Circuit Court for Montgomery County
Case No. 138159-C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 552

September Term, 2024

ANDRE R. MOORE

v.

STATE OF MARYLAND

Reed,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 20, 2026

A jury in the Circuit Court for Montgomery County found Andre R. Moore, Appellant, guilty of murder in the first degree and use of a firearm in the commission of a crime of violence. The court sentenced Appellant to consecutive terms of life imprisonment, with all but fifty years suspended, for first-degree murder, and twenty years' imprisonment for illegal use of a firearm. In this appeal, Appellant presents two questions for our review:

> 1. Did the trial court err by admitting text messages that contained inadmissible hearsay, as well as irrelevant and prior bad acts evidence?
>
> 2. Did the trial court abuse its discretion by admitting unduly prejudicial references to a "ghost gun"?

Finding no reversible error, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

As Appellant acknowledges, the underlying facts in this case are largely uncontested. The crimes took place in a dwelling in Silver Spring and were recorded on security cameras that had been installed by the landlord. The principal issue at trial was whether the State had proven the element of premeditation.[1]

The victim, Michael Sutton, and Appellant's girlfriend, Nakiyah Bell, rented rooms at the premises in Silver Spring. It appears that Appellant became jealous because he believed that Mr. Sutton was befriending Ms. Bell.[2] On January 18, 2021, shortly after

[1] Initially, Appellant had filed a plea of not criminally responsible, but he withdrew that plea prior to trial.

[2] In December 2020, Appellant became aware that Ms. Bell and Mr. Sutton were exchanging text messages (not the ones at issue in this appeal) and "was really upset" with (continued)

noon, Appellant engaged in a verbal altercation with Mr. Sutton and shot him in the back of the neck, killing him.

Appellant fled, shirtless and shoeless, through a nearby wooded area. He was arrested, and, later that evening, he gave police detectives a recorded statement, acknowledging that he had killed Mr. Sutton. Several weeks after the shooting, on February 8, 2022, the landlord found an unserialized handgun in the Silver Spring residence, and he notified police, who seized it. Subsequent testing determined that the recovered handgun was consistent with being the murder weapon.

The State filed an indictment, charging Appellant with first-degree murder of Michael Sutton and use of a firearm in the commission of a crime of violence. A five-day jury trial took place. The State called seventeen witnesses over three days of testimony. Appellant exercised his right not to testify.

After deliberating during parts of two days, the jury found Appellant guilty of murder in the first degree and use of a firearm in the commission of a crime of violence. The court sentenced Appellant to life imprisonment, with all but fifty years suspended, for first-degree murder; and a consecutive term of twenty years' imprisonment for use of a

both Ms. Bell and Mr. Sutton. In addition, Ms. Bell testified that, in the fall of that same year, Appellant became jealous of her socializing with her predominantly male roommates and told her that she should remain in her room.

firearm in the commission of a crime of violence, to be followed by five years' supervised probation. This timely appeal ensued.[3]

Additional facts are included where pertinent to the discussion of the issues.

DISCUSSION

I.

Parties' Contentions

Appellant contends that the trial court erred in admitting State's Exhibits 116 through 118, which contained text messages between him and several non-testifying parties (an unknown sender, "Benji Campbell," and "Cheff"), related to an attempted purchase of a handgun and/or a magazine. According to Appellant, those messages contained inadmissible hearsay, irrelevant evidence, and unfairly prejudicial evidence of prior bad acts. Relying upon the implied assertion rule articulated in *Stoddard v. State*, 389 Md. 681 (2005), and *Bernadyn v. State*, 390 Md. 1 (2005), Appellant asserts that the messages in State's Exhibit 116 contain implied assertions "that the unknown sender had built a gun that the State claimed [Appellant] used to kill Mr. Sutton," that those assertions therefore were hearsay, and that they did not fall within any exception to the rule against hearsay. Appellant further asserts that "the earliest of the text messages," which were sent December 20, 2020,[4] "predated the time when Ms. Bell testified that [Appellant] discovered the

[3] Appellant also sought review of his sentence by a three-judge panel. That panel left intact the sentence that had been imposed.

