Circuit Court for Baltimore County
Case No. 03-K-02-004813

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1860

September Term, 2021

RODNEY JAMES ALEXANDER

v.

STATE OF MARYLAND

Arthur
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Arthur, J.

Filed: March 21, 2023

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

**At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Under section 7-104 of the Criminal Procedure Article ("CP") of the Maryland Code (2001, 2018 Repl. Vol.), a person who is imprisoned because of a conviction for a crime may petition a circuit court to "reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interests of justice."

In this case, Rodney James Alexander, who is serving a life sentence for the first-degree murder of his wife, petitioned the Circuit Court for Baltimore County to reopen his postconviction proceeding. The circuit court denied the petition.

Alexander appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Alexander's conviction stems from the death of his estranged wife, Laurie Alexander, on November 13, 2002.

At the time of her death, Alexander and his wife lived in separate residences, but shared custody of their two children, who were five and 13 years old, respectively.

On the evening of November 13, 2002, Alexander's wife went to his apartment to pick up their children. A fight broke out.

At a bench trial in the Circuit Court for Baltimore County, Alexander testified that his wife got upset with him because she believed that he was hiding someone in the apartment and because their five-year-old daughter was not ready to leave. While he was sitting at the dining room table, Alexander testified, he suddenly and unexpectedly felt "a blow" to his head, which, he said, left him "dazed." He then felt a series of "pin prick[s]" to the left side of his neck. He claimed to have realized that his wife was stabbing him.

In a statement to a police detective, Alexander said that his wife hit him in the head with a hammer and stabbed him with a fishing knife.

Alexander testified that, after his wife struck and stabbed him, he walked into the kitchen and got a steak knife from the drawer. His wife did not follow him into the kitchen.

Alexander told the court that he "wasn't trying to hurt her, but was trying to just fend her off" and "get out of the place." He contended that he "couldn't get a right direction to run because she was there and she had the knife." He claimed that he "was afraid" and that he "didn't know where she was going to move."

After he returned from the kitchen with the steak knife, Alexander testified, "the only thing" he knew or remembered was that he and his wife "were fighting." His daughter was clinging to his leg.

Alexander testified that he and his wife continued to struggle and that, at some point, he gained possession of the hammer. He hit her on the top of the head with the hammer. She "went down," but, Alexander said, "was still moving." At that point, Alexander testified, he took his daughter to her room, locked her in the room, went to the bathroom to get a towel for his injuries, and called 911.[1]

[1] Alexander's first call to 911 started out with him saying: "Hello, me and my wife is fighting[.] [W]e had an accident[.] [S]omeone came in here." At that point, the call was disconnected. The 911 operator called back, and Alexander stated: "Me and my wife was in here fighting. I tried to defend myself. She had a hammer. I got a knife out to defend myself and stabbed her."

Police officers kicked in the door to Alexander's apartment. They found Alexander's wife, lying face down on the living room floor in a pool of blood, dead, with a knife handle in her hand. The officers recovered a steak knife, a fishing knife, and a hammer from the scene.

Alexander was transported to the University of Maryland Shock Trauma Center for the treatment of his wounds, including cuts on the right side of his neck and more serious injuries on the left side of his neck and left arm.

Dr. Susan Hogan, the medical examiner who conducted an autopsy on the victim's body, testified as an expert in the field of forensic pathology. Dr. Hogan told the court that Alexander's wife suffered "over 50 injuries," which, she opined, "isn't really consistent" with the theory that Alexander acted in self-defense.

According to Dr. Hogan, the victim's death was an example of "overkill": she was stabbed 31 times, including twice in the back; she suffered eight separate blows to the head; she had contusions to the torso, which indicated that she had been "stomped" or "kicked"; and she had a "comminuted fracture" of the skull, which means that the bone was "broken into so many pieces that it's sort of bone dust rather than bone." The severity of the head injury indicated that her body "was on the ground when that blow was struck."[2]

[2] The trial judge explained it more clearly in recounting his findings of fact: "Her head couldn't move to absorb the impact."

