

Circuit Court for Prince George's County  
Case No. CT180729A

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 56

September Term, 2019

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CRISTHYAN HERNANDEZ-ROMERO

v.

STATE OF MARYLAND.

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Kehoe,  
Shaw Geter,  
Robinson, Jr., Dennis M.  
(Specially Assigned),

JJ.

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Opinion by Robinson, Jr., J.

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Filed: April 28, 2020

\* 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.

A jury sitting in the Circuit Court for Prince George’s County found the appellant, Cristhyan Hernandez-Romero, guilty of participation in a criminal gang, assault in the second degree, and two counts of conspiracy to commit assault in the second degree. Hernandez-Romero filed this appeal. He argues that the trial court abused its discretion by admitting into evidence certified records regarding the convictions of other individuals who were alleged to be members of the MS-13 gang (the “underlying convictions”), and that it was not harmless error to admit those records. He also argues that there was insufficient evidence to support his conviction for participation in a criminal gang. For the reasons explained below, we find no error and affirm the judgment of the circuit court.

### **BACKGROUND**

This case arises out of an interaction between two groups of people at a shopping mall located on East-West Highway in the Hyattsville area of Prince George’s County. Luis Rene Gomez-Rodriguez and Brian Alberto Garcia-Prieto were at the shopping mall on February 13, 2018 to purchase Valentine’s Day gifts for their respective girlfriends when they were approached by a group of people, one of whom made statements about belonging to the Mara Salvatrucha gang (a reference to MS-13), made certain hand gestures associated with MS-13, and attacked Gomez-Rodriguez and Garcia-Prieto with punches and a knife. Hernandez-Romero was among the group of people that approached Gomez-Rodriguez and Garcia-Prieto. Witnesses identified an individual wearing a white Nike shirt as the person who made comments about MS-13, made the hand gestures associated with MS-13, and attacked the victims. A witness who was working at the mall

when the attack occurred testified that she saw a male in a white shirt initiate the attack. She also heard comments about the instigator of the attack being in a gang and specifically referring to “la mara,” a slang word for gang that is associated with MS-13.

Officer Chrismer of the Hyattsville City Police Department responded to the mall for a call for service related to the altercation. Upon arrival, he spoke with Garcia-Prieto and Gomez-Rodriguez. He also viewed surveillance camera footage of the incident. He identified Hernandez-Romero and his co-defendant as being among the individuals who were at the mall when the incident occurred. According to Officer Chrismer, Hernandez-Romero was wearing a black jacket with a “throw on hood” and a white Nike t-shirt. Officer Chrismer arrested Hernandez-Romero and a co-defendant. Detective Ramirez also responded to the mall on the date of the incident and testified that he saw the victims and Hernandez-Romero at the mall.

The State charged Hernandez-Romero in a multi-count indictment. Count 1 was for participation in a criminal gang. Counts 2 and 3 were for assault in the second degree. Counts 4 and 5 were for conspiracy to commit assault in the second degree. Count 6 was for wearing and carrying a dangerous weapon with intent to injure. Count 7 was for making a false statement to a peace officer.

Corporal Wilson, who was qualified as an expert regarding gangs, testified at the trial about his experience as a member of the Prince George’s County Police Department Gang Unit. He provided testimony regarding several topics, including the presence and operations of MS-13 in Prince George’s County, the history and development of MS-13,

the structure of MS-13, the criminal activities and recruitment efforts of MS-13 in Prince George’s County, and the hand gestures MS-13 gang members use to identify themselves and establish status with each other. During the trial, the State attempted to introduce through Corporal Wilson certified copies of documents regarding the underlying convictions for the purpose of proving that Hernandez-Romero was participating in a criminal gang. The circuit court admitted the documents over defense counsel’s objections. Corporal Wilson also testified that the underlying convictions were for first-degree murders in Prince George’s County within the previous few years.

The jury found Hernandez-Romero guilty of participation in a criminal gang, one count of assault in the second degree, and two counts of conspiracy to commit assault in the second degree. This appeal followed.

## **DISCUSSION**

### **I. The Circuit Court Did Not Abuse Its Discretion By Admitting “Other Crimes” Evidence Regarding Individuals Other Than Appellant.**

The State introduced, and the circuit court admitted as evidence, the underlying convictions to establish that MS-13 operated as a criminal gang in Prince George’s County. One certified conviction record related to the conviction of Christian Alvarez Beltran for first-degree murder. The second certified conviction record related to the conviction of Darwin Naum Monroy-Madrid for first-degree murder. The third certified conviction record related to the conviction of Herminio Gonzalez Sanchez for first-degree murder. The fourth certified conviction record related to the conviction of Julio Jacome Rosales for first-degree murder. Hernandez-Romero acknowledged in his

appellate brief, as he must, that the certified conviction records do not mention or otherwise involve him.

This Court has explained:

The admissibility of evidence is left to the sound discretion of the trial court. We will not disturb a trial court’s evidentiary ruling 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. An abuse of discretion occurs when a decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.