[4] Appellant also sought review of his sentence by a three-judge panel. That panel left intact the sentence that had been imposed. We also note that a suppression hearing was (continued)

messages from" the victim, Mr. Sutton, and were therefore irrelevant to Appellant's motive. And finally, Appellant asserts that "the State could not prove that the gun at issue in the texts was used to kill Mr. Sutton, making its acquisition a separate act"; and that furthermore, the texts "served simply to paint [Appellant] as a person of bad character" and therefore, should have been excluded under Maryland Rule 5-404(b).

The State counters that most of the incoming text messages to Appellant were not hearsay because they were not offered for the truth of the matter asserted, but to the extent they may have been hearsay, they either were "verbal acts" and were admissible under *Garner v. State*, 414 Md. 372 (2010), or they fell within the hearsay exception for statements against penal interest. The State further avers that the December 20, 2020, text messages between Appellant and the unknown sender were relevant to premeditation because "the tension between [Appellant] and [Mr.] Sutton, and [Appellant's] dislike for [Mr.] Sutton, predated the discovery of the Facebook messages[,]" which occurred after December 20. Finally, the State asserts that Appellant's claim, that text messages suggesting that he was purchasing a "ghost gun" were improper "bad acts" evidence, either relied upon facts that were not presented to the jury or, to the extent the claim was based upon the State's purported inability to link the gun referenced in the text messages to the murder weapon, was not preserved for appeal, and in any event, fails on its merits because the text messages were not offered as propensity evidence.

held prior to trial, and the court granted in part a motion to suppress Appellant's recorded statement to police. That ruling is not at issue in this appeal.

Additional Facts Pertaining to the Claim

Near the end of the first day of trial, following jury selection, defense counsel alerted the court to objections to the admission of certain text messages that had been extracted from Appellant's phone following his arrest. Among the grounds she raised were confrontation, hearsay, and relevance. The court took the matter under advisement so that it would have an opportunity to read the challenged text messages.

When trial resumed the next morning, defense counsel sought to exclude State's Exhibits 116 through 118, contending that they contained inadmissible hearsay, and that they were irrelevant because Ms. Bell had told police that Appellant already possessed a gun on December 18, 2020, prior to when any of the text messages were sent/received. Specifically, regarding the text messages dated December 20, 2020, defense counsel asserted that they were irrelevant because Ms. Bell had told police that Appellant did not discover the messages between her and Mr. Sutton until afterward. Finally, defense counsel asserted that the text messages were unfairly prejudicial bad acts evidence, barred under Maryland Rule 5-404(b).

The court overruled the defense motion to exclude the text messages, subject to certain redactions. The court initially found that text messages at issue were not "testimonial" (indeed, that they were "almost the exact opposite") and therefore were not barred under the Confrontation Clause. The court then addressed Appellant's hearsay contention:

> Are they, are they hearsay? Are they violative of the hearsay rule? Again, I do not think they are. They're not offered necessarily for the truth of the declarant, the unknown, Benji, Cheff. They're offered to show the

> defendant's state-of-mind, the defendant's intent, and that is to purchase a firearm to, in his words, run [down] on someone.

The court then overruled Appellant's objection to the statement, "I need to run down on a N right fast." The court declared:

> I think it's for the, I think it's for the jury to decide; but I need to run down on a N right fast. Let me know. Run down, run up, I don't know. I disagree with you. It is intended, these texts are intended to show the defendant's state of mind during a time immediately before this murder, this alleged murder.
>
> I do believe they are probative. The defense says they're not probative of anything. They're, they're not probative. They're, they're not relevant. They're not material because you, the defense position is that Nakiyah Bell already says, tells the police on December 18, well, he already, he has a gun. So, therefore, all of this is irrelevant to whether or not he had a gun and shot the victim with it. Irrelevant, not probative, not material.
>
> The . . . State's position is completely contrary to that. The State's position is that he did not have a gun; there's no evidence he had a gun; Ms. Bell didn't say he had a gun; and that these texts, when read together, clearly, and I think the State is correct, could the trier of fact, the jury infer and decide beyond a reasonable doubt that these words are, the defendant's texts are his, show his intent to purchase a gun? Of course they could, of course they could. This is not hieroglyphics. Some of these words do need to be explained to a jury. I didn't know until last night at 6 o'clock in the evening that kill means, yeah, I agree with you.
>
> So, you know, we find ourselves in this job and we think everybody knows what a compact is. They don't. So, it's up to the jury to decide once the, if the State has proven what these words mean beyond a reasonable doubt. So, but that doesn't mean the State can't try to do that and the, the standard is unfair prejudice. Is this prejudicial to the defendant? Of course it is. Is it unfairly prejudicial such that it is not probative of a fact that needs to be proven in this case? No, I do not find it is unfairly prejudicial.
>
> I do think certain portions of these texts need to be redacted and changed, and we've discussed that; and I will leave it to the State to do that and we can meet again to, if you disagree on these redactions, we can talk again about them and I can try to help with that. I do not believe that in another argument the defense raised is that these are bad character evidence,