Dr. Hogan testified that five of the stab wounds "entered the chest cavity" and that any of them were "potentially fatal." Dr. Hogan also testified that Alexander's wife suffered "two stab wounds to the neck, one which cut the trachea and one which cut the jugular vein." In Dr. Hogan's opinion, "[e]ither of those [wounds] alone could have killed her."

Dr. Hogan saw no indication from Alexander's medical records that he had been struck in the head with a hammer, as he claimed. In addition, she suggested that some of Alexander's injuries were self-inflicted. The knife wounds on the right side of Alexander's neck were what Dr. Hogan called "hesitation marks," consistent with the type of wounds seen in suicide cases when people contemplate hurting themselves, don't realize how much it will hurt, and stop and start on multiple occasions. The larger wound on the left side of Alexander's neck was, Dr. Hogan said, consistent with an attempt by Alexander to cut his own throat. The injury to Alexander's left arm was, Dr. Hogan said, consistent with an unsuccessful attempt by a right-handed person to commit suicide. The injury was severe enough to cut some of the tendons, which, Dr. Hogan suggested, would have prevented Alexander from grasping the knife with his injured left hand and cutting his right wrist.

After reviewing the evidence, the trial court found Alexander guilty of first-degree murder.

In reaching that decision, the court said that it was "not convinced" that the injuries to Alexander's left forearm and neck were self-inflicted. Thus, the court allowed

that Alexander's wife might have attacked him or that he may have suffered those injuries while acting in self-defense. Nonetheless, on the basis of the medical records and the testimony of witnesses who saw Alexander after the incident, the court saw no evidence that he had been hit in the head with a hammer, as he claimed. Furthermore, the court expressed its belief that the "hesitation" wounds on the right side of Alexander's neck were self-inflicted.

The court cited Alexander's statement to the detective, that after his wife had stabbed him and hit him with the hammer, he went into the kitchen to get a steak knife. The court said that it could not understand why Alexander went into the kitchen for a knife instead of going out the front door.

The court went on to observe that Alexander's wife had sustained 31 separate stab wounds and 12 hammer wounds, eight of which were directly to her head. "She suffered some of the wounds while she was on the floor," the court found. Part of her skull was "pulverized or turned to powder," because "her head couldn't move to absorb the impact" of the blows. The court also observed that the drops of blood on the soles of her shoes were not smeared, which indicated that she had not been moving about the apartment, as Alexander claimed.

The court cited Alexander's own testimony that he continued to stab his wife, in the back, while she was on the floor. The court noted a one and a half-inch deep wound to the right side of the neck, which severed the jugular vein; a three and a half-inch deep wound to the right side of the chest cavity, which pierced the upper lobe of the right lung;

and five-inch and six-inch deep wounds to the right lung. The court stated that the wounds were caused by a long "filet" knife.

On the basis of this evidence, the court concluded that the State had "more than met" its burden of proving beyond a reasonable doubt that Alexander was guilty of first-degree murder. The court was "convinced that the infliction of forty-five separate wounds exceed[ed] any force necessary or required if, in fact, this was a case of self-defense." "[I]f the incident began as a case of self[-]defense," the court said, "it certainly didn't end that way." The court found that, if Alexander did not start out as the aggressor, he "became the aggressor" and "finished up as the aggressor." "He overstepped the balance that would have been needed for self-defense."

The trial court sentenced Alexander to life imprisonment. He noted an appeal.

On appeal, Alexander argued, among other things, that, in light of the trial court's comments to the effect that he may have acted in self-defense or imperfect self-defense, the first-degree murder verdict was necessarily based on an error of law. In an unreported opinion, this Court affirmed the judgment. *Alexander v. State*, No. 2510, Sept. Term, 2003 (filed Mar. 8, 2005), *cert. denied*, 387 Md. 465 (2005).

Alexander filed a petition for a writ of certiorari, which the State's highest court denied.

