Circuit Court for Prince George's County
Case No. CT200125X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1445

September Term, 2023

SAMMIE JEREMIAH WARREN

v.

STATE OF MARYLAND

Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 6, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Sammie Warren was convicted by a jury in the Circuit Court for Prince George's County of second-degree depraved heart murder related to the death of Filomena Vasquez. He was also convicted of use of a handgun in the commission of a crime of violence, and illegal possession of a firearm.

Appellant notes this timely appeal and presents four questions for our review:

1. Did the trial court err[] in admitting as consciousness of guilt evidence [appellant's] statement that he would rely on "loopholes" in face of evidence of his participation in the purchase of [a vehicle] using the app[] OfferUp?

2. Did the trial court err in denying [appellant's] motion to suppress based on *Franks v. Delaware*, 438 U.S. 154 (1978)?

3. Did the trial court err[] in denying [appellant's] motion to vacate his convictions for second degree murder and use of a firearm in the commission of [a crime of violence] based on its grant of [appellant's] motion for judgment of acquittal of first degree murder?

4. Was the evidence insufficient to support [appellant's] conviction for second degree depraved heart murder and use of a firearm in the commission of a crime of violence?

For the reasons to follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the morning of December 24, 2019, appellant purchased a 2003 Infiniti G35 from Roni Vasquez for $1,100. They had communicated concerning the purchase via OfferUp[1] and text messages. The purchase was completed at the home of Mr. Vasquez's parents, Filomena and Eugenio Vasquez, on Varnum Street in Hyattsville. Shortly before

[1] OfferUp is a website and mobile app which allows individuals to buy and sell items and services with other individuals in their local area. *About Us*, OfferUp, https://about.offerup.com (last visited December 18, 2025).

10:00 p.m. the same day, the Infiniti broke down, leaving appellant stranded on the side of the road overnight. During this time, appellant sent Mr. Vasquez numerous text messages asking for a ride home and seeking a full or partial refund of the money he paid for the vehicle. Mr. Vasquez did not give appellant a ride home, declined to refund any money, and eventually stopped responding to his text messages.

On January 1, 2020, at approximately 11:30 p.m., an individual fired 14 shots at the Varnum Street home of Mr. Vasquez's parents. Filomena Vasquez, who was sitting at the kitchen table near a front window, was shot in the chest and died shortly thereafter. Eugenio Vasquez had been asleep upstairs at the time of the shooting and was awoken by the gunfire. He looked out the window and saw someone walking away from the home. He then went downstairs, saw Filomena on the floor, and yelled for his daughter to call 911. The 911 call was placed at 11:34 p.m.

Because of his recent purchase of the Infiniti at the Varnum Street house, appellant became the main suspect in the shooting. Police obtained a warrant for appellant's DNA and fingerprints, and went to appellant's home in Bowie on January 4, 2020, to execute the warrant. At that time, police officers observed appellant through a window in possession of a handgun. They forced entry into the house and arrested him. Police then obtained a search warrant for the home, where they recovered a handgun and ammunition.

Appellant challenged the warrant that led to the recovery of the handgun, arguing that it was based on a false affidavit of probable cause. In the affidavit, Detective McAveety stated: "officers attempted to make contact with the subject at his location, at which time

they observed him through a window of the home in possession of a handgun." Appellant asserted that the detective's statement was false because the blinds in his bedroom were down, meaning officers could not have seen him through the window.

The court held a *Franks* hearing on May 28, 2021. Appellant and Toni Ellerbe testified. Ms. Ellerbe was appellant's girlfriend and was at his home when he was arrested. Both appellant and Ms. Ellerbe testified that they were watching TV in appellant's ground-floor bedroom when they heard police knock at the door. The blinds in the bedroom windows were down. Appellant left the bedroom and walked a short distance down the hallway toward the front door to see who was knocking. Ms. Ellerbe testified that there was a small window in the top of the front door as well as a window next to the door. She could not remember whether the window next to the door was covered, but stated that the window in the door did not have blinds. Appellant testified that, when he was in the hallway, he heard police announce themselves and saw them through the window. At that time, he did not answer the door and went back into the bedroom. Police then forced entry and arrested him.

