Circuit Court for Prince George's County
Case No. CT140125X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2444

September Term, 2018

RUDY ISMAEL MANCHAME-GUERRA

v.

STATE OF MARYLAND

Fader, C.J.,
Arthur,
Bair, Gary E.
(Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: December 26, 2019

In 2018, the Court of Appeals reversed Rudy Ismael Manchame-Guerra's convictions for second degree murder and use of a handgun in the commission of a crime of violence, and remanded for a new trial. *Manchame-Guerra v. State*, 457 Md. 300, 322 (2018). A new jury in the Circuit Court for Prince George's County found him guilty of the same offenses. Mr. Manchame-Guerra now asserts that the circuit court erred during the retrial by (1) declining to instruct the jury on the offense of voluntary manslaughter based on imperfect self-defense, (2) allowing a detective to testify regarding his "disbelief" in Mr. Manchame-Guerra's statements, and (3) denying Mr. Manchame-Guerra's motion to suppress statements made during a police interview. We find no error and will affirm.

BACKGROUND

A more fulsome recitation of the underlying factual and procedural background is set forth in the Court of Appeals's 2018 opinion. *Manchame-Guerra*, 457 Md. at 303-07. We limit our discussion here to the portions of the record relevant to the issues before us.

The charges at issue arose from an incident that occurred outside of an informal restaurant, during which Mr. Manchame-Guerra shot the victim, Saul Felipe-Augustine, in the presence of his friend, Edi Felipe.[1] At trial, Mr. Felipe testified that he witnessed Mr. Manchame-Guerra point a gun at close range at the victim's face and then shoot him once in the head. The State charged Mr. Manchame-Guerra with first degree murder, second degree murder, and use of a firearm in commission of a crime of violence.

[1] To avoid confusion, we refer to Mr. Saul Felipe-Augustine as the victim and to Mr. Edi Felipe as Mr. Felipe.

The 2015 Motion to Suppress

Mr. Manchame-Guerra's first trial took place in April 2015 (the "2015 Trial"). Before trial, Mr. Manchame-Guerra moved to suppress statements he had made to Detective Marcos Rodriguez during an interview that took place when he was first apprehended. After a hearing, the court concluded that Mr. Manchame-Guerra had voluntarily waived his Miranda rights before the interview and so denied the motion to suppress.

The 2015 Trial Verdict

At the close of evidence in the 2015 Trial, the court instructed the jury on, among other things, (1) first degree murder, (2) second degree murder, (3) voluntary manslaughter, (4) use of a handgun in the commission of a crime of violence, (5) complete self-defense, and (6) imperfect self-defense. The verdict sheet included the following questions:

VERDICT SHEET

1. **(a)** First Degree Murder (Saul Felipe-Augustine)

_____Not Guilty _____Guilty

If Guilty, skip question 1(b) and 1(c) and answer question number 2. If Not Guilty, answer question 1(b).

(b) Second Degree Murder

_____Not Guilty _____Guilty

If Guilty, skip question 1(c) and answer question number 2. If Not Guilty, answer question 1(c).

(c) Voluntary Manslaughter

_____Not Guilty _____Guilty

If you entered Not Guilty to questions 1(a) (b) and (c), enter Not Guilty to question number 2.
Otherwise answer question number 2.

2. Use of a handgun in the commission of a Felony or Crime of Violence.

_____Not Guilty _____Guilty

The jury returned the form with an X marked next to "Not Guilty" for first degree murder, an X marked next to "Guilty" for second degree murder, and an X marked next to "Guilty" for use of a handgun in the commission of a felony or crime of violence. Ignoring the instruction to skip question 1(c) if it found Mr. Manchame-Guerra guilty in 1(b), the jury also placed an X next to "Not Guilty" for Voluntary Manslaughter. The court, however, only read the verdicts on questions 1(a), 1(b), and 2, and the jury was hearkened and polled on only those charges.