In 2008, Alexander filed a postconviction petition, which he later supplemented. In 2010, the postconviction court held a hearing, during which it addressed six claims of ineffective assistance of counsel.[3]

The postconviction court issued an oral ruling denying the petition "in all respects." This Court denied an application for leave to appeal.[4]

In 2021, Alexander, represented by new counsel, filed a motion to reopen a petition for postconviction relief. He raised the following issues, which we quote:

[3] Alexander raised the following claims:

> 1. Trial counsel was ineffective because he did not properly object to Dr. Hogan's testimony regarding Alexander's injuries.
>
> 2. Trial counsel was ineffective because he did not consult with a forensic pathologist to assist in cross-examining and countering the testimony of Dr. Hogan; and trial counsel was ineffective in failing to thoroughly cross-examine Dr. Hogan.
>
> 3. Trial counsel was ineffective because he did not accept the court's offer of a postponement to consult with and potentially retain an expert.
>
> 4. Trial counsel was ineffective because he did not consult with Alexander to discuss whether to accept the court's offer of a postponement.
>
> 5. Trial counsel was ineffective because his behavior was "erratic" during trial.
>
> 6. The cumulative effect of trial counsel's errors warranted a new trial.

[4] Alexander filed the application one day late, but the applications panel "read and considered" the application and "denied" it rather than dismissing it.

1. Trial counsel was ineffective for failing to call Mr. Alexander's daughter as a witness or [a police detective] to introduce the statement made by his daughter to police.

2. Post-conviction counsel was ineffective for failing to challenge trial counsel's failure to call Mr. Alexander's daughter or [the police detective] as a witness.

3. Trial and post-conviction counsel were ineffective for failing to raise defenses that would have negated a first-degree murder finding.

4. The conclusions of the trial judge constitute voluntary manslaughter and not first-degree murder.

5. The cumulative effect of the errors delineated above denied Alexander his constitutional right to the effective assistance of counsel as well as the right to a fair trial and sentencing.

The circuit court denied the motion without a hearing. Alexander filed an application for leave to appeal. We granted the application.

QUESTIONS PRESENTED

Alexander raises the following issues, which we quote.

1. Did the lower court err in denying Mr. Alexander's Motion to Reopen Post-Conviction where trial and post-conviction counsel were ineffective for failing to raise defenses that would have negated a first-degree murder conviction?

2. Did the lower court err in denying Mr. Alexander's Motion to Reopen Post-Conviction where the conclusions of the trial judge constitute voluntary manslaughter and not first-degree murder?

3. Did the lower court err in denying Mr. Alexander's Motion to Reopen Post-Conviction where trial counsel was ineffective for failing to call Mr. Alexander's daughter as a witness or [a police detective] to introduce the statement made by his daughter to police?

4. Did the lower court err in denying Mr. Alexander's Motion to Reopen Post-Conviction where post-conviction counsel was ineffective for

failing to challenge trial counsel's failure to call Mr. Alexander's daughter as a witness or [a police detective] to introduce the statement made by his daughter to police?

5. Did the cumulative effect of the above errors deny Mr. Alexander his constitutional right to the effective assistance of counsel as well as the right to a fair trial?

For the reasons that follow, we shall affirm the judgment of the circuit court.

DISCUSSION

Standard of Review

Under CP § 7-102(a)(1), a person who has been convicted of a crime and who is imprisoned, on parole, or on probation may file a petition for postconviction relief claiming that "the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of the State[.]" In general, a person may file only one petition. CP § 7-103(a). If, however, a court has denied postconviction relief, a petitioner may seek to reopen that postconviction proceeding by filing a motion with the court. CP § 7-104. "The court may reopen a postconviction proceeding that was previously concluded if the court determines that the action is in the interests of justice." *Id.*

Ineffective assistance of postconviction counsel may afford a basis for reopening a postconviction proceeding. *Gray v. State*, 388 Md. 366, 382 n.7 (2005); *accord Tate v. State*, 459 Md. 587, 619-20 (2018) (stating that examples "of the interests of justice that may compel reopening postconviction cases" include ineffective assistance of postconviction counsel).

