APPENDIX

APPENDIX TABLE OF CONTENTS

Page

APPENDIX A: *State* v. *Thornton*, 361 A.3d 321 (Md. July 21, 2026) 1a

APPENDIX B: Order, *State* v. *Thornton*, No. 46 (July 21, 2026) 35a

APPENDIX C: Opinion, *Dunbar* v. *State*, Nos. 119343014, 119343015, 119343016 (Md. July 21, 2025) 37a

APPENDIX D: Commitment Record, *State* v. *Thornton*, No. 119343014 (D. Md. Oct. 12, 2023) 101a

APPENDIX E: Transcript of Disposition Hearing, Vol. II, *State* v. *Thornton*, No. 119343014 (Balt. County Cir. Ct. Oct. 12, 2023) 105a

APPENDIX F: Transcript of Post-Conviction Hearing, Vol. XII, *State* v. *Dunbar*, No. 119343016 (Balt. County Cir. Ct. Dec. 1, 2022) 118a

APPENDIX G: Motion for New Trial, *State* v. *Thornton*, No. 119343014 (Balt. County Cir. Ct. Dec. 14, 2022) 159a

APPENDIX A

agree with the dissenting portion of Justice Watts's separate opinion.

However, I join the remainder of the Majority opinion, including Part III.F., in which the Majority concludes that any error in failing to give a voluntariness instruction was harmless beyond a reasonable doubt. Accordingly, I concur in the judgment affirming Mr. Shuler's convictions.



495 Md. 581

STATE of Maryland

v.

William THORNTON & James Dunbar

No. 46, Sept. Term, 2025

Supreme Court of Maryland.

July 21, 2026

Background: After motion for mistrial was denied, defendant and three codefendants were convicted following joint trial in the Circuit Court, Baltimore City, Nos. 119343014 and 119343016, Dana M. Middleton, J., of various crimes arising out of fatal shooting. Defendant's motion for new trial was denied. Defendant and two codefendants appealed. The Appellate Court, 2025 WL 2027549, reversed defendant's and one codefendant's convictions and remanded for further proceedings, based on Circuit Court's admission of unqualified firearm identification evidence, but affirmed second codefendant's convictions. State's petition for writ of certiorari was granted.

Holdings: The Supreme Court, Killough, J., held that:

(1) admission of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified firearm identification testimony was not clear or obvious error, and thus did not allow defendant and codefendant to obtain plain-error review;

(2) defendant's challenge to expert's unqualified firearm identification testimony was not preserved for appellate review by State's failure to request *Daubert* hearing or defendant's motion for new trial;

(3) unpreserved error was not subject to de novo review;

(4) threshold inquiry would be undertaken to determine whether courtroom closures were de minimis, for purposes of determining whether closures violated Sixth Amendment right to public trial;

(5) total closure of courtroom to public during jury deliberations, coupled with trial court's partial closure when verdict was read, were not de minimis;

(6) trial court identified overriding interests that were likely to be prejudiced, as required to justify total closure of courtroom during jury deliberations;

(7) total closure of courtroom during deliberations, together with partial closure during reading of verdicts, were no broader than necessary to protect overriding interests in juror safety and integrity of deliberative process, as required to justify closures;

(8) trial court considered reasonable alternatives to closures, as required to justify closures; and

(9) trial court made findings sufficient to permit meaningful appellate review of orders, as required to justify closures.

Judgment of Appellate Court affirmed in part, reversed in part, and remanded with instructions.

Fader, C.J., filed opinion concurring in part and dissenting in part in which Booth and Biran, JJ., joined.

1. Criminal Law ⚿1030(1)

Plain-error review is reserved for unpreserved errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.

2. Criminal Law ⚿1030(1)

Before an appellate court may exercise its discretion to reverse on the basis of plain error, four conditions must be satisfied, all of which are mandatory prerequisites: (1) there must be an error or defect that has not been intentionally relinquished or abandoned; (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 ordinarily means that the appellant must demonstrate that the error affected the outcome of the proceedings; and (4) the error must seriously affect the fairness, integrity, or public reputation of judicial proceedings; if any of these prerequisites are not met, plain-error review is unavailable.

3. Criminal Law ⚿1030(1)

The first two prerequisites to plain-error review, specifically, whether there was an error and whether the error was clear or obvious, present legal questions that an appellate court reviews without deference.

4. Criminal Law ⚿1030(1)

In evaluating the third and fourth prerequisites to plain error review, specifically, that the error must have affected the appellant's substantial rights, and that it seriously affected the fairness, integrity, or public reputation of judicial proceedings, the ultimate decision whether to grant relief is committed to the discretion of the reviewing court.

5. Courts ⚿26(3)

A court "abuses its discretion" when its decision rests on an error of law.

See publication Words and Phrases for other judicial constructions and definitions.

6. Criminal Law ⚿1030(1)

If appellate court grants plain-error relief based on mistaken legal conclusion that the error was clear or obvious, grant of relief cannot stand.

7. Criminal Law ⚿1134.29

Where defendant's constitutional claim was preserved through contemporaneous objection, appellate court makes its own independent constitutional appraisal of record.

8. Criminal Law ⚿1134.27, 1158.1

Appellate court accepts trial court's findings of fact unless they are clearly erroneous, but applies law to those facts independently.

9. Criminal Law ⚿1030(1)

"Clear or obvious" error, as a prerequisite to plain-error review, means more than that the error is one a careful court might find on close examination; it means that the error is not reasonably debatable.

See publication Words and Phrases for other judicial constructions and definitions.

10. Criminal Law ⚿1036.6

Admission of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified testimony that cartridge casings, one bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase was not clear or obvious error, and thus did not permit defendant and codefendant to obtain plain-error review of expert's testimony, on appeal from convictions following joint trial for various crimes arising out of fatal

shooting, where law was not settled at time of trial; although Maryland had replaced *Frye* method for evaluating expert testimony with *Daubert* two years before trial, its then highest court had expressly cautioned bench and bar that admissibility of expert testimony previously settled under *Frye* was open to renewed scrutiny, and Supreme Court's subsequent decision on admissibility of unqualified AFTE testimony had not issued at time of trial.

11. Criminal Law ⚿1030(1)

Error that occurs in area of law not yet authoritatively resolved is, by definition, subject to reasonable dispute and cannot be "clear or obvious," as prerequisite to plain-error review.

See publication Words and Phrases for other judicial constructions and definitions.

12. Criminal Law ⚿1036.6

Admission of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified testimony that cartridge casings, one bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase was not clear or obvious error, and thus did not permit defendant and codefendant to obtain plain-error review of expert's testimony, on appeal from convictions following joint trial for various crimes arising out of fatal shooting, absent showing that question regarding admissibility of testimony was not reasonably debatable; Supreme Court's holding in *Abruquah v. State*, 296 A.3d 961, that AFTE theory of firearms identification was not sufficiently reliable basis for unqualified opinion, upon which Appellate Court had relied to grant plain-error relief, was not per se rule that resolved with categorical clarity question of unqualified firearms identification testimony.

13. Criminal Law ⚿1036.6

Failure by defendant and codefendant to request *Daubert* hearing on admissibility of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified opinion that cartridge casings, one bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase was not categorical bar to plain-error review of admission of expert's testimony by either Appellate Court or Supreme Court, in proper exercise of discretion granted to those Courts under plain-error rule.

14. Criminal Law ⚿486(1), 695.5

In evaluating the admissibility of scientific evidence, *Daubert* gatekeeping requires the trial court to weigh scientific studies, assess expert testimony, and make case-specific reliability findings.

15. Criminal Law ⚿486(1), 1134.17(1)

Under *Daubert*, parties and trial court are forced to reckon with factors that really do determine whether scientific evidence is reliable, relevant, and fits case at issue, and appellate review of such determination is necessarily limited to information that was before trial court at time it made decision.

16. Criminal Law ⚿1036.6

Defendant's challenge to scientific reliability of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified testimony that cartridge casings, one bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase was not preserved by failure of State, as proponent of expert testimony, to request *Daubert* hearing, in joint trial against defendant and codefendant on charges for offenses arising out of fatal shooting.

17. Criminal Law ⚿1036.6

Defendant forfeited challenge on direct appeal to admission of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified testimony that cartridge casings, one bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase, in joint trial with multiple codefendants for offenses arising out of fatal shooting, absent *Daubert* hearing to determine reliability of expert's methodology, where issue was never raised at any point prior to or during trial. Md. Rule 4-252, 5-702.

18. Criminal Law ⚿480

When a challenge to the admissibility of expert testimony is raised, the burden rests with the proponent to demonstrate that the requirements of the rule governing the admission of scientific evidence have been met. Md. Rule 5-702.

19. Criminal Law ⚿480

The burden of establishing admissibility of expert testimony under the rule governing the admission of such evidence is triggered by an objection or motion; it is not self-executing. Md. Rule 5-702.

20. Criminal Law ⚿695.5

Daubert challenges to scientific evidence fall within the scope of the rule requiring a pretrial hearing on any other defense, objection, or request capable of determination before trial because they ordinarily can be resolved before trial without litigation of the general issue. Md. Rule 4-252(d)(3), 5-702.

21. Criminal Law ⚿480, 486(1)

In the context of determining the admissibility of scientific evidence under *Daubert*, the trial court's gatekeeping function exists to keep unreliable expert testimony out, and the party seeking exclusion is the party with the burden to invoke that function.