The court denied appellant's motion, determining that his challenge to the affidavit of probable cause was "just a clear dispute of facts" and appellant did not provide "any substantial proof that the detective lied."

Trial commenced in late October and continued into early November 2022, but the court ultimately declared a mistrial. Appellant's retrial took place from April 25, 2023 to

May 11, 2023. Appellant's primary defense at trial was that the shooting was committed by his friend, Kerry Odoms, who died in 2021.

Mr. Vasquez testified that he "exchanged a few messages" with appellant on OfferUp about the car before giving appellant his cell phone number. The State presented records of all messages sent and received by an OfferUp account with the username "Toni," which listed a 2003 Infiniti G35 that "won't start up" for sale on December 28, 2019, and which was giving prospective buyers appellant's phone number. The same account made inquiries about purchasing several vehicles in December 2019, but did not contain any communication with Mr. Vasquez about purchasing the Infiniti. Appellant testified that the "Toni" OfferUp account was Ms. Ellerbe's account. He listed the Infiniti for sale on her account because she had told him she would help him sell the car. However, when he was looking at purchasing a car, he used his own OfferUp account. There was no other evidence produced concerning appellant having a separate OfferUp account.

Appellant testified that he funded the purchase of the Infiniti using $700 of his own money and $400 borrowed from Mr. Odoms. He first told Mr. Odoms about the problems with the car and Mr. Vasquez's refusal to refund any money on the evening of January 1, 2020.

Detective Aven Odhner, who worked in the Prince George's County Police Department technical operations division, testified concerning the cell tower data associated with appellant's phone. At 11:15 p.m. on January 1, 2020, appellant's phone connected with a tower in northeastern Washington, D.C. The phone proceeded to connect

with towers progressively closer to the Varnum Street house, and was in the same neighborhood as the house from 11:23 p.m. to 11:37 p.m. The phone connected with the towers closest to the house from 11:25 p.m. to 11:28 p.m.—approximately the time the shooting occurred. By 11:38 p.m., the phone was moving east and connecting with towers "closer toward the Bowie area."

Appellant testified that he was dropped off in the Adams Morgan neighborhood in D.C. at around 8:00 p.m. and spent the evening with Mr. Odoms, walking around and visiting multiple bars and restaurants. It was during this time that appellant told Mr. Odoms about the situation with the Infiniti and showed him the text message exchange with Mr. Vasquez, which included the address of the Varnum Street house. At 11:00 p.m., Mr. Odoms called an Uber or Lyft to take himself and appellant home. According to appellant, Mr. Odoms was dropped off at a CVS close to the Varnum Street house, and appellant was driven to his Bowie home immediately thereafter. Appellant stated that he was at the CVS where Mr. Odoms was dropped off "a couple minutes, if that. Probably a minute."

Detective Odhner was called as a rebuttal witness. She testified that appellant's phone was connecting to cell towers in Bowie until 10:15 p.m. on January 1, 2020, at which time it began moving toward D.C. The phone did not begin connecting to towers within D.C. until shortly after 10:30 p.m. For approximately 20 minutes after entering D.C., the phone "would have to be [in] a vehicle" driving around, based on the distance between the towers it connected to within a short period of time. There was a six-minute period of time, from 10:54 p.m. to 11:00 p.m., when the phone was connecting with towers in the Adams

Morgan neighborhood. Detective Odhner stated that "those six minutes . . . was the only time that I could say where it is possible that the phone wasn't moving" in a vehicle. Between 11:00 p.m. and 11:15 p.m., the phone moved from Adams Morgan to northeastern D.C., and then to the vicinity of the shooting. Detective Odhner reiterated that "[t]he phone [was] hitting towers consistent with being in the area of the location of [the] incident for a total of about ten minutes."