*Mines v. State*, 208 Md. App. 280, 291–92 (2012) (internal quotations and citations omitted).

According to *Hernandez-Romero*, the circuit court abused its discretion when it admitted certified records regarding the underlying convictions into evidence as “other crimes” evidence under Maryland Rule 5-404(b). *Hernandez-Romero*’s position is inconsistent with the text and purpose of Maryland Rule 5-404(b). Maryland Rule 5-404(b) provides:

Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by Code, Courts Article § 3-8.A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.

Maryland Rule 5-404(b) is intended to prevent a jury from “developing a predisposition of guilt’ based on unrelated conduct of the defendant.” *Sinclair v. State*,

214 Md. App. 309, 334 (2013) (quoting *State v. Faulkner*, 314 Md. 630, 633 (1989)). The reasons for the general inadmissibility of other crimes, wrongs, or bad acts as substantive evidence is “because a jury could decide to convict on the basis of an alleged disposition and might infer that because the defendant had acted badly in the past that he is more likely to have committed the crime charged.” *State v. Westpoint*, 404 Md. 455, 488 (2008) (citations omitted).

Hernandez-Romero argues that application of the three-step analysis established in *State v. Faulkner*, 314 Md. 630 (1989) precluded the admission of the four certified conviction records related to individuals other than Hernandez-Romero. The *Faulkner* three-step analysis requires consideration of 1) whether the “other crimes” evidence falls into one of the established exceptions to Maryland Rule 5-404(b), such as evidence that “tends to establish motive, intent, absence of mistake, a common scheme or plan, identity, opportunity, preparation, knowledge, absence of mistake or accident,” 2) whether the defendant’s involvement in the other crimes is established by clear and convincing evidence, and 3) the probative value of the “other crimes evidence” against “any undue prejudice likely to result from its admission.” *Faulkner*, 314 Md at 634–35.

Hernandez-Romero concedes that the purpose of the State seeking to admit the certified records regarding the underlying convictions was not to provide evidence of his character to show action in conformity with his character. Indeed, he acknowledges that the State sought to admit the certified conviction records to establish that MS-13 was a criminal gang operating within Prince George’s County. According to Hernandez-

Romero, the admission of the certified records regarding the underlying convictions fails the second part of the *Faulkner* analysis, *i.e.*, establishing Hernandez-Romero’s involvement in the “other crimes” by clear and convincing evidence. He also argues that the admission of the certified conviction records fails the third prong of the *Faulkner* analysis, *i.e.*, weighing the probative value of the underlying convictions against any undue prejudice resulting from the admission of the certified conviction records. These arguments demonstrate that Hernandez-Romero’s interpretation of Maryland Rule 5-404(b) is fundamentally flawed.

The State did not attempt to rely on the certified records regarding the underlying convictions for any purpose related to Maryland Rule 5-404(b), making Maryland Rule 5-404(b) and the *Faulkner* three-step analysis inapplicable. Indeed, the purpose of introducing the certified conviction record is not related to any alleged action by Hernandez-Romero. The sole purpose for the State to introduce the evidence was to prove that members of MS-13 engaged in criminal activity, which is an element of the offense of participation in a criminal gang. That evidence was relevant pursuant to Maryland Rules 5-401 and 5-402 because it is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” The admissibility of the certified conviction records regarding the underlying convictions is not precluded by Maryland Rule 5-403 because its probative value is not “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by

considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” The evidence is also not plainly inadmissible under a specific rule or principle of law. The trial court did not abuse its discretion when it admitted the certified conviction records regarding the underlying convictions. It is, therefore, not necessary to address the issue of harmless error.

**II. There Was Sufficient Evidence To Support Appellant’s Conviction For Participation In A Criminal Gang.**

The jury found Hernandez-Romero guilty of participation in a criminal gang in violation of section 9-804(a) of the Criminal Law Article of the Maryland Code (“CR”), which provides that a person may not “participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity. A “criminal gang” is defined as “a group or association of three or more persons” whose members:

- (1) individually or collectively engage in a pattern of criminal gang activity;
- (2) have as one of their primary objectives or activities the commission of one or more underlying crimes, including acts by juveniles that would be underlying crimes if committed by adults; and
- (3) have in common an overt or covert organizational or command structure.

CR § 9-801(c). A “pattern of criminal gang activity” is defined as “the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident. CR § 9-



801(e). “Underlying crime” is also a statutorily-defined term, which through multiple statutory cross-references, includes several criminal offenses, including first-degree murder. CR § 9-801(g).

Hernandez-Romero raises three arguments in support of his position that there was insufficient evidence to support his conviction for participation in a criminal gang. First, he contends that the State did not prove a connection between MS-13 and the certified records regarding the underlying convictions the State introduced as evidence. Second, Hernandez-Romero argues that, because he was unaware of the events reflected in the certified records regarding the underlying convictions, there is insufficient evidence to support his conviction for participation in a criminal gang. Third, according to Hernandez-Romero, the State did not establish that the underlying convictions were not part of the same incident. The State argues that this Court should not consider the second and third arguments because Hernandez-Romero did not raise those arguments in his motions for judgment of acquittal.