22. Criminal Law ⚿1036.6

Party who wishes to challenge admissibility of expert testimony on reliability grounds must raise that challenge through proper pretrial motion; failure to do so forfeits claim, absent showing of good cause or unexpected developments at trial that prevented pretrial challenge. Md. Rule 4-252, 5-702.

23. Criminal Law ⚿1036.6, 1064(4), 1139

Defendant's motion for new trial did not preserve for appellate review challenge to admission of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified testimony that cartridge casings, bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase, in joint trial with multiple codefendants on charges arising out of fatal shooting, and thus, appellate review of admission of expert testimony was not de novo, where motion said nothing about firearms identification, but raised claims challenging trial court's partial closing of trial to public, sufficiency of evidence, and prosecutor's closing argument, and defendant did not raise challenge to firearm identification evidence until hearing on motion nine months after motion was filed.

24. Criminal Law ⚿951(1)

A supplemental motion for new trial filed more than ten days after verdict alleging entirely different grounds for relief is treated as a new and untimely motion. Md. Rule 4-331(a).

25. Criminal Law ⚿1063(1)

Even when a motion for a new trial is timely filed within ten days after the verdict, the inclusion of an issue in such a motion does not relieve a defendant of the

obligation to preserve objections at trial for review; a motion for a new trial should not be an opportunity to sandbag an opponent, nor ordinarily to correct oversights that might have been remedied at trial if seasonably noted. Md. Rule 4-331(a).

26. Criminal Law ⚿1036.6, 1139

Rule permitting de novo review of denial of motion for new trial regarding error that occurred during trial that was not discovered during trial, when losing party was not at fault for not discovering error, and error was raised in writing, did not apply to defendant's claim that he was entitled to de novo review, rather than plain-error review, of unpreserved challenge to admission of Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified testimony that cartridge casings, bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase; admission of testimony was not error given unsettled law about admissibility of such testimony without *Daubert* hearing at time of trial, and issue was being publicly debated, and therefore defendant was not without fault in failing to request *Daubert* hearing prior to trial, but had notice of unsettled nature of law in this regard.

27. Criminal Law ⚿1036.6

Defendant was not permitted to invoke de novo review of unpreserved challenge to Association of Firearm and Tool Mark Examiners (AFTE) expert's unqualified testimony that cartridge casings, bullet, and two bullet fragments found at scene of shooting were fired with pistol recovered by police from getaway car following chase, on appeal from convictions following joint trial with multiple codefendants on charges arising out of fatal shooting, where, before Appellate Court, defendant acknowledged that he had not raised issue regarding reliability of expert's firearm identification testimony either before or during trial and specifically requested plain-error review.

28. Criminal Law ⚿1139, 1156(1)

A discretionary denial of a motion for a new trial is reviewed for abuse of discretion; it is not subject to de novo appellate review.

29. Constitutional Law ⚿3856

Sixth Amendment right to speedy and public trial is incorporated against states through Fourteenth Amendment. U.S. Const. Amends. 6, 14.

30. Criminal Law ⚿635.1

Sixth Amendment right to open trial is not absolute; other interests, including maintenance of fairness and orderliness in proceedings and protection of integrity of judicial system may permit closure of trial to public under appropriate circumstances. U.S. Const. Amend. 6.

31. Criminal Law ⚿635.6(1)

Closure, either total or partial, of courtroom to public is justified only if four conditions are satisfied: (1) party seeking to close hearing must advance overriding interest that is likely to be prejudiced; (2) closure must be no broader than necessary to protect that interest; (3) trial court considers reasonable alternatives to closing proceeding; and (4) trial court must make findings adequate to support closure.

32. Criminal Law ⚿635.6(1)

A court evaluates whether a courtroom closure is de minimis, i.e., so trivial that it does not implicate the Sixth Amendment, by considering three factors: (1) the duration of the closure; (2) the significance of the proceedings during the closure; and (3) the scope of the closure; this framework appropriately calibrates the constitutional inquiry to the realities of trial practice, in which not every brief or technical

limitation on public access can sensibly be treated as a violation of the constitutional right to a public trial. U.S. Const. Amend. 6.

33. Criminal Law ⚿635.6(1)

The inquiry as to whether a courtroom closure is so trivial that it does not implicate the Sixth Amendment right to public trial, and thus constitutes a de minimis closure, is a threshold question: if a closure is de minimis, the Sixth Amendment is not implicated, and the analysis to determine whether the closure has violated the Sixth Amendment need not be reached. U.S. Const. Amend. 6.

34. Criminal Law ⚿635.6(1)

Duration of trial court's closure of courtroom during jury deliberations did not weigh in favor of finding that closure was so trivial as to be de minimis, for purposes of determining whether closure violated defendant's and codefendant's Sixth Amendment right to public trial on charges for offenses arising out of fatal shooting; total closure during deliberations spanned multiple days, substantive on-the-record proceedings during closure were considerably shorter than full deliberation period and included significant time spent in bench conferences that spectators would not have been able to hear, and even assuming estimate of approximately five hours of substantive closed proceedings, closure was meaningfully longer than other closures deemed de minimis. U.S. Const. Amend. 6.

35. Criminal Law ⚿635.6(1)

Significance of criminal proceedings during jury deliberations did not weigh in favor of finding that total closure of courtroom during deliberations was so trivial as to be de minimis, for purposes of determining whether closure violated defendant's and codefendant's Sixth Amendment right to public trial on charges arising out of fatal shooting; although notes sent by jury during deliberations were mostly administrative in nature, trial court gave modified *Allen*-type instruction in response to jury notes asking about effect of undecided verdict on unanimous verdict and jury's announcement that they had reached verdicts on all but two counts, which raised matter of substantive consequence, and while *Allen* charge was rereading of pattern instruction given in open court and no party objected, those facts, while potentially relevant to analysis, did not eliminate constitutional significance of closure. U.S. Const. Amend. 6.

36. Criminal Law ⚿635.6(1)

Scope of total courtroom closure during jury deliberations and partial closure during reading of verdict did not weigh in favor of finding that closure was so trivial that it did not implicate Sixth Amendment, and thus was de minimis, for purposes of determining whether closure violated defendant's and codefendant's Sixth Amendment right to public trial on charges arising out of fatal shooting; during deliberations, no member of public was allowed in courtroom, eight defense family members and five of victim's family members were permitted to attend reading of verdict, capacity of courtroom, including necessary court personnel, was approximately 45, which left room for only about 11 spectators during verdict reading in any event, and while partial closure was relevant to de minimis analysis, it was not dispositive. U.S. Const. Amend. 6.

37. Criminal Law ⚿635.6(1)

Total closure of courtroom to public during jury deliberations, coupled with trial court's partial closure when verdict was read, was not de minimis, for purposes of determining whether closures violated defendant's and codefendant's Sixth Amendment right to public trial on

charges arising out of fatal shooting; total closure during deliberations spanned multiple days and included significant time spent in bench conferences that spectators would not have been able to hear, proceedings during total closure, including rereading of *Allen* instruction were constitutionally significant, no one but parties were allowed to be present in courtroom during deliberations, eight defense family members and five members of victim's family were permitted to attend reading of verdict, and while partial closure during reading of verdict was relevant to de minimis analysis, it was not dispositive. U.S. Const. Amend. 6.

38. Criminal Law ⚿635.6(3)

Trial court identified overriding interests that were likely to be prejudiced, specifically, juror safety and integrity of deliberative process, as required to justify total closure of courtroom during jury deliberations, under Sixth Amendment right to public trial, in joint trial against defendant and codefendants on charges arising out of fatal shooting; interest raised was neither speculative nor abstract, but was supported by three separate incidents of spectator misconduct that escalated in nature, last of which involved father of one codefendant approaching juror, identifying himself, shaking juror's hand, and making aggressive statement in presence of other jurors, trial court had previously warned gallery after first incident and said that disruption of proceedings would not be tolerated, and misconduct continued nonetheless. U.S. Const. Amend. 6.

39. Criminal Law ⚿635.6(4)

The Sixth Amendment right to a public trial does not require a court to forfeit its legitimate and substantial interest in maintaining security and order in the courtroom. U.S. Const. Amend. 6.

40. Criminal Law ⚿633.17

Courtroom security is an ultimate determination that rests entirely and solely in the discretion of the trial judge.

41. Criminal Law ⚿635.6(4)

Total closure of courtroom during deliberations, together with partial closure during reading of verdicts when trial court allowed certain number of members from defendant's, codefendants', and victim's families to be present, were no broader than necessary to protect overriding interest in jurors' safety and integrity of deliberative process, following three incidents of spectator misconduct during joint trial, as required to justify closures, under Sixth Amendment right to public trial, in joint trial on charges arising out of fatal shooting; courtroom was open for entire evidentiary phase of trial that lasted three weeks, it was only after third and most serious incident when father of one codefendant approached juror, introduced himself, shook juror's hand, and made aggressive statement in presence of other jurors that court closed courtroom, and incidents, taken together, established pattern of escalating misconduct connected to parties that culminated in direct compromise of juror safety. U.S. Const. Amend. 6.