> propensity evidence. I disagree with that. I, I think they are probative. I think the text and the words are probative of a fact in this trial that the trier of fact must decide.

At the conclusion of the third day of trial, the parties addressed the redactions that the court had ordered, and defense counsel renewed her previous objections to their admissibility. The following day, State's Exhibits 116 through 118, as redacted, were admitted into evidence over defense objection. Thereafter, Detective Sarah White was examined and testified about several of the text messages at issue.

For clarity, we adopt the State's summary describing the contested exhibits as follows:

> State's Exhibit 116 comprised 101 text messages between Appellant and an unknown person ("Unknown") using a phone number ending in 7164 on the following dates: December 20, 2020, December 31, 2020, January 1, 2021, January 2, 2021, and January 7, 2021. Fifty-eight of the messages were sent by Appellant (outgoing) and forty-three messages were sent by the unknown person (incoming).
>
> State's Exhibit 117 comprised ten text messages between Appellant and "Benji" on January 1, 2021. Appellant sent five of the messages (outgoing) and received five messages from Benji (incoming).
>
> State's Exhibit 118 comprised eight text messages between Appellant and "Cheff" on January 1, 2021. Appellant sent four of the messages (outgoing) and received four messages from Cheff (incoming).

To give the reader a flavor of the disputed text messages, we reproduce the (corrected) tables from the State's Brief, showing the text messages specifically cited in Appellant's Brief, all of which are in State's Exhibit 116:

January 2, 2021 Text Messages:

Time	Sender	Message
9:38:24 a.m.	Appellant	Bro
9:38:36 a.m.	Appellant	This joint acting weird you sure it's not jamming?
9:38:52 a.m.	Appellant	Cause if it jam I'm gon want the bred back Ian want no gun that jams
9:44:31 a.m.	Unknown	I sent the video it needs to be oiled up sum
9:45:10 a.m.	Appellant	Bro are you sure. Don't put me in a position w a bs glock
9:45:26 a.m.	Appellant	First no mag
9:45:32 a.m.	Appellant	Now might jam lmk.
9:58:59 a.m.	Unknown	Cuh I just told u it's not gonna jam just needs to be oiled so it's not so tight
9:59:23 a.m.	Unknown	I have a video of it shooting and not jamming!
1:40:05 p.m.	Appellant	I hope it don't jam bra
2:23:47 p.m.	Unknown	It won't

January 7, 2021 Text Messages:

Time	Sender	Message
10:57:58 p.m.	Unknown	Just needs a magazine and sum oil
10:58:14 p.m.	Appellant	Lemme see
10:58:41 p.m.	Appellant	That's weird [redacted] need a mag and oil?
11:00:39 p.m.	Unknown	It def needs to be cleaned

11:00:39 p.m.	Unknown	Cause I built [redacted] and I don't have oil to use when I'm building it, also Mags don't come wit ghost kits
11:01:58 p.m.	Appellant	Ard [redacted]

Texts in State's Exhibit 117 include inquiries by Appellant to Benji Campbell seeking to buy a "9 clip." Texts in State's Exhibit 118 include inquiries by Appellant to Cheff likewise seeking to buy a "9 clip."

Analysis

Hearsay

Maryland Rule 5-801 provides:

> The following definitions apply under this Chapter:
>
> **(a) Statement.** A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
>
> **(b) Declarant.** A "declarant" is a person who makes a statement.
>
> **(c) Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Maryland Rule 5-802 provides that, "Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." A "trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review." *Gordon v. State*, 431 Md. 527, 538 (2013). "Accordingly, the trial court's legal

conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error[.]" *Id.* (citations omitted).

