

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2251

September Term, 2015

DEVON D. FERGUSON

v.

STATE OF MARYLAND

Krauser, C. J.,
Graeff,
Leahy,

JJ.

PER CURIAM

Filed: September 6, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Accused of shooting to death two men, following an argument, Devon D. Ferguson, appellant, was convicted by a jury, in the Circuit Court for Baltimore City, of two counts of first-degree murder, two counts of using a handgun in the commission of a crime of violence, and one count of possession of a regulated firearm by a prohibited person. On appeal, Ferguson argues that the trial court erred in admitting photographs of the crime scene and the victims’ autopsies because the photographs were not relevant and, alternatively, that the trial court abused its discretion in admitting the photographs because any relevance that they had was substantially outweighed by their prejudicial effect.

“[I]n determining the admissibility of any photograph, the trial judge must make a two-part assessment: first, the judge must decide whether the photograph is relevant, and second, the judge must balance its probative value against its prejudicial effect.” *Thompson v. State*, 181 Md. App. 74, 95 (2008) (quotation marks and citation omitted). “We review *de novo* a trial court’s “conclusion of law that the evidence at issue is or is not of consequence to the determination of the action.” *Gupta v. State*, 227 Md. App. 718, 743 (2016) (internal quotation marks and citation omitted)).

The balancing of the probative value against the potential for improper prejudice to the defendant, however, is reviewed for abuse of discretion. *See Page v. State*, 222 Md. App. 648, 666 (2015). “[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling.” *Norwood v. State*, 222 Md. App. 620, 643 (2015) (internal quotation marks and citation omitted)). Rather, the decision under consideration has to be “well removed from any

center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (internal quotation marks and citation omitted).

We are persuaded that the photographs were relevant to illustrate the layout of the crime scene and the nature and extent of the victims’ injuries. *See Lovelace v. State*, 214 Md. App. 512, 548-49 (2013) (noting that “photographs may be relevant and possess probative value even though they often illustrate something that has already been presented in testimony” (quotation marks and citation omitted)). Moreover, the record demonstrates that the trial court conducted the appropriate balancing test and, with respect to the crime scene photographs, it limited the number and type of photographs that were presented to the jury in order to avoid unfair prejudice to Ferguson. Accordingly the trial court did not err or abuse its discretion in admitting the photographs into evidence.

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