42. Criminal Law ⚿635.6(3)

Trial court considered reasonable alternatives to total closure of courtroom during deliberations and partial closure of courtroom during reading of verdict, following three escalating incidents of spectator misconduct, in joint trial against defendant and multiple codefendants on charges arising out of fatal shooting, as condition precedent to justification for closures, under Sixth Amendment right to public trial; trial court considered excluding only those individuals who had been involved in prior incidents, but rejected that option after concluding that prior warnings to gallery

had not prevented escalation of misconduct, and it considered taking verdict one defendant at a time so that more family members could attend each individual verdict, but concluded that that option presented additional risks after consulting with courtroom security personnel. U.S. Const. Amend. 6.

43. Criminal Law ⚿635.1

Trial court made findings sufficient to permit meaningful appellate review of orders for total closure courtroom during jury deliberations and partial closure of courtroom during verdict reading, as required to justify closures, under Sixth Amendment right to public trial, in joint trial against defendant and codefendants on charges arising out of fatal shooting; trial court announced its findings on record, it identified three incidents of escalating spectator misconduct that supported closures, it explained that cumulative effect of incidents was that it was "not … comfortable with the public being in this trial or observing it anymore" and that it did not "want the jurors to feel that they cannot deliberate freely," and when it partially reopened for verdict reading by allowing certain number of members from defendant's, codefendants', and victim's families to be present, it was not "satisfied" that "conflict will not reoccur" and explained its ongoing "concern for the jury's safety." U.S. Const. Amend. 6.

44. Criminal Law ⚿635.1, 1166.7

A courtroom closure that satisfies the *Waller* test is not a violation of the Sixth Amendment right to public trial, and thus, the question of structural error does not arise. U.S. Const. Amend. 6.

45. Criminal Law ⚿635.6(3, 4)

The Sixth Amendment right to public trial does not require a court to maintain unconditional public access in the face of misconduct that compromises the safety of jurors and the integrity of deliberations. U.S. Const. Amend. 6.

Circuit Court for Baltimore City, Case Nos.: 119343014, 119343016, Dana M. Middleton, Judge.

Argued by Cristin Treaster, Asst. Atty. Gen. (Anthony G. Brown, Atty. Gen. of Maryland, Baltimore, MD), on brief, for Petitioner/Cross-Respondent.

Argued by Michael Braudes, Assigned Public Defender (Baltimore, MD), on brief, for Respondent.

Argued by Brent E. Newton, Assigned Public Defender (Gaithersburg, MD), on brief, for Respondent/Cross-Petitioner.

Argued before: Fader, C.J., Watts, Booth, Biran, Gould, Eaves, Killough, JJ.

Killough, J.

I.

This appeal arises out of the convictions of Respondents William Thornton and James Dunbar in the Circuit Court for Baltimore City for offenses arising from the November 2019 murder of Donnell Brockington. Six individuals surrounded the victim and shot him ten to twelve times. The suspects fled in a vehicle, crashed into a tree, and four of them, including Thornton and Dunbar, were apprehended. Police recovered five firearms from the vehicle and one from a co-defendant's person. DNA evidence linked all four co-defendants to the recovered firearms, and the DNA of both Respondents was found on a Desert Eagle 9mm pistol recovered from the front passenger floor of the getaway vehicle. The State's firearms examiner testified at trial that two cartridge casings, one bullet, and two bullet fragments "were fired with" the Desert Eagle. None of the four co-defendants filed

a pretrial motion challenging the reliability of that methodology, none requested a hearing under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), or its Maryland counterpart, *Rochkind v. Stevenson*, 471 Md. 1, 236 A.3d 630 (2020), and none objected when the examiner delivered his unqualified opinion.

During the pendency of Thornton's and Dunbar's appeal, approximately seven months after Respondents' trial, this Court decided *Abruquah v. State*, 483 Md. 637, 296 A.3d 961 (2023). Based on the record before us in that case, we held that the methodology of the Association of Firearm and Toolmark Examiners ("AFTE") could support an opinion that ammunition evidence was "consistent with" having been fired from a particular firearm but could not support an unqualified opinion that the ammunitions fired from that specific firearm. *Id.* at 694–95, 296 A.3d 961. The Appellate Court of Maryland subsequently reversed Respondents' convictions on plain-error review, concluding that the firearms examiner's testimony "was exactly the kind of testimony that *Abruquah* prohibits." *Dunbar v. State*, 2025 WL 2027549, *16 (Md. App. Ct. July 21, 2025). The State appealed the Appellate Court's determination to this Court.

Respondent Thornton separately challenges the trial court's decision to close the courtroom during jury deliberations and to permit only family members from each side to attend the return of the verdict, a decision made in response to escalating incidents of spectator misconduct that culminated in a co-defendant's father approaching a juror. The Appellate Court rejected Thornton's public trial claim, finding the closures de minimis.

We granted certiorari to consider two questions, which we rephrased as follows:

1. Did the Appellate Court of Maryland err in reversing Respondents' convictions under plain-error review based on this Court's decision in *Abruquah v. State*, when no defendant challenged the reliability of the firearms identification methodology at trial, no *Daubert-Rochkind* hearing was held, and the law concerning the admissibility of unqualified firearms identification testimony was unsettled at both the time of trial and the time of appeal?

2. Did the trial court violate Respondent Thornton's Sixth Amendment right to a public trial when it closed the courtroom during jury deliberations and partially closed it during the return of the verdict, in response to three escalating incidents of spectator misconduct?

We answer the first question in the affirmative and reverse the intermediate appellate court. The admission of the firearms examiner's unqualified opinion was not "clear or obvious" error at either the time of trial or the time of appeal, which is dispositive under plain-error review. *Abruquah* is a case-specific *Daubert* determination, not a per se prohibition on unqualified firearms identification testimony.

With respect to Thornton's argument that his right to a public trial was violated when the trial court partially closed the courtroom, we disagree and affirm the intermediate appellate court. Although we agree that the closures were not de minimis under the framework set forth in *Kelly v. State*, 195 Md. App. 403, 6 A.3d 396 (2010), which we adopt today, we conclude that the closures were justified under *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984). The trial court advanced an overriding interest in juror safety and the integrity of deliberations, supported by adequate findings on the record regarding three escalating incidents of spectator misconduct, including direct contact between a co-defendant's father and a

sitting juror. The court also considered reasonable alternatives, and its response was no broader than necessary.

II.

FACTS

A. The Crime and Apprehension

On the evening of November 13, 2019, six individuals surrounded Donnell Brockington in Baltimore City and an undetermined number of them shot him ten to twelve times. Surveillance video captured six men approaching the victim, one of whom was carrying a long gun. All six attempted to flee in a vehicle. A police officer, who had been alerted about the shooting, observed suspicious activity in a vehicle occupied by about six people and decided to follow it. He also requested assistance from the police department's aviation unit. Together, they pursued the vehicle until it crashed into a tree at an intersection. Four of the vehicle's occupants, Respondent William Thornton, Respondent James Dunbar, Shamar Jerry, and Anthony Clark, were apprehended in or near the vehicle.

Police recovered five firearms in connection with the apprehension: one handgun on Clark's person and four firearms within the vehicle. The firearms recovered from the vehicle included a Desert Eagle 9mm pistol found on the front passenger floor. DNA evidence linked all four co-defendants to the recovered firearms. Dunbar's DNA was found on three of the recovered guns, including a revolver containing five spent casings and a rifle. DNA from Thornton, Dunbar, and Clark was found on the Desert Eagle.

The State's firearms examiner testified at trial that two cartridge casings, one bullet, and two bullet fragments recovered from the murder scene and from the victim's body during autopsy "were fired with" the Desert Eagle pistol.

B. The Trial and the Absence of a *Daubert* Challenge

Thornton, Dunbar, Jerry, and Clark were tried jointly before a jury in the Circuit Court for Baltimore City over a period of approximately three weeks in November and December 2022. The trial occurred against a particular legal backdrop that bears on the issues now before us. Approximately two years before trial, this Court had decided *Rochkind v. Stevenson*, 471 Md. 1, 236 A.3d 630 (2020), in which this Court abandoned the *Frye-Reed* general acceptance test for the admissibility of expert testimony in favor of the framework set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). In adopting *Daubert*, we expressly cautioned that the change "may mean, in a very real sense, that 'everything old is new again' with respect to some scientific and technical evidentiary matters long considered settled." *Rochkind*, 471 Md. at 38, 236 A.3d 630 (citation omitted).

Approximately six months before Respondents' trial, in June 2022, this Court granted certiorari for a second time in *Abruquah v. State*, 479 Md. 63, 276 A.3d 609 (2022), to consider the admissibility of unqualified firearms identification testimony under the new *Daubert-Rochkind* standard. We had previously vacated and remanded in *Abruquah v. State*, 471 Md. 249, 240 A.3d 1205 (2020), with instructions for the trial court to reconsider the admissibility of the firearms identification evidence in light of *Rochkind*. The pendency of *Abruquah* before this Court was reported in The Daily Record, both at the time certiorari was granted and again when this Court heard oral argument in October 2022, weeks before Respondents'

trial began.[1] The grant of certiorari was also officially reported and published on the Supreme Court of Maryland website.[2] *Abruquah v. State*, 479 Md. 63, 276 A.3d 609 (2022) (granting certiorari on admissibility of toolmark and firearms identification evidence).

Despite this background, *none* of the four co-defendants filed a pretrial motion under Maryland Rule 4-252 challenging the reliability of the AFTE methodology. *None* requested a *Daubert-Rochkind* hearing. *None* objected when the State's firearms examiner delivered his unqualified opinion that the ammunition evidence "was fired with" the Desert Eagle. (Petitioner's Br. at 5, 7–8). Four attorneys represented four defendants throughout the proceedings, and not one raised any challenge to the reliability of the firearms identification methodology.