We begin with the observation that the text messages in dispute were conversations between Appellant and three different individuals. Appellant's own statements in those text messages were admissible under Maryland Rule 5-803(a)(1), which provides that a party's own statement offered against himself is admissible. The State contends, and we agree, that most of the statements made by the other persons to those text conversations were offered to provide context to Appellant's own admissible statements. In other words, the statements at issue were offered for a non-hearsay purpose—to prove Appellant's state of mind (that he was planning the crimes) and intent (that he sought to purchase a ghost gun that was similar to a Glock handgun so that he could "run down" Mr. Sutton).

Furthermore, those incoming text messages discussing matters such as price, terms of payment, and the coordination of time and place where Appellant would pick up the completed weapon are "verbal acts" (that is, offer and acceptance of a contract by which Appellant would purchase the ghost gun) that are not excluded by the rule against hearsay. *See Garner v. State*, 414 Md. 372, 381-88 (2010) (holding that a police officer's testimony that, when he answered a detained suspect's cell phone, the caller asked, "can I get a 40," i.e., asking whether the suspect had cocaine for sale, did not violate the rule against hearsay, regardless of whether the out-of-court statement was an "implied assertion").[5]

[5] We do not rely on the State's contention that any of the text messages were admissible as statements against penal interest. As Appellant points out in his Reply Brief, the State, as the proponent of the evidence, was required to assert this ground for (continued)

Relevance

Maryland Rule 5-401 provides:

> "Relevant evidence" means 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.

"Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018).

There was evidence that the animosity between Appellant and Mr. Sutton predated the date of the text messages at issue, December 20, 2020. Mr. Sutton moved into the home where the murder took place in the fall of 2020. Although Ms. Bell wanted to maintain a platonic relationship with him, Mr. Sutton "wanted . . . more than just a friendship." At that time, Ms. Bell was briefly unemployed, and she spent most of her time at the residence. Appellant also was there frequently, and he apparently was jealous that "most of [her] roommates were men," going so far as to tell her not to leave her room. Moreover, Appellant told Ms. Bell that "he had an issue" with Mr. Sutton's attempts to become romantically involved with her and because Mr. Sutton was

admissibility in the trial court but did not do so. Md. Rule 8-131(a); *State v. Smith*, 487 Md. 635, 661-62 (2024) (stating that "[f]or a statement to be admissible under Rule 5-804(b)(3), the proponent of the evidence has the burden to demonstrate, and the trial court must determine that '(1) the declarant is unavailable, (2) the statement is genuinely adverse to the declarant's penal interest, and (3) corroborating circumstances clearly indicate the trustworthiness of the statement'" (quoting *State v. Galicia*, 479 Md. 341, 359 (2022))). Moreover, it is not even clear that, at the time the statements were made, it was illegal in Maryland to transfer a ghost gun. As Appellant points out, the Maryland statute prohibiting the sale or transfer of unfinished firearm frames or firearms without serial numbers did not take effect until June 2022, nearly 18 months after the statements were made. 2022 Md. Laws, chs. 18, 19.

considerably older than Ms. Bell.[6] We conclude that the December 20, 2020, text messages between Appellant and the unknown sender were relevant to premeditation, an element of the principal charged offense (murder in the first degree).

Other Bad Acts

Maryland Rule 5-404(b) governs the admission of "other bad acts" evidence. That rule provides:

> **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts, including delinquent acts as defined in Code, Courts Article § 3-8A-01, is not admissible to prove the character of a person in order to show action in the 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.

"Under Maryland's exclusionary approach to other bad acts evidence, the proponent of such evidence must satisfy three requirements before it may be admitted: (1) the evidence must be specially relevant; (2) the defendant's involvement must be proved by clear and convincing evidence; and (3) the necessity for and probative value of the evidence

[6] The State fleshes out its argument about this issue with extensive excerpts from a statement Ms. Bell made to a police detective several hours after the shooting. That statement, although disclosed to the defense in discovery, was not introduced into evidence (it was used once to refresh Ms. Bell's recollection, and we do not rely upon it in our resolution of this issue.)

must not be substantially outweighed by the risk of unfair prejudice."[7] *Browne v. State*, 486 Md. 169, 190 (2023). *See State v. Faulkner*, 314 Md. 630, 634-35 (1989).

