

Circuit Court for Baltimore County
Case No. C-03-CR-23-003195

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1770

September Term, 2024

FREEDOM DISEAN BROWN

v.

STATE OF MARYLAND

Reed,
Shaw,
Kenney, James A., III
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: June 29, 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).

A jury in the Circuit Court for Baltimore County convicted Appellant Freedom Disean Brown of manslaughter, illegally possessing a regulated firearm and possessing a regulated firearm while under 21. He was found not guilty of using a firearm in commission of a crime of violence. He was sentenced, in the aggregate, to fifteen years' imprisonment. Appellant timely appealed and presents two questions for our review:

1. Whether the Circuit Court erred by denying Brown's motion *in limine* to exclude State Exhibits 70(a-g), because they are unfairly prejudicial?
2. Whether the Circuit Court erred by instructing the jury that the "verdict in this case *which will consist of recommendations on the verdict sheet* must be the considered judgment of each of you?"

For reasons that follow, we hold that the court did not err or abuse its discretion and we affirm the judgments.

BACKGROUND

Appellant was indicted by a grand jury in the Circuit Court for Baltimore County on charges related to a murder that occurred on February 20, 2023. He elected to be tried by a jury. Prior to trial, Appellant's counsel requested, pursuant to his motion *in limine*, that photographs that depicted Appellant masked and armed with a blue firearm, along with other masked and armed individuals, not be admitted into evidence. Appellant argued that the photographs were highly prejudicial. The State disagreed, arguing that the gun depicted in the photographs was, in fact, the firearm at issue. The State also contended that the images were lawfully obtained from Appellant's iCloud as well as his Instagram page. The court denied Appellant's motion, finding that the evidence was relevant and admissible, and that it was the jury's role to determine the weight to be given to the evidence.

The State’s first witness, Officer Jacob Poetzel of the Baltimore County Police Department, testified that on February 20, 2023, at approximately 7:16 p.m., his unit received “a call for shots fired . . . in the area of 2 East Joppa Road” and that “there was a male subject lying on the roadway and another male subject running away.” Officer Poetzel testified that he and Officer Reich, responded to the scene, administered CPR to Mr. Harmon, the victim, removed a loaded firearm from Mr. Harmon’s jacket, and began canvassing the area once Mr. Harmon was transported to the hospital. Officer Poetzel stated that Corporal Brennan, one of the supervisors on scene, pointed out some shell casings that were near the rear of BJ’s Brewhouse near the dumpster area. The officers coned off five to six shelling casings, took pictures, and collected them for further examination.

Homicide Detective Jason Metz was the assigned officer. He testified that during his investigation, he received a blue handgun from another officer, in an unrelated matter, that appeared to be the firearm seen in the photographs of Appellant on his Instagram account and from his Apple iCloud.

[STATE]: Do you recognize this item?

[DETECTIVE METZ]: Yes. [. . .] It’s a photograph of three individuals one of which I know is [Appellant]. [. . .] One of which I know is [Appellant]. There’s several handguns. **One of the handguns is very consistent with the handgun that’s right here in front of me given the blue frame and the black top.**

[. . .]

[STATE]: **What is it about this weapon that you believe to be consistent with State’s Exhibit 60** [the seized firearm]?

[DETECTIVE METZ]: **The blue frame and the black slide.**

(emphasis added). Despite Appellant’s objection, the photograph of Appellant armed and masked was admitted into evidence. The gun was later admitted into evidence without objection.

Jason Birchfield, a Baltimore County Police Department Firearms Identification Unit Supervisor and Firearms Examiner, testified that the shell casings recovered were consistent with those having been fired from the same caliber firearm as the blue gun. The widths of the lands and grooves in the bullets were consistent, but there were not enough “individual characteristics to render a conclusion that this bullet was consistent with having been fired” from the blue firearm.

Parris Patterson was called as a witness by the State and began his testimony by stating that he was forced to testify, and that his memory was “blurry” regarding the incident. During the State’s questioning, he stated that he could not recall the incident. The State then requested to play Mr. Patterson’s recorded statement for the jury, given that Mr. Patterson appeared to be feigning memory loss. The court granted the State’s request, finding that Mr. Patterson was “feigning memory loss.” Mr. Patterson stated the following to an unidentified police officer during a recorded interview on February 21, 2023:

MR. PATTERSON: It was like – he [Appellant] was looking at us and we were looking at them, so it was like a little altercation, so he walked past – no we walked past. He was like who are you looking at? He’s like why are you looking at me or something like that. I’m like what do you mean? He’s like you’re looking at me. I said I can look at whoever I want and then he’s like all right (unintelligible). After that we went – where did we go? We went

– we kept walking so me – I don’t know why we separated but we went – I went to the school.