The jury convicted Thornton of first-degree murder, use of a handgun in the commission of a crime of violence, transporting a handgun in a vehicle, possession of an assault pistol, possession of a handgun with a disqualifying conviction, conspiracy to commit murder, and conspiracy to use a handgun in a crime of violence. He was sentenced to an aggregate term of life in prison plus eighteen years.

The jury convicted Dunbar of possessing an assault pistol, possessing a handgun with a disqualifying conviction, and conspiracy to use a handgun in a crime of violence. The jury was unable to reach a verdict on Dunbar's charges for second-degree murder and use of a handgun in the commission of a crime of violence. The State subsequently nol prossed those charges. Dunbar was sentenced to an aggregate term of twenty years' imprisonment.

C. The Courtroom Closures

Three incidents of escalating spectator misconduct led the trial court to close the courtroom during jury deliberations and to partially close it during the return of the verdict.

The first incident occurred during the trial. The State informed the court that someone had used a cell phone to photograph bench conferences in which the court, the defendants, and counsel appeared. The photographs had been posted on Instagram with the hashtag "free dem boys." The State represented that there were "direct connections between the individuals who own those Instagram accounts and at least one of the defendants." The trial court firmly repeated its previous warning against cellphone use in the courtroom, threatened to confiscate cell phones in the gallery if the conduct recurred, and stated that "I don't expect to hear it again."

The second set of incidents occurred on the eleventh day of trial. The court was informed of "a disturbance between, amongst the families." The court was further informed about an incident outside the courthouse involving "two individuals

1. Steve Lash, *Md. High Court to Weigh Ballistics Testimony Under Stricter Standard for Scientific Testimony*, The Daily Record (June 7, 2022), https://thedailyrecord.com/2022/06/07/md-high-court-to-weigh-ballistics-testimony-under-stricter-standard-for-scientific-testimony/ [https://perma.cc/9DHF-96F6]; Steve Lash, *Md. High Court Weighs Ballistics Testimony Under New Admissibility Standard*, The Daily Record (October 4, 2022), https://thedailyrecord.com/2022/10/04/md-high-court-weighs-ballistics-testimony-under-new-admissibility-standard/ [https://perma.cc/RY8U-J3P5].

2. *Petitions for Writ of Certiorari – June, 2022*, Supreme Court of Maryland, https://www.mdcourts.gov/scm/petitions/202206petitions [https://perma.cc/2UTWRUGA] (last visited June 15, 2026).

approached two other individuals who were in this courtroom watching the trial."

The third and most serious incident occurred after closing arguments on the twelfth day of trial. The court received a juror note indicating that co-defendant Clark's father had approached Juror 11 in the hallway. At a bench conference, Juror 11 confirmed that he had been approached by an older man who "just said hi[ ]" and identified himself as Clark's father. Juror 11 also told the court that he saw Clark's father earlier in the day and recognized him then as a "childhood friend[.]" Other jurors were present when Clark's father approached Juror 11. Juror 12 had written a note on behalf of the Juror 11 and other jurors who witnessed the interaction. At the same bench conference, Juror 12 stated that he heard Mr. Clark's father say, "I'm tired of this shit or something like that" and saw Clark's father shaking hands with Juror 11. Counsel for Dunbar described the incident as "harassing" the juror.

The court individually voir dired each of the twelve jurors at the bench about the incident. Each juror confirmed that he or she could remain fair and impartial. The court then stated:

> I want to be abundantly clear. This is basically the third incident that is disturbing to this Court that has occurred during the course of this trial.... [F]or those reasons, I am not ... comfortable with the public being in this trial or observing it any more. I don't want the jurors to feel that they can not deliberate freely. Every juror has said that they can be fair and impartial, but the Court does not want to impose any (unintelligible). For those reasons, the Court is not going to allow the public back until it's time to hear the verdict.

All four defendants objected to the closure. After hearing argument, the court denied the defendants' motion for mistrial and adhered to its decision to close the courtroom. The court explained:

> [W]e have been in this case since November the tenth. Today is December first, so the public has had an opportunity to ... observe the entire evidentiary portion of the trial.... Second, I warned everyone in the gallery that the Court had already had two other instances, and I thought it was abundantly clear that the Court was not going to tolerate any further disruption of this Court's proceedings by way of phone or any other method. Third, an interaction with the juror, the Court sees as the highest form of disruption, and I am not going to take a chance on allowing it to occur any further.

The court considered alternatives. It contemplated excluding only the individual who approached Juror 11 but rejected that option in light of the prior failures of warnings to prevent recurrence. It planned to take the verdict one defendant at a time, which would have allowed more family members in the courtroom for each individual verdict but rejected that option after consulting courtroom security personnel. The court adopted the compromise of full closure during deliberations and partial reopening for the verdict. Immediately after the court decided to fully close the courtroom until the verdict reading, the State acknowledged that it was "aware of who the individual was" that approached Juror 11 and mentioned that "[i]f this individual comes to the State's attention again," the State "may ask" the Sheriff's office to assist "in investigating a contempt of Court charge."

During the closed deliberations, the jury sent six other notes in addition to the note stating that Clark's father had interacted with Juror 11 during the lunch recess. Three were scheduling requests asking

when the jurors could leave for the day. One asked about the effect of an undecided verdict on unanimous verdicts. One prompted the court to give an *Allen*-type charge. One announced that the jury had reached verdicts on all charges except two counts against Dunbar. No defendant objected to any of the court's proposed responses to the jury's notes. The *Allen*-type charge was a rereading of Maryland Criminal Pattern Jury Instruction 2:01, the same instruction the jury had received in written form and heard read aloud earlier in open court.

For the reading of the verdict, the trial court partially reopened the courtroom. The court permitted two family members for each of the four defendants and five family members for the victim's family. The court explained that its capacity was "forty-five basically" persons in total, including corrections officers, counsel, and defendants. The court further explained that it remained "concern[ed] for the jury's safety[.]" The court emphasized its concern that families be treated equally: The limitation on family attendance "precludes or foregoes anyone feeling that the Court is treating anybody's family different than the other." Ultimately, the jury convicted Thornton of first-degree murder, use of a handgun in the commission of a crime of violence, transporting a handgun in a vehicle, possession of an assault pistol, possession of a handgun with a disqualifying conviction, conspiracy to commit murder, and conspiracy to use a handgun in a crime of violence. He was sentenced to an aggregate term of life imprisonment plus eighteen years.

D. Post-Trial and Appellate Proceedings

On December 14, 2022, within the ten-day deadline prescribed by Maryland Rule 4-331(a), Thornton filed a written motion for a new trial. The motion alleged concerns about his right to a public trial, the sufficiency of the evidence to support one of his convictions, and a complaint about the prosecutor's closing argument. The motion did not address the firearms identification testimony.

This Court issued its decision in *Abruquah v. State*, 483 Md. 637, 296 A.3d 961 (2023), on June 20, 2023. Nine months after the verdict, at the hearing on his motion for a new trial on October 12, 2023, Thornton's counsel raised *Abruquah* orally for the first time. Counsel argued that the firearms examiner's testimony tying ammunition evidence to the Desert Eagle as "an exact match" had been "placed in question by our highest Court." The prosecutor responded on the merits, arguing that the examiner's opinion was not an unqualified opinion, that *Abruquah* arguably did not extend to shell casings or cartridge cases, or hold that firearms evidence is now unreliable, and that the result would not have changed the verdict in any event. The trial court denied the motion. The court stated that "Counsel is correct regarding his statement of the case law regarding the ballistics evidence." At the same time, the court found that *Abruquah* "had not yet been settled" at the time of trial, that the examiner's testimony could not be considered not qualified, and that the jury could have relied on the DNA evidence linking Thornton to the firearm. Thornton was then sentenced.

On appeal to the Appellate Court, Respondents and co-defendant Jerry collectively raised six claims of error. Both Respondents conceded that the *Abruquah* issue had not been preserved at trial. Both asked the Appellate Court to review the issue for plain error. On the public trial issue, Thornton separately claimed that the closures violated his Sixth Amendment rights.

The Appellate Court affirmed on five of the six claims, including Thornton's public trial claim. With respect to the public trial issue, the Appellate Court applied the three-factor framework from *Kelly v. State*, 195 Md. App. 403, 6 A.3d 396 (2010), and concluded that both the deliberations closure and the partial verdict closure were de minimis. The Appellate Court reversed the convictions of Thornton and Dunbar on the firearms identification issue. The court held that the examiner's testimony "was exactly the kind of testimony that *Abruquah* prohibits." The court remanded for a new trial.

We granted the State's petition for a writ of certiorari to consider whether the Appellate Court erred in applying plain-error review. We also granted Thornton's cross-petition to consider whether the closures violated his right to a public trial.

III.

STANDARD OF REVIEW

Two distinct standards of review govern the two questions before us.