"[T]o have special relevance, other bad acts evidence 'must be strongly probative of an issue other than character that is a significant issue in the case.'" *Browne*, 486 Md. at 190 (quoting 5 Lynn McLain, *Maryland Evidence: State and Federal*, § 404:5, at 760 (3d ed. 2013)). "Before admitting such evidence, a trial court must therefore determine that the issue to which the evidence is addressed is genuinely contested in that case and that the evidence has more than a minimal bearing on the issue." *Id.* at 192. The first stage of the analysis "is a legal determination that we review without deference to the trial court." *Id.* at 193-94. Whether the proponent of the evidence has satisfied the clear and convincing standard is reviewed for sufficiency of the evidence. *Id.* at 194. And we review the trial

[7] Although *Browne* purported to reiterate that Maryland has adopted an exclusionary approach to the rule governing other acts evidence, citing, among other authorities, *Harris v. State*, 324 Md. 490 (1991), the Supreme Court has, nonetheless, overruled *Harris* sub silentio regarding the balancing test a court must undertake in weighing probative value against unfair prejudice. Whereas in *Harris*, the Court held that other acts evidence must be excluded unless its "probative force . . . substantially outweighs its potential for unfair prejudice," *id.* at 500, the Court since that time, in a line of decisions beginning with *Gutierrez v. State*, 423 Md. 476, 490 (2011) (citing Md. Rule 5-403), and culminating in *Browne*, 486 Md. at 190, 193 (citing Md. Rule 5-403 and *Gutierrez*), has replaced the *Harris* balancing test with ordinary Rule 5-403 balancing, which is tilted in favor of admissibility. *See Newman v. State*, 236 Md. App. 533, 555 & n.7 (2018) (noting that Rule 5-403 requires that "the 'danger of unfair prejudice' must not simply outweigh 'probative value' but must . . . do so 'substantially' and thus, "[b]y its express provisions, Rule 5-403 has steeply tilted the weighing process in favor of admissibility"); 5 Lynn McLain, *Maryland Evidence: State and Federal*, § 404:5(f) (observing that balancing under Rule 5-403 "is the obverse of that established in *Harris*"). To the extent that Maryland Rule 5-404(b) remains an exclusionary rule, the heavy lifting is performed, apparently, by the other stages of the *Faulker* analysis—the special relevance prong and the requirement that the proponent of the evidence satisfy the clear and convincing standard.

court's balancing of probative force versus unfair prejudice for abuse of discretion. *Id.* "Abuse of discretion exists where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to guiding rules or principles." *State v. Robertson*, 463 Md. 342, 364 (2019) (citation and quotation omitted) (cleaned up).

Evidence that Appellant was attempting to purchase a "ghost gun" and a magazine was specially relevant because the murder weapon was, in fact, a ghost gun, and furthermore, as the supplier told Appellant, the firearm did not come with a magazine. Furthermore, that evidence was offered to show preparation, which is a purpose expressly contemplated by Rule 5-404(b).[8]

Appellant does not appear to contest that the evidence satisfied the clear and convincing standard. As for whether the trial court abused its discretion in admitting the text messages, we disagree. "'[T]he State is not constrained to forego relevant evidence and to risk going to the fact finder with a watered down version of its case.'" *Newman v. State*, 236 Md. App. 533, 551-52 (2018) (quoting *Oesby v. State*, 142 Md. App. 144, 166, *cert. denied*, 369 Md. 181 (2002)) (emphasis removed). We certainly cannot say that "no reasonable person would take the view adopted by the trial court" in admitting the text messages, nor that, in so doing, the court acted "without reference to guiding rules or principles." *Robertson*, 463 Md. at 364.

II.

[8] We further note that Appellant appears to be arguing, as the State suggests, about State's Exhibit 116 *prior to* its redaction. The redacted version of that exhibit did not contain any reference to multiple firearms.