Mr. Patterson also stated during the recorded interview that the reason he and Mr. Harmon walked back to confront Appellant was because “we don’t like when people are just starting at us. . . that’s just how we is[,]” and then, when the two men walked back, that is when the shooting occurred. Mr. Patterson could not say who shot him, and from his testimony, he believed five people were involved in the shooting. On cross-examination, Mr. Patterson refused to answer questions posed by Appellant’s counsel.

Following the close of the State’s case in chief, Appellant elected to testify. He confirmed that the blue firearm at issue was his, and that he had it in his possession on the night of the shooting. Appellant explained that he carried a gun for protection during his bus commute to and from work because, as the sole provider for his family, he cannot afford to be robbed. Appellant also confirmed that he shot Mr. Harmon “because he was definitely going to kill us.” Appellant recounted:

APPELLANT: I saw a man wearing all black leaning on the Extra Storage [building across the street from the BJ’s where Appellant was] wall. All black wearing a mask and a hood. Seem overdressed for the weather.

[COUNSEL FOR APPELLANT]: What did you think about that?

APPELLANT: I ain’t – I made a mental note of it. I didn’t act or nothing. I just told her [his coworker] like just cross the street looking. That’s not hurting nobody. We should be good.

[. . .]

APPELLANT: He came back on BJ’s side of the street with another individual also wearing all black and definitely overdressed for the weather.

[. . .]

APPELLANT: The first guy was wearing a mask, and he was just across the street by himself. He came all the back so even though he was so close and looking like that he kind of made her uneasy, everybody uneasy so just a lot of I see you all. We see you all. I just asked them you all okay. I just asked if they were all right.

[COUNSEL FOR APPELLANT]: What was their reaction to that?

APPELLANT: The guy in front – the guy in the back he didn't say nothing at all but the guy in front just completely went off like completely went all – just started threatening me. (Unintelligible). What did you say?

[. . .]

APPELLANT: We're just at work. He goes, "What you say. I can look where the f*** I want, little n*****. You know who I am? I can get you killed. That's what's wrong with you little n***** nowadays. You all know you all be talking to. I can get you killed, boy." At this time the guy behind he's not saying anything. The guy with the mask around his face not on his face. He's not saying anything but he's unzipping his coat while the guy in front I believe to be passing is talking. He's unzipping his coat, starts going inside his jacket pocket.

[COUNSEL FOR APPELLANT]: Are you saying anything to them?

APPELLANT: Yes. At this time I'm asking them like (unintelligible). I just told them "All right. My bad bro, like I don't want no crimes. Just please go ahead." I said it three times. I said "Please just go ahead, bro. My bad. I don't want no problems with you bro. Just go ahead."

[COUNSEL FOR APPELLANT]: What did they do?

APPELLANT: They walked like they stepped behind that wall right there from where I'm standing, I'm thinking they're gone because I can't see them anymore so I'm thinking they've gone ahead but at that time Omar opened the door. He opened the door to the elevator door. I told you I be standing next to the door so I'm thinking they walked away but I could still hear the guy talking but he walked away so I didn't see him. I'm thinking they're gone so Omar opened the door and he asked me "Are you good?" I turned at him like "Yeah, bro, I should be all right. I should be good man." While I'm

turning around, I see the guy, the same guy that wasn't talking at first that didn't have a mask on his face. Now he came directly back from behind the wall with a mask on and a hood on and I can see him while I'm turning to talk to Sierra [co-worker]. I can see him out of the corner of my eye pulling a gun out of his jacket pocket and I see the gun, the back of the gun, the back of the chamber and I just -- while I'm turning I just (unintelligible) a shot.

[COUNSEL FOR APPELLANT]: Why did you shoot at that moment in time?

APPELLANT: Because I saw the gun. I saw the gun. I did not shoot before while he was reaching or nothing. When I'd seen the firearm, when I'd seen the gun come out, the back of the gun come out of his coat I pulled a shot.

[COUNSEL FOR APPELLANT]: The door is right there. Why didn't you just take flight into the door?

APPELLANT: Because this is all happening very fast and I told you he was gone at first, but he wasn't gone when he came back. I wasn't going to turn - - while he's pulling the gun turn my back to him.

[. . .]

[COUNSEL FOR APPELLANT]: What did you do immediately after this incident?

APPELLANT: Well after I'd seen him kind of like fall, he wasn't reaching for the gun anymore I pulled, and I didn't see past anymore. I turn and opened the door and pulled Sierra [co-worker] inside of the door and kind of pushed her against the wall. It's a brick wall that's where the stairs go up. I put my back to the wall and Omar [co-worker] is standing there like facing the elevator. I told him bro, "Don't stand in front of the door, bro. Come over here with is [sic], bro just in case."

