Circuit Court for Prince George's County
Case No. CT150153X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2395

September Term, 2018

BRANDON STEVENS

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 9, 2020

Brandon Stevens was convicted in the Circuit Court for Prince George's County of second-degree murder, carrying a dangerous weapon with intent to injure, and theft of less than $1,000. At trial, the dispute centered around whether Mr. Stevens killed Louis William Jordan in self-defense. On appeal, Mr. Stevens argues that the circuit court erred in admitting evidence that he says was hearsay, in allowing the State to cross-examine him with a letter that should have been disclosed to the defense during discovery, and in refusing to give a defense of habitation jury instruction. He argues as well that the court abused its discretion in admitting a photograph of him into evidence. Most of his arguments aren't before us, though, and the ones that are preserved are without merit. We affirm.

I. BACKGROUND

In the early afternoon of December 6, 2014, Mr. Jordan, a delivery driver at Papa John's Pizza, Inc., set out to make deliveries in Bowie. When a customer notified the Papa John's that their food was late, the manager, Alicia Hawkins, called Mr. Jordan on his cell phone several times and was unable to reach him. After failing for two hours to get hold of Mr. Jordan, three other drivers went out to where Mr. Jordan was dispatched to try and find him. They found Mr. Jordan's car in front of Mr. Stevens's apartment complex and were instructed to go back to Papa John's and call police.

Isaiah Stover, one of the three drivers who found Mr. Jordan's car, testified that when they parked next to his car, "someone came to the window [of the apartment Mr. Jordan's car was parked in front of] and started having a conversation with [them] and [told them] that [Mr. Jordan] was all right, [] was good, and he was sick and that was it."

Mr. Stover called the police, who arrived soon after.

The testimony paints a muddled picture of the events leading to Mr. Stevens's apprehension. Officer John Baker testified that he was dispatched to respond to "an unknown trouble." He arrived at the apartment with Officer Brian Whalen, and they found Mr. Jordan's car with its lights on and pizzas sitting on the front passenger seat. Detective Erik Anglin, who also responded to the call, testified that when he arrived on the scene, he observed that Mr. Jordan's "car was running." Officers Baker and Whalen knocked on the door of the second-floor apartment. Officer Baker testified that Mr. Stevens refused to open the door, saying the police needed a warrant and that Mr. Jordan was in the apartment, but wasn't feeling well and was lying on the floor. While Officers Baker and Whalen were at the door, Detective Anglin and Corporal Brinkley spoke to Mr. Stevens through the apartment window, and he admitted that he killed Mr. Jordan. Corporal Brinkley then came around the corner and "yelled to [Officers Baker and Whalen] to treat [it as] a 1015, which [] is treat [Mr. Stevens] as an arrestee . . . [because] [h]e just said he killed someone." Mr. Stevens came outside "probably ten seconds later," and the officers took him into custody.

After handcuffing Mr. Stevens, Officer Whalen testified that from the apartment, "a female started screaming, started running towards the door towards [Officer Whalen]." She also was taken into custody. Officer Whalen then began looking into the apartment. He walked through the living room area and found Mr. Jordan lying in a bedroom next to a bed. Detective Anglin testified that when he went through the living room, there was a trail

of blood that led to Mr. Jordan's body. Officer Whalen testified that he "notice[d] that [Mr. Jordan's] eyeballs had been cut in some way." Soon after, the fire department arrived on the scene and pronounced Mr. Jordan dead.

Corporal Patrick Whittington, the responding evidence technician, found evidence of a struggle when he walked into the apartment:

> [CORPORAL WHITTINGTON]: All I was told was it was an apartment and that the decedent was still on scene, that he hadn't been transported to the hospital and that he was in one of the back bedrooms, so I preliminarily walked through the apartment. As I walk in, it appeared that [] some sort of struggle had ensued. There was a pizza box laying around, pieces of pizza splattered up on the wall, stuff was strewn around, furniture and everything else.
>
> When you walk into the front door of the apartment, you're in a living room-style area. It appeared to have some sort of reddish-brown marks that led to the bedroom that was to the right where the decedent was located at, and then as you walk through to the left, there was a kitchen area, dining area. Through there was another bedroom and a bathroom that connected to the bedroom, and, again, there was things [] to me that was out of place at the time.