"[T]he Legislature has left it within the [circuit] court's discretion to decide, in the interests of justice, if a postconviction proceeding should be reopened." *Gray v. State*, 388 Md. at 382; *accord State v. Adams-Bey*, 449 Md. 690, 700 (2016). An appellate court reviews the circuit court's decision for abuse of discretion. *State v. Adams-Bey*, 449 Md. at 702; *Gray v. State*, 388 Md. at 383. A trial court abuses its discretion when its ruling is "'clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,' when the ruling is 'violative of fact and logic,' or when it constitutes an 'untenable judicial act that defies reason and works an injustice.'" *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

Analysis

Alexander's contentions fall into three categories. First, he contends that he received ineffective assistance both from his trial counsel and his postconviction counsel. Second, he contends that the trial court erred in finding him guilty of first-degree murder rather than manslaughter. Finally, he contends that the cumulative effect of these alleged errors required the circuit court to reopen his postconviction proceeding.

Because these contentions have different conceptual underpinnings, we discuss them separately.

I.

Most of Alexander's contentions concern whether he received ineffective assistance from trial counsel or from postconviction counsel, in violation of the Sixth

Amendment to the United States Constitution. We analyze those contentions under the familiar formula announced in *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

An ineffective assistance of counsel claim consists of two elements: deficient performance and prejudice. *Id.* Alexander bears the burden of proof as to both deficient performance and prejudice. *Id.*

To satisfy the first element, Alexander must show that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* To satisfy the second element, Alexander must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

A.

Alexander contends that his trial counsel performed deficiently because he failed to assert mitigating defenses, including imperfect self-defense and hot-blooded response to adequate provocation. Alexander also contends that his postconviction counsel performed deficiently because he failed to challenge his trial counsel's alleged failure to raise those mitigating defenses. Alexander contends that he was prejudiced by his trial and postconviction counsel's deficiencies because "it meant the difference between a conviction for first-degree murder and voluntary manslaughter, and a life sentence or a ten-year sentence."

As an initial matter, Alexander has waived the contention that he received ineffective assistance from trial counsel. Under CP § 7-106(b)(1)(i)(6), an "allegation of

error is waived when a petitioner could have made but intelligently and knowingly failed to make the allegation . . . in a prior petition" for postconviction relief. Under CP § 7-106(b)(2), "[w]hen a petitioner could have made an allegation of error" in a prior petition for postconviction relief, "but did not make an allegation of error, there is a rebuttable presumption that the petitioner intelligently and knowingly failed to make the allegation."

Alexander's motion to reopen does not contain the required "statement of the facts or special circumstances which show that the allegations of error have not been waived." Md. Rule 4-402(a)(7). Nor does Alexander attempt to rebut the presumption of waiver in his brief. Therefore, Alexander may not raise the contention that he received ineffective assistance from trial counsel because of counsel's alleged failure to raise mitigating defenses. CP § 7-106(b)(1)(i)(6); *Syed v. State*, 463 Md. 60, 103-04 (2019).

We turn to Alexander's contention that he received ineffective assistance from postconviction counsel because counsel failed to challenge trial counsel's failure to argue imperfect self-defense. Because a motion to reopen provides the first opportunity to raise a claim of ineffective assistance of postconviction counsel, CP § 7-106 does not bar a challenge to the acts or omissions of postconviction counsel.

On the merits, however, Alexander's contention fails for two reasons. First, trial counsel did argue imperfect self-defense, and hence his performance was not deficient. Second, the court clearly considered and rejected a claim of imperfect self-defense, and hence Alexander suffered no prejudice as a result of counsel's alleged failure.