The First Appeal

On appeal to this Court, Mr. Manchame-Guerra challenged the trial court's (1) denial of his motion to suppress, and (2) refusal to permit him to impeach Mr. Felipe with questions about criminal charges that were then pending against Mr. Felipe. In an unreported opinion, a panel of this Court affirmed both rulings. *See Manchame-Guerra v. State*, No. 899, Sept. Term 2015, 2017 WL 193159, at *1 (Md. Ct. Spec. App. Jan. 18, 2017). With regard to the first issue, the panel found "the record [] clear that" Mr. Manchame-Guerra "underst[ood] that he was waiving certain rights," that his signed advice of rights form was "an effective waiver of [his] Miranda rights," and that his answers were given voluntarily. *Id.* at *3. With regard to impeachment, the panel held that Mr. Manchame-Guerra had "not provide[d] a sufficient factual basis" to establish that Mr. Felipe "might have expected a benefit" from the State in exchange for his testimony and, therefore, that the court had not erred in refusing to permit questions about the charges pending against him. *Id.* at *6.

Mr. Manchame-Guerra petitioned for certiorari only on the impeachment issue, and the Court of Appeals granted that petition. *Manchame-Guerra*, 457 Md. at 308 n.4. The Court ultimately agreed with Mr. Manchame-Guerra that the trial court committed reversible error in precluding him from asking his impeachment questions of Mr. Felipe and instructed this Court to vacate the judgment and remand for a new trial. *Id.* at 322.

The 2018 Trial

The State retried Mr. Manchame-Guerra in September 2018. The parties did not relitigate the motion to suppress, but the court granted Mr. Manchame-Guerra "a continuing objection to the use of [his] statement at trial based on all of the issues that were raised during the motion to suppress . . . at the first trial." The court "rule[d] that any issues preserved [during the 2015 Trial] are preserved and need not be raised again . . . in the course of trial."

At trial, Det. Rodriguez testified about his interview of Mr. Manchame-Guerra. He testified that at "different times through[out] the interview," Mr. Manchame-Guerra said that: (1) the victim "pushed him outside" the restaurant; (2) the victim "tried to hit him with a fire extinguisher"; (3) the victim drew the gun; (4) at some point, the gun fell on the stairs; and (5) in a struggle over the gun, "[Mr. Manchame-Guerra] took the gun from the victim and [] shot the victim in the forehead." The following exchange is particularly relevant to Mr. Manchame-Guerra's claims on appeal:

> [STATE]: Did there come a time that you confronted [Mr. Manchame-Guerra] with his variety of reasons he gave you for the shooting and asked him what really happened?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [DET. RODRIGUEZ]: Yes, I did.
>
> [STATE]: And do you recall what his response was when you confronted him with the various versions he had given you?
>
> [DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[DET. RODRIGUEZ]: I don't remember his exact response. But I do remember that he said that he lost control.

Later in his testimony, Det. Rodriguez testified that "one of the versions" of events that Mr. Manchame-Guerra provided involved the victim drawing the gun during the altercation. The State subsequently asked Det. Rodriguez, "Approximately how many versions of events leading up to the defendant shooting the victim did he give you?" He responded, "About three."

The Jury Instructions at the 2018 Trial

In proposed jury instructions, Mr. Manchame-Guerra requested, among other instructions, that the court propound the Maryland Criminal Pattern Jury Instruction for "Voluntary Manslaughter (Perfect/Imperfect Self-Defense)." *See* MPJI-Cr 4:17.2C. At the close of evidence, Mr. Manchame-Guerra argued that he had presented sufficient evidence to establish a theory that, based on his statements to police, he had "acted in self-defense." That led to the following dialogue:

THE COURT: I do have a question however about self-defense. This is a retrial of a trial before [a different judge]. Self-defense, an imperfect self-defense was presented to that jury and they found the defendant not guilty of voluntary manslaughter on the basis of imperfect self-defense, right?

[DEFENSE COUNSEL]: Yes.

THE COURT: So how can I present that to the jury?