It seemed to him that Mr. Jordan had been dragged through the apartment:

> [THE STATE]: What, if any, blood did you observe as you made your initial walk-through?
>
> [CORPORAL WHITTINGTON]: What appeared to me to be drag marks on the floor appeared to be blood to me. There appeared to be blood on the curtains and some of the blinds and possibly some on the wall.
>
> We eventually tested some of that with the preliminary blood test to confirm that because there was also pizza sauce on the wall, so it kind of blended in. So even though it looks different, [] from a distance, it was kind of confusing at first.

He found Mr. Jordan's wallet on the bathroom counter with some money underneath it,

and some blood on the money.

Dr. Carol Allan was the medical examiner who performed Mr. Jordan's autopsy. She testified "there were 32 stab wounds and 14 cutting wounds on Mr. Jordan's body." Although Mr. Jordan was stabbed in the thyroid gland and in the neck where the knife "went in through the soft tissue, went through part of the vertebral column and actually penetrated into the spinal canal and injured the spinal cord[,]" those injuries were not fatal. Instead, "the combination of [the following] injuries [] contributed both to external as well as internal blood loss[,]" and likely were the fatal injuries:

> [DR. ALLAN]: So in this photograph, Mr. Jordan's lying on his stomach and this shows his back and he had 15 stab wounds. The most significant is this one right here, which actually penetrated into the chest cavity, injured the left lung and penetrated into the heart, and it was associated with bleeding into the tissue sac surrounding the heart as well as leakage into the chest cavity.
>
> This one here [] injured a rib. This one way over here actually penetrated into the chest cavity [] and injured the lung. This one also went in and injured the [] right lung here. This one here went in and injured a rib as well as the kidney. . . . These two here also went in and injured the right lung. This one here went in and injured the right kidney. This one went in and injured the spleen, and then these two here just went into soft tissue."

She testified that the cause of death was "[s]harp-force injuries" and the manner of death was homicide.

Detective Michael Delaney interviewed Mr. Stevens after he was arrested. He testified that both Mr. Stevens and his girlfriend, Angela Gay, were taken to the Homicide Unit of police headquarters and interviewed. When they got to the Homicide Unit, they

were photographed, and those photographs showed no injuries to Mr. Stevens or Ms. Gay. Although the story changed a few times, Mr. Stevens was forthcoming during the interview and described, from his perspective, how the incident unfolded:

> [DETECTIVE DELANEY]: He said that his girlfriend Ms. Gay wanted to order pizza, so he called and used his discount to order pizza from Papa John's. He said that [] when the delivery guy came with the pizza, he answered the door and that's when the victim that he referred to as D or Dammo (phonetic), he said that the victim, when he walks in with the pizza and the wings, that he immediately went towards Ms. Gay, the girlfriend, and began to make sexual advances towards her and grab her inappropriately in a sexual nature. . . . [A]nd he also said that the victim Mr. Jordan began to tussle with Ms. Gay and he felt that at that point, he had to jump in and begin to fight with the victim.
>
> [THE STATE]: Was there a time during the course of your interview with the defendant that that story changed, Mr. Delaney?
>
> [DETECTIVE DELANEY]: Yes. I would say within a couple minutes, he changed and said that [] the witness, Ms. Gay, answered the door and the victim began to grab her as she answered the door and began to try to take her clothes off.
>
> [THE STATE]: And was there a time during the course of your interview with the defendant that that story changed again?
>
> [DETECTIVE DELANEY]: Yeah. He would go back and forth. He kind of stuck with the story that Ms. Gay answered the door and that [] the victim jumped on Ms. Gay and he had to defend her, so he kind of stuck with that.

Detective Delaney interviewed Ms. Gay at that point because of Mr. Stevens's inconsistent statements. He confirmed with Ms. Gay that she was neither attacked nor raped. After confronting Mr. Stevens with that information, Mr. Stevens told Detective Delaney that "he definitely stabbed [Mr. Jordan] multiple times" and that he and Ms. Gay "acted together in killing the victim." But the investigation revealed that Ms. Gay did not

participate in killing Mr. Jordan. The admissibility of Mr. Stevens's statements during the interview with Detective Delaney is not challenged on appeal.