Officer Joshua Copfer testified that he was part of the perimeter at the rear of appellant's home when appellant was arrested and he saw appellant walking through the house holding a gun. The gun and multiple boxes of ammunition were recovered from appellant's bedroom after his arrest. Corporal Jenna Kelly, a firearms examiner, testified that ballistics markings indicated the gun recovered from appellant's home was the same gun that fired the bullets found at the Varnum Street house and the bullet recovered from Filomena Vasquez's body. Joseph Rose, a forensic chemist working for the Prince George's County Police Department, tested a swab of the "trigger, slide, handgrip, and magazine" of the recovered handgun and determined that appellant's DNA was present. Appellant testified that, on the afternoon of January 2, 2020, Mr. Odoms spent some time at his house. Shortly before leaving, appellant agreed to hold a gun for Mr. Odoms, which he indicated was the same gun that the police later recovered at his house. When police knocked on his door on January 4, 2020, appellant tucked the gun in the waistband of his underwear before going to the door. When he realized that police were at the door, appellant hid the gun in the bathroom "[b]ecause I ain't supposed to have a gun." Appellant

explained that the ammunition police found in his home had been purchased for a gun he previously owned but had sold in September 2019.

The State read into the record the following transcript of a January 6, 2020 jail call between appellant and an unknown individual:

> [Unknown Speaker]: The got, they got, they got, they got your text messages bro.
>
> [Appellant]: Huh?
>
> [Unknown Speaker]: They got your offer up. They got the offer up. They got all that bro.
>
> [Appellant]: I know
>
> [Unknown Speaker]: They talking about how they talking about they got threatening text messages and shit, bro.
>
> They talking about you made a text message, you sending threatening text messages, threatening them and their family and shit
>
> [Appellant]: I never did none of that!
>
> [Unknown Speaker]: Shut up! Shut up! Shut up!
>
> But that, but that shit, but that shit is everywhere, bro.
>
> She was sitting at, . . . The old lady was sitting the table reading her bible moments before. She might have been, she might have been sitting there reflecting on the time she just spent with her family over the holidays, for the, for the, for the holiday season and shit. They coming with all that bro.
>
> [Appellant]: This shit crazy, bro
>
> [Unknown Speaker]: (inaudible)
>
> [Appellant]: Y'all know how this is. I need y'all bro.

[Unknown Speaker]: Man, we already hip bro

No questions man

[Appellant]: Broh, broh, All Imma say is they is loopholes.

Appellant testified as to what he meant by the term "loopholes" in the call: "Loopholes is another way of saying ways around. When I was saying loopholes, when I originally got locked up, I didn't want to rat my friend out, so I was trying to find a way to beat my case other than telling on my friend."

At the close of the State's case, appellant moved for judgment of acquittal as to all charges other than illegal possession of a firearm. The court granted the motion with respect to first-degree murder, but denied it as to all other counts.

The jury found appellant guilty of second-degree depraved heart murder, use of a handgun in a crime of violence, and illegal possession of a handgun. It found him not guilty of second-degree specific intent murder. On May 16, 2023, appellant filed a motion to vacate the second-degree murder and use of a handgun convictions, arguing that the judgment of acquittal for the first-degree murder charge meant that any lesser-included charges should not have been submitted to the jury. This motion was denied, and appellant was sentenced on August 4, 2023. For the second-degree murder conviction, appellant was sentenced to 40 years' imprisonment, with all but 30 years suspended. He was sentenced to a consecutive 20 years' imprisonment on the conviction for use of a handgun in the commission of a crime of violence, with all but 15 years suspended. For illegal possession of a handgun, appellant was sentenced to five years' imprisonment, also consecutive to the other two sentences.

Appellant noted this timely appeal.