[1, 2] The first concerns plain-error review of an unpreserved evidentiary claim. Both Respondents conceded below that their challenge to the firearms identification testimony was not preserved at trial. Both asked the Appellate Court to review the issue for plain error. Plain-error review is "reserved for errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Yates v. State*, 429 Md. 112, 130, 55 A.3d 25 (2012) (citation modified). Before an appellate court may exercise its discretion to reverse on this basis, four conditions must be satisfied:

- *First*, there must be an error or defect that has not been intentionally relinquished or abandoned.
- *Second*, the legal error must be clear or obvious, rather than subject to reasonable dispute.
- *Third*, the error must have affected the appellant's substantial rights, which ordinarily means that the appellant must demonstrate that the error affected the outcome of the proceedings.
- *Fourth*, the error must seriously affect the fairness, integrity, or public reputation of judicial proceedings.

Beckwitt v. State, 477 Md. 398, 464, 270 A.3d 307 (2022) (citation omitted). *All* four conditions are mandatory prerequisites; if any of them are not met, plain-error review is unavailable. *Id.*

[3–6] The first two prerequisites, whether there was an error and whether the error was clear or obvious, present legal questions that we review without deference. *See State v. Wallace*, 372 Md. 137, 144, 812 A.2d 291 (2002). The third and fourth prerequisites, and the ultimate decision whether to grant relief, are committed to the discretion of the reviewing court. That discretion has limits. A court abuses its discretion when its decision rests on an error of law. *Rochkind*, 471 Md. at 11, 236 A.3d 630. Accordingly, if an appellate court grants plain-error relief based on a mistaken legal conclusion that an error was clear or obvious, the grant of relief cannot stand.

[7, 8] The second standard of review concerns appellate review of a claimed Sixth Amendment violation regarding the court closure. Where, as here, a defendant's constitutional claim was preserved through contemporaneous objection, we make our own independent constitutional appraisal of the record. *Longus v. State*, 416 Md. 433, 457, 7 A.3d 64 (2010). We accept the trial court's findings of fact unless they are clearly erroneous, but we apply the law to those facts independently. *Id.*

IV.

DISCUSSION

We address the firearms identification issue first because it is dispositive of Respondents' appeal of their convictions. We then turn to Thornton's public trial cross-petition.

The Firearms Identification Testimony

The Appellate Court reversed Respondents' convictions under plain-error review on the ground that the firearms examiner's testimony "was exactly the kind of testimony that *Abruquah* prohibits." *Dunbar v. State*, 2025 WL 2027549, *16 (Md. App. Ct. July 21, 2025). Both Respondents had conceded that the issue was not preserved below and had asked for plain-error review. The Appellate Court concluded that the examiner's opinion that the ammunition evidence "was fired with" the Desert Eagle was indistinguishable from the testimony we found inadmissible in *Abruquah* and that the trial court therefore abused its discretion in admitting it. *Id.* at *17.

For the reasons detailed below, we disagree. Plain-error review requires that the error be "clear or obvious, rather than subject to reasonable dispute[.]" *Beckwitt*, 477 Md. at 464, 270 A.3d 307. The admission of the firearms examiner's testimony was not clear or obvious error at either the time of trial or the time of appeal. That conclusion is dispositive. We explain that conclusion in Section A. We then address, in Section B, the reviewability of unpreserved *Daubert* challenges under plain-error review. In Section C, we reject Dunbar's alternative theory that the State, as the proponent of the firearms identification evidence, bore the burden of initiating its own *Daubert* hearing. Finally, in Section D, we reject Thornton's separate argument that he is entitled to de novo review of an issue he never raised in writing.

A. The Error, If Any, Was Not Clear or Obvious

[9] The second prerequisite to plain-error review requires that the error be "clear or obvious, rather than subject to reasonable dispute[.]" Beckwitt, 477 Md. at 464, 270 A.3d 307. "Clear or obvious" means more than that the error is one a careful court might find on close examination. It means that the error is not reasonably debatable. *Id.* (declining to exercise plain-error review where "any error . . . was not clear and obvious but rather is subject to reasonable disagreement"). The admission of the firearms examiner's testimony in this case fails that standard, both with respect to the law as it stood at the time of trial and with respect to the law as it stood at the time of appeal.

1. The law was unsettled at the time of trial.

[10] Respondents' trial took place in November and December 2022. By that point, the legal framework governing the admissibility of expert scientific testimony in Maryland had been the subject of significant change, and the admissibility of conclusive firearms identification testimony specifically was the subject of pending appellate review.

In August 2020, approximately two years before this trial, this Court decided *Rochkind v. Stevenson*, 471 Md. 1, 236 A.3d 630 (2020). *Rochkind* replaced the longstanding *Frye-Reed* general acceptance test for expert scientific testimony with the more searching framework set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). *Rochkind*, 471 Md. at 36, 236 A.3d 630. We did not adopt *Daubert* quietly. We expressly cautioned the bench and bar that "[t]he shift to *Daubert* may mean, in a very real sense,

that 'everything old is new again' with respect to some scientific and technical evidentiary matters long considered settled." *Id.* at 38, 236 A.3d 630 (citations omitted). That cautionary language informed the bench and the bar that the admissibility of expert testimony previously settled under *Frye-Reed*, including testimony from the forensic disciplines, was now open to renewed scrutiny under the *Daubert* framework.

Two additional developments confirmed that firearms identification evidence was specifically among the categories of evidence newly subject to challenge. In October 2020, this Court summarily granted certiorari in *Abruquah v. State*, 471 Md. 249, 250, 240 A.3d 1205 (2020), vacated, and remanded with instructions for the trial court to reconsider the admissibility of firearms identification evidence in light of *Rochkind*. That decision placed firearms identification evidence on the bench's and bar's radar as an evidentiary matter newly in flux. In June 2022, approximately six months before Respondents' trial began, this Court granted certiorari in *Abruquah* for the second time. *Abruquah v. State*, 479 Md. 63, 276 A.3d 609 (2020). The pendency of *Abruquah* before this Court was also published on our website [3] and reported in *The Daily Record*, both at the time certiorari was granted and again when the Court heard oral argument in October 2022, weeks before this trial began.[4]

[11] The Appellate Court reasoned that the law was nevertheless settled at the time of trial because firearms identification testimony had long been admitted under the *Frye-Reed* standard and "was generally accepted" in the relevant scientific community. *Dunbar*, 2025 WL 2027549 at *19; (E. 46). We disagree, for two independent reasons. *First*, even accepting the Appellate Court's premise, its conclusion does not follow. If the law was settled at the time of trial that the testimony was admissible, then the trial court ruled in accordance with settled law, and a ruling consistent with settled law cannot constitute clear or obvious error. *Second*, the premise is wrong. *Frye-Reed* was no longer the law of Maryland. *Rochkind*, 471 Md. at 38, 236 A.3d 630. It had been replaced more than two years before this trial, and the law governing the admission of unqualified AFTE testimony under the new standard was not settled in either direction. An error that occurs in an area of law not yet authoritatively resolved is, by definition, subject to reasonable dispute and cannot be "clear or obvious[.]" *Beckwitt*, 477 Md. at 464, 270 A.3d 307.

Moreover, there are differing opinions about whether the "clear or obvious" requirement is measured as of the time of trial or the time of appellate review. *Compare Henderson v. United States*, 568 U.S. 266, 273, 133 S.Ct. 1121, 185 L.Ed.2d 85 (2013) (ruling that the error must be plain at the time of review), *with id.* at 285–94, 133 S.Ct. 1121 (Scalia, J., dissenting) (concluding that the error must be plain at the time it was committed). We need not resolve that question today. The law governing unqualified firearms identification testimony was unsettled at the time of trial, *infra* at 609–11, 361 A.3d at 336–38, and remained unsettled at the time of appeal, *infra* at 610–14, 361 A.3d at 338–39. Under any formulation of the temporal inquiry, the Respondents cannot show clear or obvious error.

In sum, the unsettled state of the law placed the Respondents on notice that the issue was open. With *Rochkind* providing the governing standard, *Abruquah* pend-

3. *See Petition for Writ of Certiorari – June, 2022, supra* at 599, n.2, 361 A.3d at 331, n.2.

4. *See Lash, supra* at 598–99, n.1, 361 A.3d at 331, n.1.

ing before this Court, and the issue being publicly debated, Respondents' counsel had every reason and opportunity to file a pretrial *Daubert* motion or, at the very least, to object at the time of the testimony. Four attorneys representing four defendants did neither. Plain-error review is not designed to rescue litigants from strategic choices made when the legal landscape is uncertain.

2. The law remained unsettled at the time of appeal; the holding in Abruquah is not a per se rule.

[12] The Appellate Court's analysis treated *Abruquah* as having resolved the question of unqualified firearms identification testimony with categorical clarity. It did not. *Abruquah* was a case-specific *Daubert* determination based on a particular evidentiary record. Several features of our opinion make this plain on its face. We described the scope of our holding in unambiguous terms. We wrote:

> *Based on the evidence presented at the hearings*, we hold that the circuit court did not abuse its discretion in ruling that [the expert witness] could testify about firearms identification generally, his examination of the bullets and bullet fragments found at the crime scene, his comparison of that evidence to bullets known to have been fired from [the defendant's] revolver, and whether the patterns and markings on the crime scene bullets are consistent or inconsistent with the patterns and markings on the known bullets. However, the circuit court should not have permitted the State's expert witness to opine without qualification that the crime scene bullets were fired from [the defendant's] firearm.

Abruquah, 483 Md. at 698, 296 A.3d 961 (emphasis added). The Court's holding was tied to "the evidence presented at the hearings." *Id.*; *see also id.* at 696, 296 A.3d 961 ("[*B*]*ased on the record here*, . . . firearms identification has not been shown to reach reliable results linking a particular unknown bullet to a particular known firearm." (emphasis added)).