Mr. Stevens testified in his own defense at trial. He told the jury that when Mr. Jordan delivered the pizza, Mr. Jordan "was standing in the dining room area" and "having a conversation" with Ms. Gay. About five minutes into the conversation, Mr. Stevens saw Mr. Jordan touch Ms. Gay "in a friendly manner." Mr. Stevens told Mr. Jordan that he "didn't want him to be friendly" and that he "want[ed] him to leave." Mr. Jordan "gave [him] a dark stare and continued talking." At that point, he said, the two men began shoving each other. Mr. Stevens testified that Mr. Jordan struck him, so he retrieved a kitchen knife and "approached [Mr. Jordan], told him to leave the residence." According to Mr. Stevens, Mr. Jordan refused to leave, which made Mr. Stevens feel "like [Mr. Jordan] was going to get the knife from [him] if this continued, so [he] just did what [he] could to stop [Mr. Jordan] from being that type of power over [him]."

Mr. Stevens never disputed that he killed Mr. Jordan; the dispute at trial centered around whether it was in self-defense. He was charged with first-degree murder, second-degree murder, carrying a dangerous weapon with intent to injure, and theft of less than $1,000 from Mr. Jordan, false imprisonment and second-degree assault of Ms. Gay, and theft of less than $1,000 from Papa John's. At the close of the State's case, defense counsel moved for judgment of acquittal and the court dismissed the false imprisonment and second-degree assault counts. After a three-day trial, the jury acquitted Mr. Stevens of first-degree murder but found him guilty of second-degree murder, carrying a dangerous

weapon with intent to injure, theft of less than $1,000 from Mr. Jordan, and theft of less than $1,000 from Papa John's. The court sentenced him to thirty years' incarceration for second-degree murder, three years for carrying a dangerous weapon with intent to injure, and eighteen months for theft under $1,000,[1] all to run concurrently.

Mr. Stevens noted a timely appeal. We supply additional facts as necessary below.

II. DISCUSSION

On appeal, Mr. Stevens identifies several errors that, he contends, occurred during the trial.[2] He asserts *first* that Detective Delaney's testimony about the State's decision not

[1] Although Mr. Stevens was convicted of two counts of theft of less than $1,000, the sentencing proceeding transcript reflects that he was only sentenced for one count. The commitment record, however, reflects two sentences of one year and six months for two counts of theft of less than $1,000, to run concurrently. But Mr. Stevens does not raise this as an issue on appeal, so we do not resolve it.

[2] Mr. Stevens phrased his Questions Presented as follows:

> 1. Did the trial court err by admitting Gay's out-of-court statements and by admitting that the State did not charge [G]ay?
> 2. Did the trial court err by permitting the state to elicit testimony about a letter it failed to disclose in discovery?
> 3. Did the trial court err by failing to instruct the jury on defense of habitation?
> 4. Did the trial court err by permitting the state to admit a photograph that showed appellant with a tattoo that read "I'M A GANG BANGER"?
> 5. Were the errors harmless?

The State phrased its Questions Presented as follows:

> 1. Should this Court decline to find reversible error in the admission of references to the content of the police interview of Stevens' girlfriend, and testimony that his girlfriend was not charged, where several similar

to charge Ms. Gay and her statements to Detective Delaney were inadmissible hearsay, that the introduction of Ms. Gay's statements violated his right to confrontation because the State never produced Ms. Gay as a witness, and that the decision not to charge Ms. Gay was more prejudicial than probative. *Second*, he argues that the circuit court erred when it allowed "the State to elicit testimony about a letter that it failed to disclose in discovery." *Third*, he argues that the court erred by failing to instruct the jury on defense of habitation. *Fourth*, he argues that the court erred when it allowed the State to introduce a shirtless photograph taken of him after his arrest that showed a tattoo on his back reading "I'M A GANG BANGER." For the reasons set forth below, we disagree and affirm his convictions.

A. The Circuit Court Did Not Err In Admitting Both Detective Delaney's Testimony On The Decision Not To Charge Ms. Gay And Ms. Gay's Statements To Detective Delaney.

At trial, Detective Delaney testified that during his interview with Mr. Stevens, during which his stories about what happened varied, he left to go speak with Ms. Gay:

> [THE STATE]: Was there an occasion where you left the

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statements were admitted without objection?