DISCUSSION

I. THE COURT DID NOT ERR IN ADMITTING THE JAIL CALL TRANSCRIPT

Appellant argues that the court erred in admitting evidence of the jail call in which he used the term "loopholes." He argues that the jail call was not relevant because appellant's "comment that there were 'loopholes' was far too ambiguous and equivocal to render this statement an[] expression of consciousness of guilt." Additionally, appellant argues that the call "was certainly more prejudicial than it was probative and allowed the jury to surmise that [appellant's] defense was based on legal technicalities and craftmanship and not the actual innocence defense he presented."

The State responds that the jail call was relevant as evidence of consciousness of guilt, and specifically links the "loopholes" comment to the missing OfferUp communication between appellant and Mr. Vasquez. The State argues that "a jury could reasonably infer that the evidence discussed on the call, specifically the OfferUp messages, were destroyed or concealed and subject to the 'loopholes' [appellant] hinted at." The State further responds that the court did not abuse its discretion in determining that the call was more probative than unfairly prejudicial, and that this aspect of appellant's argument was waived because it was not raised before the trial court.

We review without deference to the trial court whether evidence is relevant. *Ford v. State*, 462 Md. 3, 46 (2018). On the other hand, "[a]n appellate court reviews for abuse of discretion a trial court's determination as to whether evidence is inadmissible under

Maryland Rule 5-403[,]" concerning whether the evidence is more unfairly prejudicial than probative. *Id.*

Evidence is relevant if it has "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." Rule 5-401. Generally, "all relevant evidence is admissible. Evidence that is not relevant is not admissible." Rule 5-402. "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." Rule 5-403. "[I]f relevant, circumstantial evidence regarding a defendant's conduct may be admissible under M[aryland] Rule 5-403, not as conclusive evidence of guilt, but as a circumstance tending to show a consciousness of guilt." *Ford*, 462 Md. at 47 (alterations in original) (quoting *Decker v. State*, 408 Md. 631, 640 (2009)). To be relevant as evidence of consciousness of guilt, the conduct

> must satisfy four inferences: (1) from the defendant's conduct, a desire to evade prosecution or conceal evidence; (2) from a desire to evade prosecution or conceal evidence, consciousness of guilt; (3) from consciousness of guilt, consciousness of guilt with respect to the charged offenses; and (4) from consciousness of guilt with respect to the charged offenses, actual guilt.

Wagner v. State, 213 Md. App. 419, 465 (2013) (citing *Thomas v. State*, 397 Md. 557, 576 (2007)). "The proper inquiry is whether the evidence *could* support an inference that the defendant's conduct demonstrates a consciousness of guilt. If so, the evidence is relevant and generally admissible." *Ford*, 462 Md. at 50 (quoting *Thomas*, 397 Md. at 577).

We find two cases, *Wagner v. State*, 213 Md. App. 419 (2013), and *Ford v. State*, 462 Md. 3 (2018), instructive.

The defendant in *Wagner* was charged with felony murder and armed robbery. 213 Md. App. at 431. Wagner's girlfriend, Lavelva Merritt, had assisted in the robbery and was arrested at the same time as Wagner. *Id.* at 435-38. Police found a wallet and cell phone belonging to the victim in Wagner and Ms. Merritt's home. *Id.* at 436. In Ms. Merritt's initial statement to police, she claimed that she and Wagner had been at home all day and another individual living with them committed the robbery. *Id.* at 440.

> After giving her initial statement, she went back to her cell. Later that day, she decided she wanted to speak to the detectives again because she "wanted the truth to get out," because "what happened to [the victim] was wrong and it shouldn't never happened." Ms. Merritt was led back to an interview room, passing [Wagner's] cell on the way, and she began giving the police different information regarding her involvement. While in the interview room, she heard [Wagner] shouting her name several times. After hearing [Wagner], she "felt that [she] was doing him wrong, so I told the police that I didn't want to cooperate." At that point, she ended the interview.