Appellant reiterated, when asked why he shot, "He was going to kill us. He'd have killed Sierra and I. He'd have got that gun out. He'd have killed Sierra and me and whoever else was out there at the time, any coworkers that were out there."

On cross-examination, Appellant confirmed that he was aware that he was prohibited from possessing a firearm. He confirmed that he did not give his gun to police after the shooting, and that he gave it to a friend. He claimed not to know what happened to it. Appellant testified that he refused to speak to the police about the shooting. Instead, he requested a lawyer, and told him, “everything I knew.”

Prior to closing arguments, the court instructed the jury. One of the instructions addressed the verdict. The court stated:

THE COURT: The instructions that I give about the law are binding upon you. In other words you must apply the law as I explain it in arriving at your verdict. On the other hand any comments that I may have made or may make about the facts are not binding upon you and are advisory only. You are the ones to decide the facts and apply the law to those facts. **The verdict in this case which will consist of recommendations on the verdict sheet must be the considered judgment of each of you.** In order to reach a verdict all of you must agree. In other words your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment. Each of you must decide the case for yourself but do so only after an impartial consideration of the evidence with your fellow jurors. During the deliberations do not hesitate to reexamine your own views. You should change your opinion if convinced you are wrong but do not surrender your honest belief as to the weight or the effect of the evidence only because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict.

(emphasis added). Appellant did not lodge an objection to the instructions. The parties then presented their closing arguments.

Following deliberations, Appellant was found guilty of manslaughter, illegally possessing a regulated firearm, and possessing a regulated firearm while under 21. The jury found him not guilty of using a firearm in the commission of a crime of violence. The

court merged Count Four (illegal possession of a regulated firearm while under 21) into Count Three (illegal possession of a regulated firearm), and sentenced Appellant to fifteen years’ imprisonment. Appellant timely filed this appeal.

STANDARD OF REVIEW

Our review of the trial court’s decision to admit evidence involves a two-step analysis.” *Akers v. State*, 490 Md. 1, 24 (2025). First, we determine whether the evidence is relevant; this is a legal conclusion which we review de novo. *Id.* If we determine that the evidence was relevant, then we proceed to the second step, and decide “whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice[.]” *Id.* at 25. The second inquiry “is subject to the abuse of discretion standard[.]” *id.*, because the “final balancing between probative value and unfair prejudice is something that is entrusted to the wide discretion of the trial judge. *Newman v. State*, 236 Md. App. 533, 556 (2018).

Campbell v. State, 267 Md. App. 248, 282–83 (2025), *cert. denied*, 493 Md. 71 (2026) (internal citations omitted).

A “trial court’s decision to give a particular jury instruction will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State v. Sayles*, 472 Md. 207, 230 (2021) (citation modified).

DISCUSSION

I. The court did not err or abuse its discretion in admitting photographs of Appellant armed and masked.

Appellant argues that the four photographs from his Instagram account, admitted into evidence, were unfairly prejudicial, in violation of Md. Rule 5-403. Appellant contends the photographs “inflame[ed] jurors’ passions, distracting them from considering

whether self-defense and defense of others applied.” The State argues that the probative value of the photos was not substantially outweighed by the danger of unfair prejudice. The State contends that the photographs of Appellant, and two other young men wearing masks and wielding firearms, were probative and one of the firearms in the photo appeared to be the gun that was used.

Maryland Rule 5-401 states:

“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.

Maryland Rule 5-403 provides:

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.

(emphasis added).

When weighing the probative value of evidence against the danger of unfair prejudice, “this Court is mindful that prejudicial evidence is not excluded under Rule 5-403 only because it hurts one party’s case.” *Montague v. State*, 471 Md. 657, 674 (2020). “[W]hen the evidence ‘tends to have some adverse effect ... beyond tending to prove the fact or issue that justified its admission [.]’” the probative value is outweighed by unfair prejudice. *Id.* (quoting *State v. Heath*, 464 Md. 445, 464 (2019)).

In *Campbell v. State*, this Court examined whether the circuit court abused its discretion in admitting video footage of the appellant in a jail uniform and photographs depicting the victim’s injuries in an attempted murder case. 267 Md. App. at 284. At trial,

the State sought to enter into evidence, video footage that depicted the appellant in his jail uniform during a recorded interrogation. *Id.* at 276-77. The appellant filed a motion to suppress, arguing that the video was “unfairly prejudicial, and that this unfair prejudice outweighed the video’s probative value.” *Id.* at 277. The court found that the “probative value of the video substantially outweighed any potential unfair prejudice.” *Id.* at 278. With regard to the photographic evidence of the victim’s injuries, the court determined that the photographs were “limited in nature” and were probative of the manner and cause of the injury. *Id.* at 280-81. On appeal, this Court agreed and concluded that the circuit court did not abuse its discretion. We held that, “[e]ach piece of evidence was highly probative as to the degree of murder which was a question of fact sent to the jury.” *Id.* at 292 (citing *Roebuck v. State*, 148 Md. App. 563, 598 (2002)). We also stated that, “[p]hotographs do not lack probative value merely because they illustrate a point that is uncontested.” *Id.* at 294 (internal citations omitted).