[DEFENSE COUNSEL]: Obviously, our position is that the facts are essentially the same in both of the trials. But they aren't a hundred percent the same. And this jury, I think, heard somewhat more with regard to – the statement –

THE COURT: But I guess my question is [that] regardless of what the evidence is in this trial as opposed to the other trial, [] will double jeopardy prevent my presenting that [voluntary manslaughter based on imperfect self-defense instruction] to the jury again.

[DEFENSE COUNSEL]: I understand the Court's concern, Your Honor. I feel as though all I can do is submit on that issue. You've heard my arguments.

. . .

THE COURT: For the reasons we discussed, I am not going to give the voluntary – the voluntary manslaughter, perfect and imperfect self-defense instructions.

. . .

[DEFENSE COUNSEL]: . . . [L]et me just renew my objection to the Court's ruling with regard to the self-defense instruction. Obviously, it is of momentous importance to my client. And although I recognize the Court's basis for making the ruling, I want to again emphasize that I think that the testimony came out somewhat differently in this case. That there was more that the jury could consider based on the testimony at this trial that –

THE COURT: So what are you saying, you want to waive any double jeopardy right, any right to be free from double jeopardy and present voluntary manslaughter to the jury?

[DEFENSE COUNSEL]: No. I don't want to waive any of my client's rights, particularly with regard to double jeopardy.

THE COURT: I didn't think you did. . . . So if double jeopardy prevents the jury from considering that, how would I present it, I guess is my question.

[DEFENSE COUNSEL]: I don't have anything that I can add to my argument. Please note my objection.

THE COURT: So I'm clear, you want [the instruction for] self-defense as a complete defense and not an incomplete defense, is that what you're saying? That under the circumstances that we're here with the prior acquittal and everything else, he can't argue that it is imperfect and thus –

[DEFENSE COUNSEL]: All right. I agree.

Following that discussion, the trial court instructed the jury on second degree murder, use of a handgun in the commission of a crime of violence, and complete self-defense. The court did not instruct the jury as to voluntary manslaughter or imperfect self-defense, nor did Mr. Manchame-Guerra object to the court's failure to do so after the court read the instructions.

The jury found Mr. Manchame-Guerra guilty of second degree murder and use of a handgun in the commission of a crime of violence. Mr. Manchame-Guerra timely appealed.

DISCUSSION

I. MR. MANCHAME-GUERRA WAIVED HIS CLAIM THAT THE TRIAL COURT ERRED IN NOT INSTRUCTING THE JURY ON VOLUNTARY MANSLAUGHTER.

Mr. Manchame-Guerra argues that the trial court erred in denying his request to instruct the jury on voluntary manslaughter based on imperfect self-defense. He contends that the trial court "was plainly wrong in ruling that" double jeopardy precluded it from giving that instruction. The State asserts that Mr. Manchame-Guerra waived and otherwise failed to preserve his challenge to the jury instructions. Mr. Manchame-Guerra disagrees and, in the alternative, asks that we exercise plain error review. We agree with the State that Mr. Manchame-Guerra waived this claim. As we will explain, that waiver renders plain error review unavailable, and so we do not reach the merits of this claim.

Rule 4-325(e), which governs objections to jury instructions, states in relevant part that "[n]o party may assign as error the giving or the failure to give an instruction unless

the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." The Court of Appeals "has consistently repeated that the failure to object to an instructional error prevents a party on appeal from raising the issue under Rule 4-325(e)." *Watts v. State*, 457 Md. 419, 426 (2018); *see also Lindsey v. State*, 235 Md. App. 299, 329 (2018) ("In order to properly preserve [an] issue for appellate review, appellant was required to promptly object following the court's instructions to the jury."). The purpose of this Rule is rooted in fairness. Not only does "[t]he timing of the objection . . . give the trial court an opportunity to correct the instruction in light of a well-founded objection," *Lindsey*, 235 Md. App. at 330 (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)), but also it allows "the other parties and the trial judge . . . to consider and respond to the challenge," *Lindsey*, 235 Md. App. at 330 (quoting *Chaney v. State*, 397 Md. 460, 468 (2007)).