Id. at 440-41 (last alteration in original). Wagner argued that Ms. Merritt's testimony about him shouting her name during the second interview should not have been admitted because "the evidence was 'too ambiguous' to be relevant." *Id.* at 463. This Court concluded that

> a reasonable fact finder could infer that, when [Wagner] saw Ms. Merritt return to the interview room for the second time, he yelled Ms. Merritt's name in an effort to stop her from making further statements to the police regarding [the victim's] robbery and murder. This desire to conceal evidence is consistent with consciousness of guilt regarding his actions, as well as actual guilt. Although, as [Wagner] asserts, there may have been another explanation for [Wagner] shouting Ms. Merritt's name, [Wagner] offered no such explanation, and the issue was one for the jury to determine. It did not render the evidence irrelevant.

Id. at 465-66 (footnote omitted).

The defendant in *Ford* stabbed an individual during an argument, killing him. *Ford*, 462 Md. at 10-11. "Ford fled the scene, eventually going to the home of Sheila Brown, his ex-girlfriend, whom he told that he had 'cut a boy.'" *Id.* at 11. Ford asked to stay at Ms. Brown's home, and she allowed him to stay the night. *Id.* at 18. "The following morning, Brown advised Ford that he could not stay at her home and 'that he had to go.'" *Id.* Ford then "cursed [her] out, and he slammed back the front door and left." *Id.* at 20. Ms. Brown's testimony on this point was admitted over Ford's objection as evidence of consciousness of guilt. *Id.* at 18-19. Ford argued that this testimony should not have been admitted because it was "'too ambiguous and equivocal to' constitute evidence of consciousness of guilt." *Id.* at 45. He posited alternative explanations for his behavior, such as not having taken his daily medication or that "being told to leave by Brown 'could have triggered some hurt left over from the break-up of their romantic relationship.'" *Id.* at 52. The Maryland Supreme Court concluded that the evidence satisfied the four inferences needed for admission of consciousness of guilt evidence:

> the jury could reasonably have drawn the following inferences: (1) from Ford's reaction to a desire to hide from law enforcement and elude capture; (2) from hiding to consciousness of guilt; (3) from consciousness of guilt to consciousness concerning the crime charged, *i.e.*, murder of [the victim]; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.

Id. at 51-52. As to any potential innocent explanations, the Court stated that these possibilities did not render the evidence inadmissible. *Id.* at 52. "[E]ven if Ford had presented an innocent explanation for his reaction that contradicted that inference of guilt,

that would not mean that the evidence of his reaction did not have a tendency to show consciousness of guilt." *Id.* at 53. The Court therefore held that "the evidence of Ford's reaction . . . could support an inference that his conduct demonstrated a consciousness of guilt[.]" *Id*.

Here, appellant's statement in a conversation about the evidence against him that there were "loopholes" could support an inference of consciousness of guilt. Appellant testified that his definition of "[l]oopholes is another way of saying ways around." He further noted in his brief that "loophole" is defined in dictionaries as "'a means or opportunity of evading a rule, law, etc.' and 'an opportunity to legally avoid an unpleasant responsibility, usually because of a mistake in the way rules or laws have been written.'" (First quoting *Loophole*, Dictionary.com, https://dictionary.com/browse/loophole (last visited Dec. 18, 2025), then quoting *Loophole*, Cambridge Academic Content Dictionary, https://dictionary.cambridge.org/us/dictionary/english/loophole (last visited Dec. 18, 2025)). Thus, appellant's statement a mere five days after the shooting that there were "loopholes" was relevant and would permit the jury to infer (1) that appellant had "a desire to evade prosecution or conceal evidence," (2) that this desire was caused by a consciousness of guilt, (3) that the consciousness of guilt related to the shooting of Filomena Vasquez, and (4) that appellant had a feeling of guilt related to the shooting because he was actually guilty. *See Wagner*, 213 Md. App. at 465 (citing *Thomas*, 397 Md. at 576). Appellant's explanation that he "was trying to find a way to beat [his] case

other than telling on" Mr. Odoms could be weighed by the jury, but did not render the jail call irrelevant or inadmissible.