At Alexander's trial, the State explained, in closing argument, why the evidence did not support a claim of imperfect self-defense. There, the State argued that the evidence of "overkill" — the staggering number of stab wounds and hammer blows that Alexander inflicted — refuted any contention that Alexander subjectively believed that his life was in danger, an element of imperfect defense. *See, e.g.*, *Porter v. State*, 455 Md. 220, 235 (2017). Alexander's trial counsel responded by arguing that the court should convict him of "voluntary manslaughter" rather than murder, because the victim had attacked Alexander, who, counsel said, had merely responded. In so doing, trial counsel clearly implied that the offense should be reduced from murder to manslaughter because Alexander had acted in imperfect self-defense. Alexander's postconviction counsel could not have rendered ineffective assistance of counsel by failing to fault trial counsel for neglecting to make an argument that trial counsel did in fact make.

Alexander has not only failed to establish deficient performance, but he cannot demonstrate the requisite prejudice as well. On direct appeal from his criminal conviction, Alexander contended that because "the trial court made a factual finding that [he] may well have acted in self-defense or partial [i.e., imperfect] self-defense," his conviction for first-degree murder must have been based on an error of law. This Court rejected that contention, citing the trial court's statements that "[i]f the incident began as a case of self[-] defense, it certainly didn't end that way"; that Alexander "became the aggressor"; that if Alexander "did not start out as the aggressor, he certainly finished as

the aggressor"; and that Alexander "overstepped" the bounds of self-defense. *Alexander v. State*, No. 2510, Sept. Term, 2003, *supra*, slip op. at 13.

Reviewing the trial court's statements, this Court wrote: "The [trial] court made clear . . . that it believed the force used by Alexander exceeded by far the amount of force that was necessary to stop any attack by the victim, and that it did not believe that Alexander thought otherwise." *Id.* at 16-17. "That is," this Court continued, "the court expressly determined that Alexander was not entitled to a perfect self-defense, and explained that the evidence established that Alexander used more force the situation demanded." *Id.* at 17. In this Court's view, "it was implicit in the court's comments that it also determined that Alexander was not entitled to an imperfect self-defense, in that the court did not believe he had a subjective, honest belief that deadly force was required." *Id.* Thus, this Court concluded that the trial court "clearly considered and rejected the evidence regarding perfect and imperfect self-defense." *Id.*

This Court, therefore, has already concluded that the trial court considered and properly rejected Alexander's claims of self-defense. Alexander could not have suffered prejudice as a result of his postconviction counsel's failure to challenge trial counsel's alleged failure to raise a defense that both the trial court and this Court considered and rejected.

Alexander goes on to argue that postconviction counsel was ineffective because he failed to challenge trial counsel's purported failure to argue the defense of hot-blooded

response to provocation. But assuming, for the sake of argument, that trial counsel did not raise that defense, Alexander suffered no prejudice.

When defense counsel asked Alexander if he told a detective that he was "[i]n a rage because [his wife] stabbed [him]," Alexander denied that he had done so. Instead, he testified that he "wasn't trying to hurt her," and that he was just trying "to fend her off and . . . get out of the place." Thus, Alexander denied that he killed his wife in a hot-blooded rage, an essential component of the defense. *See Girouard v. State*, 321 Md. 532, 539 (1991).

In these circumstances, the defense of hot-blooded response was at odds with Alexander's own testimony. It would have been futile for postconviction counsel to challenge trial counsel's failure to raise a defense that was inconsistent with Alexander's account of the events.

Furthermore, a defendant cannot claim hot-blooded response to provocation if he had the opportunity for his passions to cool. *See*, *e.g.*, *Cunningham v. State*, 58 Md. App. 249, 259 (1984). Here, however, Alexander testified that, after his wife struck and stabbed him, he went into the kitchen to find a weapon, and that she did not follow him. Alexander, therefore, may have had an opportunity for his passions to cool. In these circumstances, postconviction counsel could have made a reasonable strategic decision not to challenge trial counsel's failure to raise that defense. A reasonable strategic decision is not ineffective assistance of counsel. *See*, *e.g.*, *Cirincione v. State*, 119 Md. App. 471, 485 (1998).