We further acknowledged that other studies on the reliability of the AFTE methodology existed but were not before us. We declined to consider them, explaining: "We have not considered those studies in reaching our decision. If any of those studies materially alters the analysis applicable to the reliability of the [AFTE] theory of firearms identification, they will need to be presented in another case." *Id.* at 656, 296 A.3d 961 n.6. We further stated that we did "not preclude the possibility that the [analytical] gap may be closed in the future," *id.* at 694, 296 A.3d 961, and we acknowledged that different conclusions might be reached by experts "who are asked the right questions or have the benefit of additional studies and data[,]" *id.* at 696, 296 A.3d 961.

This language is impossible to square with a *per se* rule. A *per se* rule, by its nature, applies regardless of the underlying record. *Abruquah* by its express terms applies only to a record like the one before us in that case. And where reasonable judges might disagree about whether a categorical rule exists at all, and if so, what it covers, admission of an opinion that falls within the disputed zone cannot be characterized as a clear or obvious error.

Our subsequent disposition of the petition for certiorari in *Harris v. State* confirms this understanding. Pet. 489 Md. 334, 330 A.3d 660(2025) (unpublished) (Fader, C.J., statement on denial of cert.). In a statement accompanying the denial of certiorari, Chief Justice Fader cautioned that the denial "should not be considered a departure" from the suggestion in *Abruq-*

uah that additional studies presented in a future case might alter our analysis. *Id.* The Chief Justice further explained that it would be "more appropriate to consider certiorari based on a record that is created following our decision in *Abruquah*." *Id.* That statement reflects the same principle: *Abruquah* contemplates case-by-case litigation on developed records, not automatic exclusion regardless of the record.

Even setting aside the express terms of *Abruquah*, the broader landscape of authority confirms that the admissibility of unqualified firearms identification testimony remains the subject of reasonable disagreement. Federal circuits continue to admit this category of testimony under *Daubert*. *See, e.g.*, *United States v. Hunt*, 63 F.4th 1229, 1233 (10th Cir. 2023) (affirming testimony that cartridge cases "were fired from" the same weapon); *United States v. Brown*, 973 F.3d 667, 702, 704 (7th Cir. 2020) (affirming testimony that casings "were fired by the same firearm"); *United States v. Johnson*, 875 F.3d 1265, 1280–81 (9th Cir. 2017) (affirming testimony that bullets "matched ... to a reasonable degree of ballistics certainty"). Some state courts in *Daubert* jurisdictions have reached similar conclusions. *See, e.g.*, *State v. Mills*, 623 S.W.3d 717, 732 (Mo. Ct. App. 2021) (affirming admissibility of firearm and toolmark identification evidence); *Willie v. State*, 274 So. 3d 934, 939–40 (Miss. 2018) (same); *Garrett v. Commonwealth*, 534 S.W.3d 217, 222–23 (Ky. 2017) (same).

The Respondents' burden under the second prerequisite to plain-error review is to demonstrate that the admission of the firearms examiner's testimony was not reasonably debatable. They have not carried that burden. The Appellate Court's contrary conclusion was an error of law and an abuse of its discretion to grant plain-error review.

B. The Absence of a *Daubert* Record Below

[13] Beyond the dispositive failure on the second plain-error prerequisite, this case raises a distinct concern about the reviewability of unpreserved *Daubert* challenges. The State urges us to hold that the lack of any request for a *Daubert* hearing renders this issue "functionally unreviewable." We do not embrace that categorical formulation. We have previously rejected an analogous argument that plain-error review is unavailable whenever an unobjected-to error "could have been and probably would have been corrected if called to the trial judge's attention[.]" *State v. Hutchinson*, 287 Md. 198, 203, 411 A.2d 1035 (1980). We described that approach as "the antithesis of the discretion authorized by the rule." *Id.* The same logic counsels against a categorical bar on plain-error review of unpreserved *Daubert* issues.

[14, 15] That said, *Daubert* determinations present reviewability concerns of a different kind from many other categories of plain-error claims. An erroneous jury instruction can be evaluated on the cold appellate record by comparing the instruction given to the correct legal standard. A *Daubert* admissibility determination cannot be so readily assessed. *Daubert* gatekeeping requires the trial court to weigh scientific studies, assess expert testimony, and make case-specific reliability findings. Under *Daubert*, "the parties and the trial court are forced to reckon with the factors that really do determine whether the evidence is reliable, relevant, and 'fits' the case at issue." *Rochkind*, 471 Md. at 31, 236 A.3d 630 (citation omitted). Appellate review of such a determination is "necessarily limited to the information that was before the trial court at the time it made the decision." *Abruquah*, 483 Md. at 656, 296 A.3d 961.

In this case, no *Daubert* challenge was raised. No hearing was held. No evidentiary record was created. No gatekeeping decision was made. The trial court was never asked to evaluate the reliability of the AFTE methodology, much less to admit or exclude testimony based on that evaluation. There is no ruling to affirm or reverse, no record against which to measure the trial court's exercise of discretion, and no factual foundation from which to conduct the analysis *Daubert* requires.

The Appellate Court imported the evidentiary record from *Abruquah*, which involved a four-day hearing with extensive expert testimony and multiple scientific studies, into a case in which no comparable record exists, and Respondents now ask us to endorse that approach. Federal courts addressing similar situations have warned against precisely this approach. The First Circuit observed that "we can envision few, if any, cases in which an appellate court would venture to superimpose a *Daubert* ruling on a cold, poorly developed record when neither the parties nor the nisi prius court has had a meaningful opportunity to mull the question." *Cortés-Irizarry v. Corporación Insular De Seguros*, 111 F.3d 184, 189 (1st Cir. 1997); *see also Zimmerman v. Powell*, 268 Neb. 422, 684 N.W.2d 1, 13 (Neb. 2004) ("An appellate court is limited to a cold record and thus is not in a position to perform the gatekeeping role in a manner that is fair to the parties."); *C.B. Fleet Co. Inc. v. SmithKline Beecham Consumer Healthcare, L.P.*, 131 F.3d 430, 437 (4th Cir. 1997) (recognizing that *Daubert* application is to be "raised and resolved in the trial court" (citation omitted)).

We need not, and do not, decide the outer boundaries of plain-error review for unpreserved *Daubert* claims. We do not rule out the possibility that a trial record by itself, even without a formal *Daubert* hearing, might contain enough information to permit meaningful appellate review of the reliability of expert testimony. This is not such a case. Four co-defendants represented by four attorneys raised no challenge whatsoever to the firearms identification methodology. The trial record contains no testimony, studies, or argument bearing on the reliability of the AFTE methodology as a general matter. Nothing in the record permits an appellate court to conduct the analysis *Daubert* requires. While that concern does not independently dispose of this case, it reinforces our conclusion that the Appellate Court erred in granting plain-error relief on this record.

C. The State, as Proponent, Did Not Bear the Burden of Initiating a *Daubert* Hearing

[16, 17] Dunbar offers an alternative theory that does not depend on plain-error review. He contends that the State, as the proponent of the firearms identification evidence, bore the burden of initiating its own *Daubert* hearing to establish the reliability of the testimony, even in the absence of any challenge by the defense. In Dunbar's view, the State's failure to do so constituted preserved error. We reject that argument.

[18, 19] It is well established that, "[w]hen a challenge to the admissibility of expert testimony is raised, 'the burden rests with the proponent . . . to demonstrate that the requirements of Maryland Rule 5-702 have been met.' " *See Oglesby v. Balt. Sch. Assocs.*, 484 Md. 296, 346, 298 A.3d 859 (2023) (quoting *Rochkind v. Stevenson*, 454 Md. 277, 286, 164 A.3d 254 (2017)). The operative phrase is "[w]hen a challenge . . . is raised[.]" *Oglesby*, 484 Md. at 346, 298 A.3d 859. The burden of establishing admissibility is triggered by an objection or motion. It is not self-executing.

[20, 21] Maryland Rule 4-252(d)(3) provides that "[a]ny other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial." *Daubert* challenges fall within this provision, because they ordinarily can be resolved before trial without litigation of the general issue. *See Clemons v. State*, 392 Md. 339, 347 n.6, 896 A.2d 1059 (2006) (noting that evidence relevant to the admissibility of expert testimony "will usually be collateral to the substantive issues at trial"). The Rule contemplates that the party opposing evidence will put the proponent to its burden by filing a pretrial motion. The trial court's gatekeeping function exists to keep unreliable expert testimony out. The party seeking exclusion is the party with the burden to invoke that function.

If we were to accept Dunbar's position, the consequences would extend far beyond firearms identification testimony. The State would be required to initiate *Daubert* hearings for every expert it intends to call, regardless of whether anyone challenges the expert's testimony. DNA analysts, medical examiners, toxicologists, fingerprint examiners, and every other category of forensic expert would be subject to preemptive reliability hearings in every criminal case. No jurisdiction has adopted such a regime, and we decline to adopt it here. The federal courts of appeals have uniformly placed the burden on the party challenging admissibility to raise a *Daubert* challenge in the trial court. *See, e.g.*, *United States v. Frazier*, 387 F.3d 1244, 1268 n.21 (11th Cir. 2004) (en banc); *Macsenti v. Becker*, 237 F.3d 1223, 1231 (10th Cir. 2001) ("*Daubert* does not mandate an inquiry questioning and challenging the scientific proffer absent a timely request by an objecting party."); *Cortés-Irizarry*, 111 F.3d at 189; *Marbled Murrelet v. Babbitt*, 83 F.3d 1060, 1067 (9th Cir. 1996). State courts in *Daubert* jurisdictions have reached the same conclusion. *See, e.g.*, *State v. Sturdivant*, 405 So.3d 756, 762–63 (La. App. 2024); *Woods v. State*, 401 P.3d 962, 972, 974 (Wyo. 2017); *Commonwealth v. Fritz*, 472 Mass. 341, 34 N.E.3d 705, 712 (2015).