Appellant argues that, even if it were relevant, the jail call was more prejudicial than probative and should have been excluded under Rule 5-403. Before the trial court, appellant only objected to the jail call on relevance grounds and did not make any argument that its admission would be unduly prejudicial. Therefore, this issue has not been preserved for appellate review. *See Harrod v. State*, 261 Md. App. 499, 521 (2024). However, because the trial court considered the issue, we shall briefly discuss it.

A determination of whether relevant evidence should be excluded because its probative value is substantially outweighed by danger of unfair prejudice is "left to the sound discretion of the trial judge." *Thomas v. State*, 168 Md. App. 682, 713 (2006) (quoting *Malik v. State*, 152 Md. App. 305, 324 (2003)), *aff'd* 397 Md. 557 (2007). Evidence is "unfairly prejudicial if it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which he [or she] is being charged." *Ford*, 462 Md. at 59 (alteration in original) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)). "[T]he fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in [Maryland] Rule 5-403." *Id.* at 58-59 (second alteration in original) (quoting *Odum*, 412 Md. at 615).

Here, the prejudice appellant complains was caused by the admission of the jail call is not "undesirable prejudice." Appellant argues that the jail call was prejudicial because "it made him out to be a trickster and a liar when his credibility was clearly at issue in the

case" based on the perception that those who "actually rely solely on loopholes are seen as cheaters and not as honest defendants seeking to have their innocence tested in a court of law[.]" But it is the very fact that appellant's comment was admittedly a statement of an intention to use "ways around" revealing the truth that makes it relevant. Furthermore, the prejudice caused by the "loopholes" comment was somewhat mitigated. As noted by the trial court, the jail call included a statement by appellant denying wrongdoing. Additionally, appellant was permitted to provide an alternate, innocent explanation for his comment. We conclude that the trial court did not abuse its discretion in determining that the probative value of the jail call was not substantially outweighed by the danger of unfair prejudice.

II. THE COURT DID NOT ERR IN DENYING APPELLANT'S REQUEST FOR A *FRANKS* HEARING

Appellant next argues that the court erred in denying his motion to suppress based on allegedly false statements made in the affidavit of probable cause supporting the search warrant. Specifically, appellant argues that, because he and Ms. Ellerbe testified that the blinds in his bedroom windows were down and appellant never put his hand in the window, "there was no evidence to support the affiant's assertion in support of the search warrant that the police saw [appellant] with a gun in his hand as it emerged through one of his bedroom windows." The State responds that the affidavit of probable cause did not specify that police saw appellant with a gun through the bedroom window, but instead stated that police saw him through "a window in the home." The State further avers that both

appellant and Ms. Ellerbe testified that appellant left the bedroom, that the window in the front door was not covered, and that other windows in the home may not have had blinds.

In *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978), the United States Supreme Court held that a defendant may challenge the veracity of a statement in an affidavit of probable cause used to procure a search warrant "where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause[.]" The defendant is then entitled to a hearing to establish perjury or reckless disregard by a preponderance of the evidence, resulting in the exclusion of the fruits of the search under the warrant. *Id.* at 156. "Affidavits supporting applications for a search warrant are presumptively valid, however, and to mandate a hearing under *Franks* the attack 'must be more than conclusory and must be supported by more than a mere desire to cross-examine.'" *Edwards v. State*, 350 Md. 433, 450 (1998) (quoting *Franks*, 438 U.S. at 171). We review the court's assessment of the evidence of misrepresentation for clear error. *Thompson v. State*, 245 Md. App. 450, 469 (2020).