Although we prefer that the trial record show "strict compliance" with the Rule, "there is 'some play in the joints' in determining whether an issue has been preserved." *Watts*, 457 Md. at 427-28. We thus may "deem [an] issue preserved for appellate review" if a party "substantially complies with Rule 4-325(e)." *Id.* To be in substantial compliance with the Rule, however, a party must satisfy the following conditions: (1) "there must be an objection to the instruction"; (2) "the objection must appear on the record"; (3) "the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record"; and (4) "the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or

useless." *Id.* at 426 (quoting *Gore v. State*, 309 Md. 203, 209 (1987)). Substantial compliance is a "rare exception[]" to strict compliance with Rule 4-325(e), *Sims v. State*, 319 Md. 540, 549 (1990), and preserves only arguments that were raised before the trial court in the first instance, *Watts*, 457 Md. at 428.

Here, Mr. Manchame-Guerra did not only fail to preserve his objection; he affirmatively waived it. At the end of the dialogue about the jury instruction, the court sought to clarify that Mr. Manchame-Guerra was requesting an instruction for "self-defense as a complete defense and not an incomplete defense." Mr. Manchame-Guerra's counsel responded, "All right. I agree." He did not raise the issue again. Even if we were to grant that there was some ambiguity in his counsel's response (and we do not), an "objection may be lost" "[u]nless the attorney . . . has somehow made it crystal clear that there is an ongoing objection to the failure of the court to give the requested instruction." *Sims*, 319 Md. at 549. Here, Mr. Manchame-Guerra did not identify any ongoing objection.

Moreover, even had Mr. Manchame-Guerra not affirmatively waived the issue, he failed to preserve it when he did not object "promptly after the court instruct[ed] the jury." Md. Rule 4-325(e). Mr. Manchame-Guerra argues that he substantially complied with the Rule, but we disagree. For purposes of this analysis only, we will (1) overlook that Mr. Manchame-Guerra effectively revoked his request for the instruction on voluntary manslaughter and imperfect self-defense when he affirmatively agreed with the court that the instruction should not be given, and (2) assume that Mr. Manchame-Guerra satisfied the first three conditions of substantial compliance, by affirmatively requesting the

instruction, doing so on the record, and stating the basis for his request. Mr. Manchame-Guerra still cannot demonstrate that he satisfied the fourth condition for substantial compliance, which is that renewal of the objection would have been "futile or useless." *Watts*, 457 Md. at 426 (quoting *Gore*, 309 Md. at 209). That is because Mr. Manchame-Guerra never challenged the circuit court's basis for resisting giving the instruction.

When the subject of the instruction initially was discussed, the circuit court identified a double jeopardy concern arising from the court's belief that the 2015 jury had acquitted Mr. Manchame-Guerra of voluntary manslaughter. Although Mr. Manchame-Guerra contends before this Court that the 2015 jury had not actually acquitted him of voluntary manslaughter, and so there was no double jeopardy problem, he never made that argument to the circuit court.[2] Having never made what he now contends to have been the dispositive argument, Mr. Manchame-Guerra cannot carry his burden to show that it would have been futile or useless to have objected following the court's instructions. Because Mr. Manchame-Guerra neither strictly nor substantially complied with Rule 4-325(e), he has not preserved his objection to the court's jury instructions.

Mr. Manchame-Guerra asks that we exercise our discretion to conduct plain error review of his unpreserved claim. However, because Mr. Manchame-Guerra waived this claim, rather than merely failed to preserve it, plain error review is not available. *See State v. Rich*, 415 Md. 567, 580 (2010) (discussing the distinction between "forfeited rights,"

[2] In light of our resolution of this challenge on other grounds, we need not confront whether the circuit court's stated belief that Mr. Manchame-Guerra had been acquitted of voluntary manslaughter in 2015 was erroneous.

which "are reviewable for plain error," and "waived rights," which ordinarily "are not"); *Joyner v. State*, 208 Md. App. 500, 517 (2012) ("Waived objections cannot be reviewed on appeal (save for the rare case in which a reviewing court, as a matter solely of its discretion, forgives the waiver) . . . ."); *Carroll v. State*, 202 Md. App. 487, 513 (2011) (stating that "[p]lain error review generally is not applicable" to an "affirmative waiver of [an] issue"), *aff'd*, 428 Md. 679 (2012).