2. If preserved, did the trial court properly exercise its discretion in admitting testimony that Stevens attempted to get his girlfriend to make false statements to police about what she witnessed around the time that Stevens stabbed the victim?
3. Should this Court decline to address Stevens' unpreserved complaint regarding a defense of habitation instruction?
4. Where Stevens made claims of self-defense and defense of others, did the trial court properly exercise its discretion in admitting a photograph of Stevens' body for the purpose of showing that he did not appear to have any injuries from his alleged fight with the stabbing victim?

> interview room and went and spoke with Ms. Gay?
>
> [DETECTIVE DELANEY]: Yes.
>
> ***
>
> [THE STATE]: And after you had occasion to speak with Ms. Gay, did you then go back in and speak with the defendant?
>
> [DETECTIVE DELANEY]: Yes.
>
> ***
>
> [THE STATE]: And what was his demeanor like?
>
> [DETECTIVE DELANEY]: He was still calm and relaxed. Once I talked to Ms. Gay, I decided to confront him with some of the information that we had. And that kind of changed his demeanor and he got a little bit defensive after being, you know, being presented with other information that we had.
>
> ***
>
> [THE STATE]: After speaking with Ms. Gay, Mr. Delaney, were you able to confirm an alleged assault or rape on Ms. Gay?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [DETECTIVE DELANEY]: No.

Detective Delaney also testified that Ms. Gay was not charged with any crime in connection with the killing of Mr. Jordan:

> [THE STATE]: And, again, were there any injuries observed to Ms. Gay that you noted during your investigation?
>
> [DETECTIVE DELANEY]: No.
>
> [THE STATE]: And was Ms. Gay charged with anything?
>
> [DETECTIVE DELANEY]: No, she wasn't.
>
> [DEFENSE COUNSEL]: Objection. Move to strike.

THE COURT: Overruled. Denied.[3]

And during the State's cross-examination of Mr. Stevens, the State asked him whether he was aware that Ms. Gay said she was not attacked or sexually assaulted:

> [THE STATE]: Well, you're aware, Mr. Stevens, that your girlfriend said she was never attacked or sexually assaulted?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [MR. STEVENS]: Am I aware of this? Yes, I was not aware of this.

Mr. Stevens argues that Ms. Gay's statements to the detective were inadmissible hearsay because they were admitted for the truth of the matter asserted—"they were admitted to rebut [Mr. Stevens's] claims that Jordan had attempted to sexually assault her and that she had [] stabbed him." He argues further that the State's decision not to charge Ms. Gay was inadmissible hearsay, but offers no support as to why. The State responds that Ms. Gay's statements were admissible "because the essential contents of the challenged statements—that his girlfriend's police interview strongly contradicted Stevens' claims—were played without any specific objection." As for the State's decision not to charge Ms. Gay, the State responds that "whether or not she was charged would not have affected Stevens' culpability."

"'Hearsay' is a statement, other than one made by the declarant while testifying at

[3] It's not obvious that this testimony was relevant, and the general objection that was overruled without the court asking for elaboration would seemingly have preserved a relevancy argument. But Mr. Stevens has not argued relevancy on appeal and we will not address that possibility on our own.

the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "Except as otherwise provided by [the Rules] or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. Whether "evidence is hearsay is an issue of law reviewed *de novo*." *Bernadyn v. State*, 390 Md. 1, 8 (2005). But the "factual findings underpinning this legal conclusion necessitate a more deferential standard of review" and will not be "disturbed absent clear error." *Gordon v. State*, 431 Md. 527, 538 (2013).

But none of the evidence that Mr. Stevens challenges as hearsay qualified as a statement in the first place. Rule 5-801(a) defines a "statement" as "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Detective Delaney never testified that Ms. Gay made an assertion. Instead, he testified about what he did in response to what Ms. Gay told him, and he never recounted her words. Additionally, Detective Delaney's testimony that the State did not charge Ms. Gay with a crime was simply a statement of fact. Finally, although the question posed by the State to Mr. Stevens during his cross-examination was not exactly an assertion, it was pretty close. Without using her words, the State characterized a statement Ms. Gay supposedly made in a way that accomplished essentially the same purpose. If not inconsistent with the prohibition on hearsay, this question dances right up to the line. But even if we assumed the defense's objection should have been sustained, the question was harmless in light of testimonies from Papa John's employees, police officers, the medical examiner, and Mr. Stevens's testimony himself, all of which amounted to overwhelming

evidence in favor of Mr. Stevens's guilt. *See Rainey v. State*, __Md. App. __, __ No. 1938, Sept. Term 2017, Slip op. at 26 (filed May 4, 2020) (explaining factors of the harmless error analysis include the effect of the erroneously admitted evidence on the jury and the strength of the State's case).