Here, appellant challenged the following statement in the affidavit: "Officers attempted to make contact with the subject at his location, at which time they observed him through a window of the home in possession of a handgun."[2] Notably, this statement does

[2] The record does not contain a copy of the affidavit of probable cause. The language of the challenged statement quoted here is derived from appellant's motion

not contend that appellant was seen specifically through a *bedroom* window. Both appellant and Ms. Ellerbe testified concerning other windows through which the police could have seen appellant. Indeed, appellant testified that he saw the police through the window in the front door and provided no reason why police could not have seen him through that same window. The circuit court did not err in finding that appellant did not make a substantial preliminary showing that the affidavit of probable cause contained a false statement.

III. THE COURT DID NOT ERR IN DENYING APPELLANT'S MOTION TO VACATE HIS CONVICTIONS

Appellant next argues that the court erred in not granting his motion to vacate the second-degree murder and use of a handgun in a crime of violence convictions. Appellant asserts that, because the State used a short form indictment that did not specifically list second-degree murder as a separate charge, the court's granting of the motion for judgment of acquittal as to the first-degree murder charge had the legal effect of dismissing all lesser-included offenses. Appellant continues that, without a second-degree murder conviction, his conviction for use of a handgun in a crime of violence cannot stand.

Our opinion in *McFadden v. State*, 1 Md. App. 511 (1967), is directly on point. There, McFadden was charged using a statutory short-form indictment, which stated that he "feloniously, willfully and of deliberately premeditated malice aforethought did murder" the victim. *Id.* at 516. This was the only murder charge in the indictment. *Id.*

requesting a *Franks* hearing and appellant's argument during the motions hearing. This is the same language used by both appellant and the State in their appellate briefs.

The trial court granted McFadden's motion for judgment of acquittal at the close of the State's case only as to first-degree murder. *Id.* The court found McFadden guilty of manslaughter. *Id.* On appeal, McFadden argued "that by granting the motion on the charge of first degree murder, the court was thereafter precluded from finding [McFadden] guilty of manslaughter 'because there was only one degree of murder charged and only one count in the indictment.'" *Id.* This Court held that "it was not error to find [McFadden] guilty of manslaughter after granting a motion for judgment of acquittal of first degree murder." *Id.*

Here, appellant was charged under a short-form indictment, which stated that he "did feloniously, willfully and of deliberately premeditated malice aforethought kill and murder Filomena Vasquez[.]" At the close of the State's case, appellant moved for judgment of acquittal. The trial court concluded: "the State has not produced sufficient evidence for a finding of guilt with respect to first degree murder. And so therefore, the defendant's request is granted on that issue. As to all other counts, though, the motion is denied." It is clear that the court did not intend to grant the motion for judgment of acquittal as to second-degree murder or manslaughter. We see no reason to deviate from our holding in *McFadden* that a short-form indictment charging first-degree murder also charges second-degree murder and manslaughter, and that an acquittal of first-degree murder does not preclude conviction for those lesser-included offenses. 1 Md. App. at 516; *cf. Powell v. State*, 23 Md. App. 666, 667 (1974) ("[T]he court granted a motion for judgment of acquittal as to murder in the first degree. The case, therefore, as to the major offense, went

to the jury for them to decide whether Powell was guilty of the homicide, and if he was, whether the killing was murder in the second degree or manslaughter." (citations omitted)). Thus, the court did not err in denying appellant's motion to vacate the conviction for second-degree murder and the related conviction for use of a handgun in the commission of a crime of violence.

IV. THE EVIDENCE WAS SUFFICIENT TO CONVICT APPELLANT

Finally, appellant argues that the evidence was insufficient to support his second-degree murder and use of a firearm in a crime of violence convictions. Appellant points to five weaknesses in the evidence presented: (1) Eugenio Vasquez, the only eyewitness, was not able to clearly identify the shooter; (2) Appellant's DNA on the gun did not indicate that he fired the gun, only that he held it, which he admitted to; (3) the cell tower evidence placing appellant in the area of the shooting "did not provide more tha[n] speculative evidence" that appellant was the person who committed the crime; (4) evidence that appellant was upset about the Infiniti breaking down "provided only motive and motive is not an element of second degree murder"; and (5) appellant's statement "that he would rely on 'loopholes' in avoiding any conviction was not evidence of his consciousness of any guilt for the shooting." In appellant's view, his "convictions rested solely on circumstantial evidence" that only created "a strong suspicion or a mere probability that he was involved in the shooting" and therefore was insufficient for a rational trier of fact to find him guilty beyond a reasonable doubt.