In summary, Alexander has waived his ability to challenge trial counsel's alleged failure to argue imperfect self-defense and his alleged failure to argue hot-blooded response to provocation; he cannot show that postconviction counsel performed deficiently in not challenging trial counsel's alleged failure to argue imperfect self-defense, nor can he show that he suffered any prejudice as a result of that alleged error by postconviction counsel; and he cannot show that postconviction counsel performed deficiently in not challenging trial counsel's failure to argue hot-blooded response to adequate provocation. The circuit court did not abuse its discretion in declining to reopen the postconviction proceedings for the purpose of considering those issues.

B.

Six days after the homicide, Detective Klimko of the Baltimore County Police interviewed Alexander's five-year-old daughter, S. S. had been present in the home during the fight between Alexander and his wife.

On November 19, 2002, Detective Klimko completed a report documenting his conversation with S. The report includes a nine-page, recorded statement, in which S. said, among many other things, that "[her mother] hit daddy" "with a hammer" and "with a sword."

Citing the trial court's skepticism about whether he had been hit in the head with a hammer, Alexander argues that his trial counsel rendered ineffective assistance because he failed to call S. as a witness. Alternatively, Alexander argues that his trial counsel

rendered ineffective assistance because he failed to call Detective Klimko to produce the report containing S.'s statement.

From the premise that either S. or Detective Klimko could have "supported [his] claim of self-defense, perfect or imperfect, and a claim of response to adequate provocation," Alexander argues he was prejudiced by trial counsel's failure to call them. He also argues that postconviction counsel rendered ineffective assistance of counsel because he failed to challenge trial counsel's failure to call either S. or Detective Klimko to discuss the statements in the police report.

In the original postconviction petition, Alexander did not claim that trial counsel was ineffective in failing to call S. or Detective Klimko. Therefore, that claim is presumed to have been waived. CP § 7-106(b)(1)(i)(6). Alexander's motion to reopen does not contain a "statement of the facts or special circumstances which show that the allegations of error have not been waived." Md. Rule 4-402(a)(7). Nor does he attempt to rebut the presumption of waiver in his brief. Therefore, Alexander has waived his claim that his trial counsel was ineffective in failing to call S. or Detective Klimko.

As previously stated, CP § 7-106 does not bar Alexander's claim that postconviction counsel was ineffective. There are, however, a number of problems with the claim against postconviction counsel.

First, Alexander failed to attach a copy of the police report detailing S.'s police interview to his motion to reopen, his application for leave to appeal, or his brief. The State and Alexander filed a joint motion to correct the record with the police report, but

we denied it on the ground that the statement "was never before the circuit court in the case giving rise to this appeal."[5] Hence, the statement is not properly before us.

Second, S.'s out-of-court statement would obviously be hearsay if it were admitted for the truth of the matters asserted therein. *See* Md. Rule 5-801(c) (defining "hearsay" as "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"). Alexander, however, does not explain how the statement would have been admissible through the detective despite the general prohibition against the introduction of hearsay in Rule 5-802.

But even if Alexander overcame these obstacles, which he cannot, we would conclude he was not prejudiced, as the statement, read in its entirety, undermines his case.

Over the course of the first five pages of the recorded interview, S. said that her mother hit Alexander with "[a] hammer" and that her mother hit Alexander in the back "with the hammer." Less helpfully to Alexander, she also said that "Daddy hit with the hammer," that her mother "was hit with a sword," and that Alexander "hit" her mother "with a sword."

[5] Alexander filed his motion to reopen on May 20, 2021, filed his application for leave to appeal on July 7, 2021, and filed his appellate brief on March 15, 2022. The State requested a copy of S.'s statement from Alexander's attorney on December 29, 2021. Counsel did not provide a copy of the statement until March 15, 2022.

When asked what her mother hit Alexander with, S. said that her mother used one of S.'s "toys." When questioned by the detective about that implausible assertion, however, S. immediately changed her account and denied that her mother had hit Alexander with a toy.