Mr. Stevens also argues that admitting these statements violated his rights under the Confrontation Clause of the Sixth Amendment. He contends that they were testimonial statements "intended to disprove [his] version of events and to help build the case against [him]." But "the Confrontation Clause only applies when an out-of-court statement constitutes testimonial hearsay." *Derr v. State*, 434 Md. 88, 106 (2013). Because the evidence to which Mr. Stevens points was not hearsay, the Confrontation Clause doesn't apply.

Finally, Mr. Stevens argues that admitting testimony about the State's decision not to charge Ms. Gay with a crime was more prejudicial than probative. Under Rule 5-403, 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." As the Rule states, the key is not whether the evidence is prejudicial, but *unfairly* prejudicial. *Newman v. State*, 236 Md. App. 533, 549 (2018). "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014). "Evidence may be

unfairly prejudicial 'if it might influence the jury to disregard the evidence or lack of evidence regarding the crimes charged.'" *Odum v. State*, 412 Md. 593, 615 (2010) (*quoting* Lynn McLain, Maryland Evidence State and Federal, § 403:1(b) (2009 Supp.)). "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003).

We disagree with Mr. Stevens that the information was highly prejudicial and had little probative value. There was no dispute that Mr. Stevens killed Mr. Jordan. There was, however, evidence that Ms. Gay *didn't* participate in killing Mr. Jordan. The jury was free to give the State's decision not to charge Ms. Gay whatever weight it deserved, but there was nothing unfair about allowing them to know it. The trial court did not abuse its discretion in admitting the testimony.

B. Mr. Stevens Failed To Preserve His Argument Regarding Cross-Examination Of The Letter.

During Mr. Stevens's cross-examination, the State sought to ask Mr. Stevens about a letter he wrote to his mother. Defense counsel objected and a bench conference ensued:

> [DEFENSE COUNSEL]: The State is seeking to introduce a letter, which is a handwritten affidavit that Mr. Stevens wanted his mother to give to Angela Gay to sign that, I guess, elaborated on what happened during the incident, and I would say it's inadmissible for a couple of reasons. One, it was provided to me yesterday. It wasn't provided in discovery and it was back in 2017, early 2018, but rather it's not something that just recently happened and it was available to the State, and also because of relevance.
>
> Angela Gay did not testify. The State could have called her. I spoke with her myself. Not that she's a missing witness, the State chose not to call her and now trying to bootstrap the police testimony about her statement and is now trying to

> bolster that further by showing this letter and I don't think it's relevant in light of the fact that Angela Gay didn't testify and essentially it's simply not relevant.
>
> [THE STATE]: Your Honor, this is actually a letter that the defendant wrote himself to his mother indicating—essentially an affidavit that Angela Gay would sign and then [] contradicts her statement completely.
>
> THE COURT: I think it goes to his credibility, so I don't know. The letter itself is [*sic*] going to come in, but I think it's fair for her to question him about it. We'll have to see it. I didn't hear her move its admission, but if you're going to question him, if you're going to show it to him, you need to have it marked.

The State questioned Mr. Stevens about the letter, but the document itself was never admitted into evidence. The State did refer to the letter in its closing argument, though:

> [THE STATE]: And, in fact, ladies and gentlemen, you heard evidence that the defendant even wrote a letter to his mom asking his mom to get ahold of Angela Gay and have her write something out because the cover up for the defendant never stops. He understood exactly what he was doing in that home before he called for the pizza and as he went to the door with the knife.

Mr. Stevens argued that the trial court erred in allowing the State to examine him about the letter because it failed to disclose the letter to defense counsel during discovery. He argues further that the State's failure to disclose the letter violated its discovery obligations and that the trial court should have sanctioned the State by precluding the State from cross-examining him on its contents. The State responds that Mr. Stevens failed to preserve this argument because defense counsel only objected to the admissibility of the letter, which was not admitted, and did not object to the testimony about the letter.