[22] We hold that a party who wishes to challenge the admissibility of expert testimony on reliability grounds must raise that challenge through a proper pretrial motion under Maryland Rule 4-252. Failure to do so forfeits the claim, absent a showing of good cause or unexpected developments at trial that prevented a pretrial challenge. Because no such good cause circumstances exist on this record, and the issue was never raised at any point before or during trial, the challenge is indisputably forfeited here.

D. Thornton Is Not Entitled to De Novo Review

Thornton offers a separate argument that he is entitled to de novo rather than plain-error review of the firearms identification issue. He bases the argument on the fact that the trial court entertained his *Abruquah* claim on the merits at the hearing on his motion for a new trial in October 2023. Thornton contends that the merits ruling rendered the issue preserved for purposes of appellate review. The argument fails for several independent reasons, any of which would be sufficient to reject this claim.

[23, 24] *First*, the *Abruquah* claim was not raised in Thornton's written motion for a new trial. That motion was filed within the ten-day deadline prescribed by Maryland Rule 4-331(a). It alleged concerns about the right to a public trial, the sufficiency of the evidence, and the prosecutor's closing argument. It said nothing about firearms identification. Thornton

raised the *Abruquah* issue orally for the first time at the motion for new trial hearing nine months later, after this Court had decided *Abruquah*. Under *Campbell v. State, 373 Md. 637, 664, 821 A.2d 1 (2003), a supplemental motion filed outside the ten-day window alleging "entirely different grounds for relief" is treated as a new and untimely motion. An oral request to add an entirely new ground at a hearing nine months after the verdict is no timelier.*

[25] *Second*, even when a motion for a new trial is timely, the inclusion of an issue in such a motion does not relieve a defendant of the obligation to preserve objections at trial. A motion for a new trial "should not be an opportunity to 'sandbag' an opponent, nor ordinarily to correct oversights that might have been remedied at trial if seasonably noted." *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 62, 612 A.2d 1294 (1992); *see also Washington v. State*, 191 Md. App. 48, 121 n.22, 990 A.2d 549 (2010). To accept Thornton's contrary position would be to permit defendants to preserve any conceivable objection by raising it for the first time after the jury's verdict, an outcome that the Maryland Rules of Procedure foreclose.

[26] *Third*, Thornton invokes *Williams v. State*, 462 Md. 335, 349, 200 A.3d 314 (2019), which permits de novo review of the denial of a motion for a new trial in narrow circumstances. *Williams* requires that an error occur during trial that was not discovered during trial, that the losing party was without fault for not discovering the error, and that the error was raised in writing. *Id.* at 345, 200 A.3d 314 (citation omitted). Thornton fails all three requirements. The trial court did not err for the reasons we have already explained. The defense was not without fault: *Rochkind* had been decided two years earlier, certiorari had been granted in *Abruquah* six months before trial, and the issue was being publicly debated. The defense had notice of the unsettled nature of this area of the law, and yet, the claim was never raised in writing at the appropriate time.

[27] *Fourth*, Thornton's position in this Court is inconsistent with the position both Respondents took below. Dunbar asked the Appellate Court to "exercise its discretion to recognize plain error." Thornton asked the Appellate Court to "apply the 'plain error' standard to this issue." In this Court, Dunbar has shifted to argue for abuse of discretion review, and Thornton has shifted to argue for de novo review. We decline to hold that Thornton may invoke de novo review on appeal after asking the intermediate appellate court to apply plain error.

[28] *Fifth*, the trial court's ruling at the motion for new trial hearing was a discretionary denial of a new trial motion, not a de novo admissibility determination. The court stated that "Counsel is correct regarding his statement of the case law," but denied the motion because *Abruquah* "had not yet been settled" at the time of trial, the testimony was qualified, and the jury could have relied on the DNA evidence. A discretionary denial of a motion for a new trial is reviewed for abuse of discretion. *Cooley v. State*, 385 Md. 165, 174–75, 867 A.2d 1065 (2005). It is not subject to de novo appellate review.

Plain-error review is the framework that applies, and as we have explained, Respondents cannot satisfy its requirements.

The Public Trial Claim

We turn to Thornton's contention that the trial court violated his Sixth Amendment right to a public trial when it closed the courtroom during jury deliberations and partially closed it during the return of the verdict. The Appellate Court rejected

this claim, finding both closures de minimis under the framework set forth in *Kelly v. State*, 195 Md. App. 403, 6 A.3d 396 (2010). We affirm the judgment of the Appellate Court on this issue but on different reasoning. We adopt the *Kelly* framework as the law of Maryland for evaluating de minimis closures. We conclude that the closures here were not de minimis. We hold, however, that the closures were justified under the four-part test of *Waller v. Georgia*, 467 U.S. 39, 48, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984), in light of the trial court's legitimate concern for juror safety in response to escalating spectator misconduct.

A. Framework

[29, 30] The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. The right is incorporated against the states through the Fourteenth Amendment. *In re Oliver*, 333 U.S. 257, 273, 68 S.Ct. 499, 92 L.Ed. 682 (1948). "The right to an open trial, however, is not absolute." *Longus*, 416 Md. at 446, 7 A.3d 64. Other interests, including the maintenance of fairness and orderliness in the proceedings and the protection of the integrity of the judicial system, may permit closure under appropriate circumstances. *Id.* at 447, 454, 7 A.3d 64.

[31] The framework for evaluating courtroom closures under the Sixth Amendment derives from the Supreme Court's decision in *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984). Under *Waller*, a closure is justified only if four conditions are satisfied: (1) "the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced"; (2) "the closure must be no broader than necessary to protect that interest"; (3) "the trial court [ ] consider[s] reasonable alternatives to closing the proceeding"; and (4) the trial court "must make findings adequate to support the closure." *Id.* at 48, 104 S.Ct. 2210 (citation omitted). *Waller*'s requirements apply to both total and partial closures. *Longus*, 416 Md. at 452, 7 A.3d 64; *see also Watters v. State*, 328 Md. 38, 45, 612 A.2d 1288 (1992) ("the public may only be constitutionally excluded from a trial ... pursuant to a narrowly tailored order necessary to protect an overriding state interest.").

[32] This Court has recognized that not every courtroom closure rises to the level of a Sixth Amendment violation. *See Watters*, 328 Md. at 46, 612 A.2d 1288 (acknowledging that a closure may be "de minimus and undeserving of constitutional protection," though holding the closure in that case constitutionally significant). In *Longus*, we noted that some courts have recognized a de minimis exception for trivial closures. 416 Md. at 459 n.10, 7 A.3d 64. The Appellate Court has more fully developed the de minimis framework in *Kelly v. State*, 195 Md. App. 403, 6 A.3d 396 (2010), and *Campbell v. State*, 240 Md. App. 428, 205 A.3d 76 (2019). Under the *Kelly* framework, a court evaluates whether a closure is de minimis by considering three factors: (1) the duration of the closure; (2) the significance of the proceedings during the closure; and (3) the scope of the closure. *Kelly*, 195 Md. App. at 421–22, 6 A.3d 396; *Campbell*, 240 Md. App. at 446, 205 A.3d 76.

[33] We adopt the *Kelly* three-factor framework as the law of Maryland for evaluating whether a courtroom closure is so trivial that it does not implicate the Sixth Amendment. The framework appropriately calibrates the constitutional inquiry to the realities of trial practice, in which not every brief or technical limitation on public access can sensibly be treated as a

violation of the constitutional right to a public trial. The de minimis inquiry is a threshold question. If a closure is de minimis, the Sixth Amendment is not implicated, and the *Waller* analysis need not be reached.

B. The Closures Were Not De Minimis

Applying the *Kelly* framework, we conclude that the closures in this case, taken together, were not de minimis.

[34] With respect to duration, the total closure during deliberations spanned multiple days. The substantive on-the-record proceedings during the closure were considerably shorter than the full deliberation period and included significant time spent in bench conferences that spectators would not have been able to hear. Even crediting the Appellate Court's estimate of approximately five hours of substantive closed proceedings, the closure here is meaningfully longer than those closures previously deemed de minimis. For example, in *Kelly*, the closure was for two to three hours during voir dire, whereas in this case, the closure spanned several days. *Compare Kelly*, 195 Md. App. at 423, 6 A.3d 396 (two to three hours of voir dire), *with* the multi-day closure here.

[35] With respect to significance, while most of the jury notes during deliberations were administrative in character, the giving of a modified *Allen*-type charge is a matter of substantive consequence. *Allen* charges [5] are given when a jury is deadlocked and encourage continued deliberation toward a verdict. *See Kelly v. State*, 270 Md. 139, 143-44, 310 A.2d 538 (1973). The giving of such a charge during closed proceedings is more constitutionally significant than the giving of administrative responses to scheduling questions or the answering of routine jury notes. We acknowledge, as the State observes, that the *Allen* charge given here was a rereading of a pattern instruction the jury had already received in open court and that no party objected to it or proposed an alternative. Those facts may bear on the analysis, but they do not eliminate the constitutional significance of the moment.