At that point, the detective admonished S. to be "serious" and asked her to start her account of the events over again. This narrative followed:

> DET. KLIMKO: Okay. When you saw your mommy and daddy fighting, where were they at?
>
> [S.]: Um, in the front room.
>
> DET. KLIMKO: Okay, do you know what they were fighting about?
>
> [S.]: Yes.
>
> DET. KLIMKO: What were they fighting about?
>
> [S.]: Um, the hammer.
>
> DET. KLIMKO: They were fighting about a hammer?
>
> [S.]: Yeah.
>
> DET. KLIMKO: Where was the hammer?
>
> [S.]: Um, on the refrigerator.
>
> DET. KLIMKO: On the refrigerator?
>
> [S.]: Yeah.
>
> DET. KLIMKO: Who went and got the hammer?
>
> [S.]: On the refrigerator.

DET. KLIMKO: Who went and got the hammer?

[S.]: Um in the drawer.

DET. KLIMKO: Okay. **Who went and got the hammer out of the drawer?**

[S.]: Um, **daddy**.

DET. KLIMKO: **Daddy got the hammer**?

[S.]: **Yes**.

DET. KLIMKO: And then **what did daddy do with the hammer**?

[S.]: Um**, hit her with the back**.

DET. KLIMKO: **He hit her in the back**?

[S.]: **Yeah**.

DET. KLIMKO: Okay. And **then what happened[?]**

[S.]: Um, **he played with sword**.

DET. KLIMKO: **Who played with the sword?**

[S.]: **Daddy**.

DET. KLIMKO: Daddy did?

[S.]: Yeah.

DET. KLIMKO: **What did he do with the sword?**

[S.]: **He cut her back**.

DET. KLIMKO: **He did what?**

[S.]: **Cut Laurie's back [i.e., her mother's back].**

DET. KLIMKO: He cut what back?

[S.]: Laurie.

DET. KLIMKO: **He cut Laurie in the back?**

[S.]: **Yeah.**

DET. KLIMKO: Okay. **Did he do anything else with the sword?**

[S.]: **Yeah**.

DET. KLIMKO: What did he do?

[S.]: **He cut her with the sword, in the face, and hit her with sword.**

DET. KLIMKO: He hit her with sword?

[S.]: Yeah.

DET. KLIMKO: Where at?

[S.]: Um, on the refrigerator.

DET. KLIMKO: On the refrigerator?

[S.]: Yeah.

* * *

DET. KLIMKO: Okay. How bout [sic], did you see mommy hit daddy?

[S.]: Yes.

DET. KLIMKO: Did mommy have anything in her hand?

[S.]: Yes.

DET. KLIMKO: What did she have in her hand?

[S.]: A sword.

DET. KLIMKO: A sword?

[S.]: Yeah. Yes sword[.]

DET. KLIMKO: Who had the sword?

[S.]: Laurie.

DET. KLIMKO: Laurie?

[S.]: Yeah.

DET, KLIMKO: What did she do with the sword?

[S.]: Hit daddy with the sword.

DET. KLIMKO: Um, Hit daddy with the sword?

[S.]: Yes. Um, That's it.

DET. KLIMKO: That's it?

[S.]: Yeah. That's it.

Read in its entirety, S.'s statement undermines Alexander's defense by suggesting that Alexander grabbed the hammer and hit his wife with it in the back. This aspect of the statement seems to contradict Alexander's testimony, that his wife hit him first with the hammer. It would have been a reasonable tactical decision for trial counsel not to call a witness, like S., who contradicted Alexander's testimony and undermined his defense. Hence, it would have been a reasonable tactical decision for postconviction counsel not to allege that trial counsel was ineffective because he failed to call S.

Furthermore, even if trial counsel had called S. to recount her earlier statement that her mother hit Alexander "in the back" with a hammer, the State could have impeached her with other statements to the contrary and could have introduced the entire

statement in evidence under Maryland Rule 5-802.1(a)(3).[6] It would have been a reasonable tactical decision for trial counsel not to call a witness, like S., who could be impeached with contrary statements that she had previously made and whose contrary statements could have been admitted as substantive evidence. Hence, it would, again, have been a reasonable tactical decision for postconviction counsel not to allege that trial counsel was ineffective because he failed to call S.