This Court recently described our review of sufficiency of the evidence issues:

> When reviewing the sufficiency of the evidence to support a criminal conviction, we must determine, after viewing the evidence in the light most favorable to the State, if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. We do not reweigh the evidence but simply ask whether there was sufficient evidence—either direct *or circumstantial*—that could have possibly persuaded a rational jury to conclude that the defendant was guilty of the crime(s) charged. If the evidence either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt, then we will affirm the conviction. In our review, we defer to the fact finder's opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence.
>
> Maryland has long held that there is no difference between direct and circumstantial evidence. Circumstantial evidence alone is sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused. Such inferences must rest upon more than mere speculation or conjecture.

Vangorder v. State, 266 Md. App. 1, 28-29 (2025) (cleaned up).

We initially note that although motive is not an element of second-degree murder, evidence of appellant's motive for committing the crime is relevant in determining whether he committed the crime. *See Snyder v. State*, 361 Md. 580, 604-05 (2000) (Evidence of motive may be relevant to identity.). The State introduced text messages sent by appellant to Mr. Vasquez when the Infiniti broke down, leaving appellant stranded on the side of the road on Christmas Eve night. In those text messages, appellant made comments such as:

- "that was my last and you doing me dirty right now. . . . I didn't give my last to be stuck on CHRISTMAS EVE";
- "I have[n't] drove the car 10 miles n it's having problems[.] [T]hat's y u told me to circle the block n not hit the street cuz u knew[.] Bro I'm been tryin so hard to stay out the way n do good n stay out of trouble n u took my only money";

- "your family won't appreciate hearing this[.] I need that money back";
- "this a lemon, this sale not legit so we can go the legal way if I have to[.] It is other options also";
- "I didn't even have anyone 2 come get me till 5 am I'm jus now getting in the house fr I cnt even sleep brah I never had no one play me like this n my whole life u really fuck my whole Christmas up"; and
- "I'm getting very impatient with u ignoring me n I dnt like to feel played wit[.]"

These messages clearly show that appellant was frustrated and very upset about the situation, and believed that Mr. Vasquez knew that the car was in poor condition when he sold it. Some of appellant's comments could reasonably be interpreted as threatening.

The cell tower evidence indicates that appellant was in the vicinity of the Varnum Street house at the time of the shooting. Appellant does not attempt to argue that the cell phone being tracked was not his, or that he did not have his cell phone on his person that night. His explanation—that he was in the area for "[p]robably a minute" or less when Mr. Odoms was dropped off at a nearby CVS—was contradicted by the evidence that his cell phone was connecting to towers in the vicinity of the house for over ten minutes. The jury was entitled to rely on evidence that showed that Ms. Vasquez was killed moments before the 911 call was made at 11:34 p.m. and that appellant's cell phone was pinging near her home between 11:23 p.m. and 11:37 p.m.

The DNA testing of the gun found in appellant's home three days after the shooting indicated that appellant was the only major contributor of DNA. Ballistics testing indicated that it was the same gun used in the shooting. Finally, as discussed above, appellant's

comment in the jail call, suggesting that he planned to use "loopholes" as a "way[] around" being convicted, could be seen as evidence of consciousness of guilt for the shooting.

The evidence as a whole was sufficient for a reasonable fact-finder to determine beyond a reasonable doubt that appellant shot Filomena Vasquez at her home on Varnum Street on January 1, 2020. Although appellant provided explanations to undermine the significance of the State's evidence, the jury was free to find that his testimony lacked credibility. We conclude that the evidence was legally sufficient to support appellant's convictions.

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