Parties' Contentions

Appellant contends that the trial court abused its discretion in admitting testimony and text messages that referred to "ghost guns" rather than to the more anodyne term, "privately manufactured firearm," which he proposed instead. According to Appellant, admitting express references to the inflammatory term "ghost guns" was unfairly prejudicial and should have been excluded under Maryland Rule 5-403. Appellant complains that references to "ghost guns" were "not relevant to any contested issue at trial," were simply unnecessary, and created "a risk of unfair prejudice against" him "as a person who used a dangerous-sounding weapon that is allegedly connected to increasing rates of violent crime."

The State counters that the term "ghost gun" was relevant because the State had introduced into evidence text message conversations between Appellant and an unknown sender, in which the parties discussed furnishing Appellant with such a weapon, and because the alleged murder weapon was a ghost gun. The State further asserts that the references to ghost guns were not unfairly prejudicial, analogizing the interchangeability of the terms "ghost gun" and "privately manufactured firearm" to that of "sawed-off shotgun" and "short-barreled shotgun." Finally, the State maintains that, even if admitting references to "ghost guns" were error, any error was harmless "because it presented the same information that the jury already knew" and because there was strong evidence of Appellant's guilt, including video evidence depicting the crime.

Additional Facts Pertaining to the Claim

Prior to the second day of trial, during a discussion about the disputed text messages addressed in Part I of this opinion, defense counsel objected to a text message sent from an unknown sender to appellant that expressly referred to "ghost kits." The prosecutor countered, stating in part:

> Ghost gun, guns in general, I think as we saw from jury selection, are a hot topic in the community. There's no way to, to sugar-coat that. There's no way to, you know, redact that and take that out of this conversation. That's what people call them. That's the lay person term for them. I don't think people in the community know the term privately-made firearm. So, that is certainly relevant in this case. It's not being used by the State to inflame anyone; it's just what they're called. And the fact that they're, you know, again, it's a sensitive, hot trigger topic or trigger word does not mean that it's not admissible. That is what they're called.

The court disagreed with defense counsel that references to "ghost guns" were unfairly prejudicial, but it deferred its ruling, declaring, "we can revisit this once the State makes some changes to these texts."

When trial reconvened the following day, defense counsel requested that the State's witnesses, the officer who recovered the gun, Sergeant Alexis Garcia, and the firearms expert, Laura Lightstone, be ordered not to use the term "ghost gun" during their testimony. Although the court denied that request, neither Sergeant Garcia nor Ms. Lightstone used the term "ghost gun" during their testimony.

There were two discrete references to "ghost guns" during trial. The first was in one of the text messages in State's Exhibit 116 from the unknown sender:

> Cause I built [redacted] and I don't have oil to use when I'm building it. also Mags don't come wit ghost kits[.]

The second reference to "ghost guns" was in Detective White's testimony. She testified, over objection, in part as follows:

> [PROSECUTOR]: What is a ghost gun?
>
> [DETECTIVE WHITE]: A ghost gun is a privately manufactured firearm. It's basically a gun kit that a person can order and put together their own handgun.
>
> [PROSECUTOR]: And does a ghost gun have a serial number, anything like that?
>
> [DETECTIVE WHITE]: It's not serialized, no.
>
> [PROSECUTOR]: Okay. And are you aware of if the gun that was recovered in this case was a ghost gun?
>
> [DETECTIVE WHITE]: Yes. It was.

Then, over defense objection, the prosecutor examined Detective White about the text messages that previously had been admitted into evidence over objection. In response to the prosecutor's inquiry, she recited the following text messages:

> [DETECTIVE WHITE]: Page 32, the subject who he bought the gun from or got the gun from says, I have video of it shooting and not jamming.
>
> And then [Appellant] in the green bubble says, I hope it don't jam, Bro.
>
> It won't, just needs a magazine and some oil. Let me see.
>
> That's weird, need a mag and oil.
>
> The guy answers back: It definitely needs to be cleaned because I built and I don't have oil to use when building it. Also, mags don't come with ghost kits.

> [PROSECUTOR]: Ghost kits, those are the kits that you were referring to before?
>
> [DETECTIVE WHITE]: Yes. That would be a ghost gun kit.