For similar reasons, it would have been a reasonable tactical decision for trial counsel not to attempt to introduce part of S.'s statement through Detective Klimko. Not only was the statement inadmissible hearsay, but if Alexander somehow succeeded in having part of it admitted, the State might have succeeded in introducing the other, less favorable parts under Rule 5-106, the rule of completeness. Hence, it would have been a reasonable tactical decision for postconviction counsel not to allege that trial counsel was ineffective because he failed to attempt to introduce part of S.'s statement through Detective Klimko.

In summary, S.'s statement is as at least as damaging to Alexander as it is helpful. Postconviction counsel did not perform deficiently in electing not to challenge trial counsel's reasonable decision not to attempt to introduce the statement, whether through the testimony of the child herself or (somehow) through Detective Klimko.

[6] Rule 5-802.1(a)(3) provides that if a declarant testifies at a trial or hearing and is subject to cross-examination, the general prohibition against hearsay does not exclude "[a] statement that is inconsistent with the declarant's testimony, if the statement was . . . recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement."

II.

Alexander contends that the trial court committed an error of law in finding that he was guilty of first-degree murder. He argues that the trial court's rejection of perfect self-defense was (in his words) "an embrace of imperfect self-defense," which negates the element of malice and permits a conviction for voluntary manslaughter. *Jones v. State*, 357 Md. 408, 422 (2000). Alexander has waived this contention because he raised it, or could have raised it, on direct appeal.

Under CP § 7-102(b)(2), a person may bring a postconviction petition if "the alleged error has not been previously and finally litigated or waived in the proceeding resulting in the conviction or in any other proceeding that the person has taken to secure relief from the person's conviction." Under CP § 7-106(a)(1)(i), "an allegation of error is finally litigated when . . . an appellate court of the State decides on the merits of the allegation . . . on direct appeal[.]"

As discussed above, on the direct appeal from his conviction, Alexander argued that his conviction for first-degree murder was based on an error of law, because "the trial court made a factual finding that [he] may well have acted in self-defense or partial [i.e., imperfect] self-defense." This Court rejected that contention. *Alexander v. State*, No. 2510, Sept. Term, 2003, *supra*, slip op. at 13-17. The trial court, we reasoned, "expressly determined that Alexander was not entitled to a perfect self-defense, and explained that the evidence established that Alexander used more force the situation demanded." *Id.* at

17. The trial court, we added, "did not believe [Alexander] had a subjective, honest belief that deadly force was required." *Id.*

Alexander's current contention (that the trial court's rejection of perfect self-defense was "an embrace of imperfect self-defense") is a variation on the argument that this Court rejected on direct appeal (that the trial court found that he may have acted in imperfect self-defense). As such, the current contention is barred by CP § 7-106(a)(1)(i), as it has been finally litigated on direct appeal. It is also barred by the doctrine of the law of the case, which provides that, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling[.]" *Scott v. State*, 379 Md. 170, 183 (2004); *accord Holloway v. State*, 232 Md. App. 272, 284-85 (2017) (applying the doctrine of the law of the case to bar a second collateral attack on a criminal conviction by means of coram nobis after this Court had affirmed the denial of the first coram nobis petition). And even if the current contention is not encompassed by the arguments that Alexander made on direct appeal, he has waived it, because he could have raised it on direct appeal. CP § 7-106(b)(1)(i)(3).

III.

Alexander contends that "the cumulative effect of the errors denied [him] his constitutional right to the effective assistance of counsel as well as the right to a fair trial." The simple answer to that contention is that, as we have explained, Alexander's attorneys committed no prejudicial error; therefore, his cumulative effect claim must fail. *See Wallace v. State*, 475 Md. 639, 673-74 (2021) (rejecting a claim of cumulative error

because "'twenty times nothing still equals nothing'") (quoting *State v. Borchardt*, 396 Md. 586, 634 (2007)); *see also Gilliam v. State*, 331 Md. 651, 686 (1993).

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