In *Newman v. State*, 236 Md. App. 533 (2018), this Court examined whether a social media photograph that the police used to identify the appellant as a suspect, that depicted him flexing his right bicep, was unfairly prejudicial. *Id.* at 533. The appellant, there, argued that the photograph at issue, a Facebook picture of him, posted by his ex-girlfriend, was unfairly prejudicial. *Id.* at 557. The trial court admitted the photograph, finding that the probative value outweighed any prejudicial effect. *Id.* at 558. Our court affirmed the trial court’s holding, stating that the judge had not abused her discretion in not finding unfair prejudice. *Id.*

Here, the court conducted the proper analysis and determined that the photographs that depicted Appellant posing, armed and masked, with other armed and masked individuals were admissible. The court stated:

THE COURT: All right. Thank you very much. I believe and find that the objection raised by the **defense goes more to the weight of the evidence as oppose to its admissibility. I do not believe there are grounds to enter a motion in limine to prevent the State from introducing this. I think it's going to be up to the Jury. And it's up to the counsel to argue what it is and it's relevance.** So, I'm going to over – I'm going to deny the motion in limine . . .

(emphasis added).

Based on this record, we hold that the court did not abuse its discretion in admitting the photographs into evidence. The photographs were probative, and while prejudicial, the photographs were not unfairly prejudicial.

II. The court did not err in its instructions to the jury.

The State argues, initially that this issue was not properly preserved for appellate review. Appellant did not lodge an objection to the instructions or otherwise indicate to the court that the instructions were not proper. Appellant does not counter the State's characterization. Rather Appellant argues that the issue “meets the plain error standard.”

In *Robson v. State*, 257 Md. App. 421 (2023) this Court examined the issue of preservation. We held that Md. Rule 8-131(a) “makes unambiguously clear, the appellate courts of this state ‘ordinarily will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.’” *Robson*, 257 Md. App. at 459 (quoting *Small v. State*, 235 Md. App. 648, 696 (2018)). We explained that the

“purpose of the preservation requirement is to preserve the integrity and the efficiency of the trial itself” and that “the primary purpose is not to facilitate or to foreclose appellate review of a trial error,” but rather to “eliminate any necessity for appellate review.” *Robson*, 257 Md. App. at 460. “A secondary purpose of the preservation requirement is to protect the trial judge from being charged with error without having been alerted to the risk by counsel.” *Id.* at 461.

Plain error review is reserved for “compelling” and “extraordinary” errors and it requires that a four-factor test be met.

Before we can exercise our discretion to find plain error, four conditions must be met: (1) there must be an error or defect-some sort of deviation from a legal rule-that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant’s substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] court proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Newton v. State, 455 Md. 341, 364 (2017) (cleaned up).

Appellant argues that the court’s “misinstructing” the jury impacted his fundamental right to a fair trial. He claims that it minimized the seriousness of the jury’s focus on guilty or innocence and that telling the jury that their verdict would consist of recommendations implied that the court would ultimately decide the facts. The State contends that if there were any error, it did not “seriously affect the fairness, integrity or public reputation of judicial proceedings.” *State v. Rich*, 415 Md. 567, 578 (2010) (internal citations omitted).

Maryland Criminal Pattern Jury Instruction 2:01 states:

The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. In other words, your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. During deliberations, do not hesitate to reexamine your own views. You should change your opinion if convinced you are wrong, but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict.

MPJI-Cr. 2:01.

Here, the court stated:

[T]he verdict in this case **which will consist of recommendations on the verdict sheet** must be the considered judgment of each of you. In order to reach a verdict all of you must agree. . . .

We recognize that the court did deviate from the pattern jury instruction, but any misstatement was isolated and countered by the court’s instructions to the jury explaining the verdict sheet. The court instructed the jury that they had to return a separate verdict for each charge and were required to find the defendant not guilty or guilty with respect to each charge. Based on the plain error review standard, we decline further review. By not objecting, Appellant waived any error, and he has, further, not demonstrated that any error affected his substantial rights or affected the fairness, integrity, or public reputation of judicial proceedings.

**JUDGMENT OF THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
AFFIRMED; COSTS TO BE
PAID BY APPELLANT.**

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

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1770s24cn.pdf>