The State is correct that this issue is not preserved. The State's questions to Mr. Stevens about the letter went unobjected:

> [THE STATE]: Mr. Stevens, you wrote your mother a letter regarding your girlfriend, didn't you?
>
> [MR. STEVENS]: Yes.
>
> ***
>
> [THE STATE]: And in that letter, you write down what you want Ms. Gay to say, right? You want her to say that she was raped or she was physically assaulted by the victim and that everything that she told the police on December 6th, 2014 was a lie, right?
>
> [MR. STEVENS]: I want her to say it, yes.
>
> [THE STATE]: Okay. So you want her to say that whatever she told the police on December 6th, 2014 is a lie? You want to her to help you and sign this basically supporting your allegations, correct?
>
> [MR. STEVENS]: If it's true, yes, what it says.
>
> [THE STATE]: And you sent that letter after December 6th, 2014, right?
>
> [MR. STEVENS]: Yes.

The absence of objections waived any challenge to the questions and answers themselves. *See Holland v. State*, 154 Md. App. 351, 373 (2003) (requiring an objection to cross-examination on defendant's statement to his mother when statement was not provided during discovery).

There also was no discovery violation. Under Maryland 4-263, the State is not required to disclose statements made by the defendant to non-State agents. *See id.* at 385. Mr. Stevens wrote the letter to his mother. But even if there had been a violation, the remedy lies within the sound discretion of the trial court. *Raynor v. State*, 201 Md. App. 209, 227 (2011). And the court "has the discretion to select an appropriate sanction, but also has the discretion to decide whether any sanction is at all necessary." *Francis v. State*,

208 Md. App. 1, 24 (2012) (*quoting Raynor*, 201 Md. App. at 227–28). The decision not to sanction the State for this non-violation fell well within the trial court's discretion.

C. Mr. Stevens Failed To Preserve His Argument That The Circuit Court Should Have Instructed The Jury On Defense Of Habitation.

Before submitting the case to the jury, the court reviewed the jury instructions with the State and defense counsel. The defense asked the court to include a defense of habitation instruction, but the court declined:

> [DEFENSE COUNSEL]: I would ask that we keep defense of habitation because [Mr. Stevens] was in his home as opposed to, say, something that happens somewhere else or on the street or in another residence. He was in his home. And while [] defense of one's home is a complete defense and in this case I think we're looking more at partial defense, imperfect self-defense with that is an—I think enough evidence has been generated that he not only was defending himself and/or Ms. Gay but his home and I would ask that be kept in.
>
> [THE STATE]: Your Honor, I'm going to argue defense of habitation, first of all, I think all of that, forcing of the instruction is covered with respect to what [defense counsel] has said in terms of the imperfect self-defense. I don't think we need to have that duplicated. I think it confuses the jury on the issue of what was going on. I don't think there's been sufficient evidence.
>
> THE COURT: All right, I'm not going to give that one, that part of it anyway.

Mr. Stevens argues that the trial judge erred in not giving the instruction because the "requested instruction was an accurate statement of law, was generated by the facts [], and was not fairly covered by the instructions that were given, including self-defense and defense of others." The State responds that this argument was not preserved because "defense counsel not only failed to object on this ground after the jury was instructed, but

she affirmatively stated that she was 'satisfied' with the instructions." We agree with the State.

Maryland Rule 4-325(e) requires parties to object after the court gives the jury instructions:

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.

And to preserve objections to a jury instruction for appellate review, the party must state their grounds and renew it *after* the court instructs the jury:

> [T]here must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

Watts v. State, 457 Md. 419, 426 (2018) (*quoting Gore v. State*, 309 Md. 203, 209 (1987)). The purpose of the Rule and its requirements is "to give the trial court an opportunity to correct its charge if it deems correction necessary." *Id.* (*quoting Gore* 309 Md. at 209). A party that fails to object is precluded from raising an instructional error under Rule 4-325(e). *Id.* at 426–27. Although strict compliance is preferred, an objection that "substantially complies" with Rule 4-325(e) may preserve a claim of error for review. *Id.* at 427.