Moreover, even if Mr. Manchame-Guerra's claim merely had not been preserved, rather than waived, we would not choose to exercise plain error review here. Although we have "plenary discretion to notice plain error material to the rights of a defendant, even if the matter was not raised in the trial court," *Danna v. State*, 91 Md. App. 443, 450 (1992), our exercise of that discretion is "a rare, rare phenomenon," *Morris v. State*, 153 Md. App. 480, 507 (2003); *see also Austin v. State*, 90 Md. App. 254, 268 (1992) (stating that "[t]he touchstone" of plain error review "remains, as it always has been, ultimate and unfettered discretion"). Particularly when the defendant alleges error in jury instructions, "the plain error doctrine has been used sparingly," *Conyers v. State*, 354 Md. 132, 171 (1999), and only when the alleged "unobjected to error [is] compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial," *Brown v. State*, 169 Md. App. 442, 457 (2006) (quoting *Smith v. State*, 64 Md. App. 625, 632 (1985)). Under the particular circumstances of this case, we do not believe the alleged error meets that standard and, therefore, even were plain error review available, we would decline to exercise our discretion to conduct it.

II. THE COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING DETECTIVE RODRIGUEZ'S TESTIMONY REGARDING MR. MANCHAME-GUERRA'S STATEMENTS TO POLICE.

Mr. Manchame-Guerra next contends that the court erred in permitting Det. Rodriguez to "express[] his disbelief in [Mr. Manchame-Guerra]'s version of events," which he alleges improperly "impart[ed] to the jury the detective's impressions and assessment of [Mr. Manchame-Guerra]'s credibility." The State responds that Det. Rodriguez did no such thing. We agree with the State.

The admissibility of evidence ordinarily is left to the "sound discretion" of the trial court. *Thomas v. State*, 429 Md. 85, 96 (2012) (quoting *Merzbacher v. State*, 346 Md. 391, 404 (1997)). We review the court's decisions for abuse of discretion, and will reverse only when the court acts "in an arbitrary or capricious manner" or "beyond the letter or reason of the law." *Jenkins v. State*, 375 Md. 284, 295-96 (2003). In general, a court has no discretion "to permit to go to the jury a statement, belief, or opinion of another person to the effect that a witness is telling the truth or lying." *Tyner v. State*, 417 Md. 611, 617 (2011) (quoting *Bohnert v. State*, 312 Md. 266, 277 (1988)). This principle extends to police officers' opinions and expressions of disbelief of defendants during investigations, as "[i]t is . . . well settled that the investigating officers' opinions on the truthfulness of an accused's statements are inadmissible." *Casey v. State*, 124 Md. App. 331, 339 (1999).

In *Crawford v. State*, 285 Md. 431 (1979), the Court of Appeals overturned a defendant's murder conviction based on the trial court's error in admitting portions of recordings of interrogations of the defendant in which "the police attempted to have her

recant her version of the incident by indicating their disbelief in her story, by exhorting her to tell the truth and arguing with her, by recounting what other persons, some named, some unnamed, had told them, by stating their opinions as to what had occurred, and by referring to what the victim had said when deposed five months before her death" in an unrelated civil matter. *Id.* at 433. The Court of Appeals found that the trial court erred in allowing the introduction of the questions and statements of the officers, which violated the defendant's due process rights and "fatally infected the trial." *Id.* at 453; *see also Casey*, 124 Md. App. at 337-38 (trial court erred in admitting portion of a recorded statement in which questioning officers repeatedly stated that they did not believe the defendant's versions of events); *Snyder v. State*, 104 Md. App. 533, 551-54 (1995) (trial court erred in permitting State to "put into evidence the detective's disbelief of [the defendant]'s statement" by having the detective testify regarding a list of questions he wanted to ask the defendant that seemed designed to challenge the defendant's credibility).

