially outweighed by any unfair prejudice as shown through the judge's explicit discussion on the balancing of the issues.

c. Harmless Error

Even if we were to conclude that the trial judge abused his discretion, we would find that the error was harmless. A defendant is entitled to "a fair trial, although not a perfect trial." *Hook v. State*, 315 Md. 23, 36 (1989). A reviewing court conducts its own "independent review of the record" and must be able "to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). If the error did influence the verdict, then it cannot be said to have been "harmless" and "reversal is mandated." *Id.*

We are satisfied beyond a reasonable doubt that even if the photograph was improperly admitted, it did not inappropriately taint the jury. In *Beales*, the defense and the State presented "dramatically different accounts" of the events leading up to Beales' arrest. 329 Md. at 275. A key defense-witness's credibility was tainted by the improper introduction of a prior theft conviction. *Id.* The Court held that the improper introduction of the theft conviction was not harmless beyond a reasonable doubt. *Id.* The Court noted that the "relative validity" of the differing accounts presented by the defense and the State turned on the "credibility of the witnesses." 329 Md. at 275. Further, the State even remarked in closing arguments that the defense witness informed the court that he was a convicted thief and noted that it was important because "he's been [defendant's] friend for ten years and maybe he's not telling the truth." *Id.* The Court explained that the defense witness's credibility was "tainted to a degree we cannot specify without speculating, by evidence that he was a convicted thief." *Id.*

This case is distinguishable from *Beales* because the State's evidence included Fenwick's eyewitness testimony, video surveillance, and cell tower location records in addition to Brawner's testimony. In contrast to *Beales* where the "relative validity" of the events leading up to Beales' arrest turned on the "creditability of the witnesses," here the State presented numerous pieces of evidence that placed Owens at the scene and likely associating with Santana. And unlike *Beales*, where the State sought to establish bias and diminish the credibility of the main defense witness, here, the photograph helped demonstrate the "close" relationship of Santana and Owens. Therefore, even if the photograph was improperly admitted, the State presented other pieces of evidence

indicating Owens' guilt. We are convinced beyond a reasonable doubt that even if the photograph had been admitted in error, it was harmless, given the other evidence that connected Owens to the murder. *See also Gutierrez v. State*, 423 Md. 476, 495 (2011) (explaining that the trial court erred in admitting the statement that MS-13 was one of the most violent gangs but found it was harmless error because it was "confident that the statement would not have persuaded the jury to render a guilty verdict when it would have otherwise done so").In conclusion, we hold that the trial court did not abuse its discretion in admitting the photograph because the trial court balanced the potential of unfair prejudice with the photograph's probative value. And, even if the trial court abused its discretion in admitting the photograph, there was other evidence that proved Owens' guilt. Consequently, the admission of the photograph was harmless beyond a reasonable doubt.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.