In this case, Mr. Stevens's counsel did not comply, substantially or otherwise, with Rule 4-325(e). After instructing the jury, the trial judge invited counsel to the bench for the purpose of hearing objections to the instructions. The judge asked if counsel were satisfied

with the instructions, and they both acquiesced:

> THE COURT: Counsel, please approach.
> (Counsel approached the bench, and the following ensued:)
> THE COURT: State satisfied with the instructions?
> [THE STATE]: Yes, Your Honor.
> THE COURT: Defense satisfied with the instructions?
> [DEFENSE COUNSEL]: Yes, Your Honor.

Because the defense acquiesced in the instructions and never lodged an objection, the objection to the decision not to give a habitation instruction wasn't preserved. *See Choate v. State*, 214 Md. App. 118, 129–30 (2013) (finding no substantial compliance where defense counsel told the court during a bench conference at the conclusion of instructing the jury that he was satisfied with the instructions); *Braboy v. State*, 130 Md. App. 220, 226–27 (2000) (finding no substantial compliance where defense counsel told the court that the defense had no exceptions).

D. The Circuit Court Did Not Abuse Its Discretion In Admitting The Photograph.

Finally, during the State's case-in-chief, the State introduced into evidence a photograph of Mr. Stevens with a tattoo on his back that seemed to say "I'M A GANG BANGER." Defense counsel objected to the photograph and court overruled the objection:

> [DEFENSE COUNSEL]: I would object as to Number 98, and the reason is because it appears to be a gang tattoo and there's no evidence that's been adduced that he's affiliated with any type of a gang. Just has the implication like a fake gang tattoo.
>
> [THE STATE]: I have no indication that is a gang tattoo. I can tell you that there are clips in the video that is extracted out that discussed tattoos, but certainly Detective Delaney is not going to discuss that tattoo.

> The purpose of these photos is to identify that there were no injuries on either Ms. Gay or the defendant, and defense has articulated throughout this case and tried to elicit from witnesses regarding a struggle, a fight that ensued, and I think that these photographs accurately depict that there are no injuries to the defendant whatsoever.
>
> THE COURT: Ninety-eight?
>
> [THE STATE]: Yes.
>
> THE COURT: That's 98? I'm going to overrule the objection based on the State's representation. I think it is probative and that outweighs any prejudicial—
>
> [DEFENSE COUNSEL]: Thank you, Your Honor.

Mr. Stevens argues that the court erred in admitting the photograph because "there was absolutely no indication that the crime was gang related" and "[t]o the extent that it was probative of [Mr. Stevens's] lack of visible injuries, its probative value was vastly outweighed by the unfair prejudice of apparent gang affiliation." The State responds that the photograph "was relevant to important issues in the case—Stevens' self-defense and defense of others claims[,]" and that the trial court weighed properly the probative value versus danger of unfair prejudice. We agree with the State.

To be admissible, photographs must be relevant, *Bedford v. State*, 317 Md. 659, 676 (1989), and introduced for a "legitimate purpose." *Conyers v. State*, 354 Md. 132, 187, *cert. denied* 528 U.S. 910 (1999). Then the court balances the photograph's probativity against its potential for unfair prejudice:

> [T]he general rule regarding admission of photographs is that their prejudicial effect must not substantially outweigh their probative value. This balancing of probative value against prejudicial effect is committed to the sound discretion of the trial judge. The trial court's decision will not be disturbed unless 'plainly arbitrary,' . . . because the trial judge is in the

best position to make the assessment.

Ayala v. State, 174 Md. App. 647, 679 (2007) (*quoting State v. Broberg*, 342 Md. 544, 552 (1996)). "On review, we will not disturb a trial court's determination that the probative value of a photograph is not substantially outweighed by unfair prejudice unless plainly arbitrary." *Lovelace v. State*, 214 Md. App. 512, 49 (2013) (cleaned up).

The trial judge's decision to admit the photograph was not "plainly arbitrary" here. *See id.* As the State explained during trial, the photograph was relevant in showing that Mr. Stevens sustained no injuries, visual evidence that went directly to his self-defense claim. Furthermore, the evidence in the case, which included testimony from the officers and detectives, the medical examiner, and Mr. Stevens himself, but no suggestion of gang membership or activity, left little likelihood that this photograph would inflame or influence the jury unfairly. Any potential for prejudice was outweighed by the photograph's probative value, and the court did not abuse its discretion in admitting it.

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