Here, Mr. Manchame-Guerra contends that the trial court erred in permitting Det. Rodriguez to testify that Mr. Manchame-Guerra told him multiple versions of the events leading up to his shooting of the victim. In making that argument, however, Mr. Manchame-Guerra fails to recognize a critical distinction between Det. Rodriguez's testimony and that of the officers in *Crawford*, *Casey*, and *Snyder*: Det. Rodriguez's statements were entirely factual. Det. Rodriguez identified that Mr. Manchame-Guerra offered different versions of the relevant events, including stating at one point that the victim pulled the gun out and at another that it fell onto the stairs. But stating that a witness

gave more than one version of events is a statement of fact, not an opinion as to truthfulness. Det. Rodriguez never opined on Mr. Manchame-Guerra's truthfulness, nor even on whether he found one version of events provided by Mr. Manchame-Guerra to be more credible than another. Det. Rodriguez's testimony thus properly left it to the jury to decide whether it found any particular account of the relevant events to be credible. That the facts may have led ineluctably in one particular direction does not render the introduction of those facts improper. To the contrary, sorting out where the facts lead is the very purpose of a trial. Det. Rodriguez's testimony did not opine impermissibly on Mr. Manchame-Guerra's credibility and, therefore, the circuit court did not err or abuse its discretion in declining to exclude it on that basis.

III. THE LAW OF THE CASE DOCTRINE BARS MR. MANCHAME-GUERRA'S CHALLENGE TO THE DENIAL OF THE MOTION TO SUPPRESS.

For the second time before this Court, Mr. Manchame-Guerra argues that the trial court erred in denying his motion to suppress without making specific factual findings. The State responds that because this Court resolved that issue in its favor in the first appeal, the law of the case doctrine bars this challenge. Mr. Manchame-Guerra does not disagree, but indicates in a footnote in his brief that he is restating his argument here to preserve it for a potential future petition for certiorari to the Court of Appeals.

As discussed above, Mr. Manchame-Guerra moved to suppress the statements he made to Det. Rodriguez before the 2015 Trial. The circuit court denied the motion, and we affirmed. *Manchame-Guerra*, 2017 WL 193159, at *1, 3. On remand, Mr. Manchame-Guerra did not relitigate the suppression issue, but instead relied on the same record made

during the first trial. Similarly, his current appeal repeats the same arguments that he made, and that a prior panel of this Court rejected, in the prior appeal.

Under the law of the case doctrine, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Holloway v. State*, 232 Md. App. 272, 279 (2017) (quoting *Scott v. State*, 379 Md. 170, 183 (2004)). Moreover, "not only are lower courts bound by the law of the case, but decisions rendered by a prior appellate panel will generally govern the second appeal at the same appellate level as well." *Holloway*, 232 Md. App. at 279 (quoting *Scott*, 379 Md. at 184). The Court of Appeals has recognized three exceptions to the doctrine, where: "(1) the evidence in a subsequent trial is substantially different from what was before the court in the initial appeal; (2) a controlling authority has made a contrary decision in the interim on the law applicable to the particular issue; or (3) the original decision was clearly erroneous and adherence to it would work a manifest injustice." *Balt. County v. Fraternal Order of Police, Balt. County Lodge No. 4*, 449 Md. 713, 730 (2016).

Mr. Manchame-Guerra does not argue that any of these exceptions applies here, and we agree that they do not. As a result, we must and do "refuse to reopen what has been decided." *Id.* (quoting *Hawes v. Liberty Homes*, 100 Md. App. 222, 230 (1994)). As

Mr. Manchame-Guerra implicitly recognizes, any further recourse he has on this issue lies with the Court of Appeals.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.