Analysis

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. Our Supreme Court recently explained:

> We do not exclude relevant evidence merely because it is prejudicial, as "[a]ll evidence, by its nature, is prejudicial." *Williams v. State*, 457 Md. 551, 572 (2018). Rule 5-403 instead excludes relevant evidence when its *unfairly* prejudicial nature *substantially* outweighs its probative value. Under Rule 5-403, unfair prejudice outweighs a piece of relevant evidence's probative value if it "tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission." *Montague v. State*, 471 Md. 657, 674 (2020) (alteration in original) (quoting *State v. Heath*, 464 Md. 445, 464 (2019)).

Woodlin v. State, 484 Md. 253, 265 (2023).

In reviewing a trial court's decision to overrule a defendant's objection to the admission of evidence under Rule 5-403, we undertake two separate inquiries, governed by two different standards of review. "Thus, we must consider first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403." *State v. Simms*, 420 Md. 705, 725 (2011). "During the first consideration, we test for legal error, while the second consideration requires review of the trial judge's discretionary weighing and is thus tested for abuse of

that discretion." *Id.* As we stated earlier, "abuse of discretion exists where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to guiding rules or principles." *Robertson, supra,* 463 Md. at 364 (2019) (citation and quotation omitted) (cleaned up).

The murder weapon in this case was, in fact, a "ghost gun," or, in the nomenclature proposed by Appellant, a "privately manufactured firearm." The references to "ghost guns" that Appellant claims are objectionable certainly clear the "low bar" required to establish relevance under Maryland Rule 5-401. *Williams, supra,* 457 Md. at 564.

Thus, we turn to consider whether the references to "ghost guns" were unfairly prejudicial and if so, whether that unfair prejudice substantially outweighed their probative value. In our view, the anodyne expression, "privately manufactured firearm," might well have led to juror confusion. The colloquial expression, "ghost gun," is far better known and used in media reports that jurors could be expected to be familiar with.[9] Moreover,

[9] *See, e.g.*, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Privately Made Firearms*, https://www.atf.gov/firearms/privately-made-firearms (last visited Nov. 30, 2025), which explains:

> Privately made firearms (PMFs) are firearms (including a frame or receiver) that have been completed, assembled or otherwise produced by a person other than a licensed manufacturer. PMFs are also made without a serial number placed by a licensed manufacturer at the time the firearm was produced. However, not all PMFs are illegal and not all firearms are required to have a serial number.
>
> * * *
>
> PMFs are commonly referred to as "ghost guns" because it can be difficult to track them. Investigating crimes involving unserialized PMFs can create

(continued)

"ghost gun" connotes the essence of such a firearm, that it lacks a serial number. And furthermore, there were only two references to a "ghost gun" during a five-day trial (once in one of the text messages in State's Exhibit 116 and the other during Detective White's testimony), and thus there was little danger of "needless presentation of cumulative evidence." Md. Rule 5-403. Although Appellant was not charged with an offense related to the absence of a serial number on the murder weapon, we do not think the trial court abused its discretion in allowing witnesses to use that expression rather than the more technical and less widely known one. We certainly cannot say that "no reasonable person would take the view adopted by the trial court" or that the court acted "without reference to guiding rules or principles" in allowing witnesses to use the term "ghost gun" in referring to the murder weapon, which in fact was a ghost gun. *Robertson*, 463 Md. at 364.

In any event, we agree with the State that the evidence in this case was so overwhelming,[10] and the references to "ghost guns" were so fleeting, that there was no reasonable possibility that those fleeting references had any influence on the jury's verdict. Therefore, any purported error in admitting references to "ghost guns" was harmless

> difficulty in tracing the origins of the firearm and linking them to related crimes. From 2016 through 2021, there were approximately 45,240 suspected privately made firearms reported to ATF as having been recovered by law enforcement from potential crime scenes, including 692 homicides or attempted homicides. These issues have led to some states passing additional laws related to PMFs.

[10] That evidence included video recordings, one of which depicted Appellant shooting Mr. Sutton at point blank range, as well as the landlord's testimony that Appellant ripped the cameras from their mounts after he killed Mr. Sutton.

beyond a reasonable doubt. *Cromartie v. State*, 490 Md. 297, 305 (2025); *Dorsey v. State*, 276 Md. 638, 659 (1976).

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.