A criminal defendant who moves for judgment of acquittal is required by Maryland Rule 4–324(a) to “state with particularity all reasons why the motion should be granted[,]’ and is not entitled to appellate review of reasons stated for the first time on appeal.” *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *State v. Lyles*, 308 Md. 129, 135–36 (1986)). “The language of the rule is mandatory, and review of a claim of insufficiency is available only for the reasons given by appellant in his motion for judgment of acquittal.” *Whiting v. State*, 160 Md. App. 285, 308 (2004) (citations

omitted), *aff'd*, 389 Md. 334 (2005). Hernandez-Romero’s arguments that the State failed to prove that he was personally aware of the events reflect in the certified records regarding the underlying convictions and that the State failed to prove that the underlying convictions were not part of the same incident are not preserved for appellate review, and we will not consider them.<sup>1</sup>

We review a challenge to the sufficiency of the evidence to determine “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Grimm v. State*, 447 Md. 482, 494–95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656–57 (2011)). “[T]he question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw an inference, but whether the inference [it] did make was supported by the evidence.” *State v. Suddith*, 379 Md. 425, 447 (2004) (citation and internal quotation marks omitted). We, therefore, “defer to any

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<sup>1</sup> Were we to look past the preservation problems, we would conclude that neither contention has merit. Hernandez-Romero’s conviction was based on section 9-804(a)(1) of the Criminal Law Article. That statute requires the State to prove that the accused “knowingly and willfully . . . participate[d] in an underlying crime . . . committed for the benefit of, at the direction of, or in association with a criminal gang.” As we will explain, there was ample evidence admitted at trial to support this conviction. Section 9-804 of the Criminal Law Article does not require the State to prove that the accused was personally aware of the specific crimes used by the prosecution to prove a “pattern of gang activity,” and we decline to read such a requirement into the statute.

Hernandez-Romero’s second unpreserved contention has even less hypothetical merit. The State presented ample evidence, including but not limited to Corporal Wilson’s testimony, that the convictions used to show MS-13 activity in Prince George’s County were for four different homicides that involved different defendants and occurred over a two-year time period. There was sufficient evidence for a jury to infer that the underlying convictions were not part of the same incident.

reasonable inferences a jury could have drawn in reaching its verdict, and determine whether there is sufficient evidence to support those inferences.” *Lindsey v. State*, 235 Md. App. 299, 311, *cert. denied*, 458 Md. 593 (2018).

Hernandez-Romero argues that the State did not establish a connection between MS-13 and the underlying convictions. There was, however, sufficient evidence to connect the underlying conviction to MS-13 activity. The trial court recognized Corporal Wilson “as an expert in gangs, specifically MS[-]13, the identification of gangs, gang members, history of MS[-]13, rules, method of operation, hierarchy and all structures of the gang life as it relates to MS[-]13, local, regional and national practices.” Corporal Wilson testified regarding the history of MS-13, the gang’s organizational structure, and characterized Maryland as “becoming a very very big stronghold for MS[-]13.” Corporal Wilson testified regarding MS-13’s presence and operations in Prince George’s County and his experience investigating MS-13-related criminal activity. He also displayed for the jury hand gestures associated with MS-13. With respect to the certified conviction records, Corporal Wilson testified regarding the primary criminal offense for each of the underlying convictions and testified that the individuals convicted were MS-13 members. Each certified conviction record included a statement of probable cause that explained the connection between the crimes and MS-13. Corporal Wilson also explained in his testimony that “Mara Salvatrucha” is another name for MS-13 and that “la mara” is a slang term for gang associated with MS-13. Corporal Wilson’s testimony provided the backdrop for other evidence presented to the jury.

The victims testified that, prior to the assault, Hernandez-Romero and his co-defendant made hand gestures associated with MS-13 and demonstrated those gestures for the jury, which included the hand gestures that Corporal Wilson displayed for the jury. The victims also testified that Hernandez-Romero claimed to be “Mara Salvatrucha” and threatened to kill them. Another State witness present at the mall testified that she heard Hernandez-Romero and his co-defendant refer to “la mara” at the time of the attack. Based on Corporal Wilson’s testimony and the testimony of other witnesses, there was sufficient evidence from which a jury could infer that the underlying convictions were connected to MS-13 activity.

### CONCLUSION

The circuit court did not abuse its discretion by admitting as evidence the certified conviction records related to individuals other than Hernandez-Romero. Maryland Rule 5-404(b) and the *Faulkner* three-step analysis are not applicable because the certified conviction records did not relate to Hernandez-Romero and were not admitted to prove the character of Hernandez-Romero in order to show actions in conformity with that character. Those records were relevant and otherwise admissible. There was also sufficient evidence to support Hernandez-Romero’s conviction for participation in a criminal gang. We affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**

The correction notice(s) for this opinion(s) can be found here:

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