[36] With respect to scope, the closure during deliberations was complete. No member of the public was permitted to attend. The closure during the verdict was partial, with eight defense family members and five family members of the victim's family permitted to attend. The capacity of the courtroom, including necessary court personnel, was approximately forty-five, leaving room for only about eleven spectators in any event. As we held in *Longus*, however, the *Waller* standard applies equally to total and partial closures. 416 Md. at 452, 7 A.3d 64. The partial nature of the verdict closure is relevant to the de minimis analysis, but it is not dispositive.

[37] Considering these factors together, though giving particular weight to the significance of the *Allen* charge and the complete closure during the period in which it was given, we conclude that the closures were not so trivial that they fall outside the protection of the Sixth Amendment. We therefore proceed to the *Waller* analysis.

5. The term "*Allen* charge" originates from *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896), where the Supreme Court upheld a jury instruction directing a deadlocked jury to reexamine their opinions and attempt to reach a unanimous verdict. This Court has adopted the term "*Allen* charge" to generally remind jurors of their duties in the course of deliberations. *See Kelly v. State*, 270 Md. 139, 142, 310 A.2d 538 (1973).

C. The Closures Were Justified Under *Waller*

Although the closures were not de minimis, the trial court's response to the security situation it confronted satisfied each of the four *Waller* requirements. We address them in turn.

1. Overriding interest likely to be prejudiced.

[38] The trial court identified juror safety and the integrity of the deliberative process as the overriding interest justifying the closure. The court's concern was supported by three escalating incidents of spectator misconduct. The first was the photographing of bench conferences in the courtroom, with the photographs posted to social media using a hashtag that, in context, suggested support for the defendants and tied directly to individuals connected with at least one defendant. The second was the disturbance between families and the approach of trial spectators outside the courthouse on the eleventh day of trial. The third was the most serious: the direct approach of a sitting juror by a co-defendant's father, who shook the juror's hand, identified himself, and made an aggressive statement in the presence of other jurors. The trial court characterized this incident as "the highest form of disruption."

[39, 40] We have recognized that interests supporting closure may include "maintaining the fairness and orderliness of the proceeding" and "protecting the integrity of the judicial system." *Longus*, 416 Md. at 447, 454, 7 A.3d 64 (citation omitted). The Appellate Court has long held that the right to a public trial "does not require a court to forfeit its legitimate and substantial interest in maintaining security and order in the courtroom." *Walker v. State*, 125 Md. App. 48, 69, 723 A.2d 922 (1999). "Courtroom security is an ultimate determination that rests entirely and solely in the discretion of the trial judge[.]" *Cooley*, 385 Md. at 184, 867 A.2d 1065.

The interest the trial court advanced here was neither speculative nor abstract. The juror approach incident was, in defense counsel's own words, "harassing" the juror. The pattern was escalating; the court had warned the gallery after the first incident, told the gallery that further misconduct would result in cell phone confiscation, and made clear that disruption of the proceedings would not be tolerated. The misconduct nonetheless continued. Three separate incidents in three separate phases of the trial, culminating in direct contact with a sitting juror, established a clear basis for the trial court's concern that further public access during deliberations would prejudice the integrity of the jury's decision-making process. The first *Waller* requirement is satisfied.

2. Closure no broader than necessary.

[41] The trial court calibrated the closure to the threat. The entire evidentiary phase of the trial, spanning approximately three weeks, was conducted with the courtroom open to the public. The court did not respond to the early misconduct by closing the courtroom. It instead warned the gallery and threatened sanctions for further violations. Only after the third and most serious incident, the direct approach of a sitting juror, did the court close the courtroom, and only for the period of jury deliberations, when juror integrity was most at stake.

For the verdict, the court partially reopened the courtroom. The court permitted family members from both the defense and the victim's family to attend. The court explained that the limit on family attendance reflected the practical capacity of the courtroom, which left room for only about eleven spectators after accounting for necessary personnel. The court further

explained that it was treating defense and victim families equally so that no one would feel "that the Court is treating anybody's family different than the other." The closure was narrower in time than the deliberations closure, narrower in scope than complete closure would have been, and tailored to maintain the protection of juror safety while affording the proceedings the meaningful presence of interested observers from both sides.

We acknowledge Thornton's argument that only one of the three incidents took place inside the courtroom itself, and that the others might have been addressed without closing the courtroom at all. The argument has surface appeal. But it misconceives the trial court's concern. The court did not close the courtroom because three incidents took place inside it. The court closed the courtroom because three incidents, taken together, established a pattern of escalating misconduct connected to the parties or their associates that culminated in the direct compromise of juror safety. The geographic location of each individual incident is less important than the cumulative pattern they established. The trial court's response to that pattern was measured, narrower than other available alternatives, and limited in time. The second *Waller* requirement is satisfied.

3. Reasonable alternatives.

[42] The trial court considered reasonable alternatives. The court considered excluding only those individuals who had been involved in the prior incidents. It rejected that option after concluding that prior warnings to the gallery had not prevented the escalation of misconduct. The court considered taking the verdict one defendant at a time so that more family members might attend each individual verdict. After consulting with courtroom security personnel, the court concluded that this option presented additional risks. The court then adopted the compromise that has been described: full closure during deliberations, partial reopening for the verdict with equal family representation. The third *Waller* requirement is satisfied.

4. Adequate findings.

[43] The trial court announced its findings on the record. The court identified the three incidents that supported the closure: the photographing of proceedings, the disturbance between families and approach of spectators outside the courthouse, and the direct approach of a juror by Clark's father. The court explained that the cumulative effect of these incidents was that it was "not . . . comfortable with the public being in this trial or observing it anymore" and that it did not "want the jurors to feel that they cannot deliberate freely." When the court partially reopened for the verdict, it was not "satisfied" that "a conflict will not reoccur" and explained its ongoing "concern for the jury's safety."

The findings were sufficient to permit meaningful appellate review. They identified the specific factual basis for the closure, articulated the interests at stake, and explained the reasoning that supported the chosen response. *Waller* requires findings "specific enough that a reviewing court can determine whether the closure order was properly entered." 467 U.S. at 45, 104 S.Ct. 2210 (quoting *Press-Enterprise Co. v. Super. Ct. of Cal.*, 464 U.S. 501, 510, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984)). The findings here meet that standard.[6]

6. We share the dissent's concern about the gravity of a trial court's decision to close a courtroom, particularly during the delivery of an *Allen* charge. Fader, CJ dissenting at 12. We reach a different conclusion about whether the closure here violated the Sixth Amendment. We do not read the cases construing the public trial right to require a trial judge,

D. The Structural Error Argument

Thornton offers an additional argument that the de minimis exception is logically inconsistent with the structural error doctrine that ordinarily attaches to violations of the right to a public trial. Thornton contends that the de minimis inquiry effectively requires a defendant to show prejudice, in the form of harm to the values the public trial right protects, and that this is incompatible with the rule that public trial violations are not subject to harmless error analysis.

We need not resolve that argument today. Because we have concluded that the closures here were not de minimis, the de minimis framework that Thornton challenges does not support the result we reach. We affirm under *Waller*, not under the de minimis exception. *See Waller*, 467 U.S. at 44, 104 S.Ct. 2210 (explaining that "the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial"); *see also Press-Enterprise*, 464 U.S. at 510, 104 S.Ct. 819 ("The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.").

[44] We note, however, that the existence of justified closures under *Waller* is not in tension with the structural error doctrine. *Waller* establishes the conditions under which a closure does not violate the Sixth Amendment in the first place. 467 U.S. at 48, 104 S.Ct. 2210 (citation omitted). A closure that satisfies *Waller* is not a constitutional violation; the question of structural error therefore does not arise. *Cf. Weaver v. Massachusetts*, 582 U.S. 286, 298, 137 S.Ct. 1899, 198 L.Ed.2d 420 (2017) (acknowledging that the existence of justified closures "suggests that not every public-trial violation results in fundamental unfairness").

[45] The closures here were responses to a genuine and escalating threat to the integrity of the trial. The trial court's response was measured, transparent, and tailored to the threat. The Sixth Amendment does not require a court to maintain unconditional public access in the face of misconduct that compromises the safety of jurors and the integrity of deliberations. We affirm the judgment of the Appellate Court on this issue, although we reach that result through *Waller* rather than through the de minimis framework on which the Appellate Court relied.

V.

CONCLUSION

The Appellate Court erred in reversing Respondents' convictions on plain-error review. The admission of the firearms examiner's unqualified opinion that the re-

faced with repeated disruptions culminating in direct spectator contact with a sitting juror, to await further incidents or to predict which spectator might interfere next. The trial judge identified the precise concern that motivated the closure, the protection of juror independence and deliberative freedom; explained why prior warnings had proven ineffective; and concluded that a temporary closure was necessary to prevent further interference. Those findings were not lengthy, but they were not opaque. They identify the interest at stake, the reason less restrictive measures had failed, and the basis for the court's judgment that closure was warranted. That is what *Waller* requires: findings specific enough to permit meaningful appellate review. *Waller*, 467 U.S. at 45, 104 S.Ct. 2210 (citation omitted). The dissent would require more, but it does not explain what a fuller statement of reasons would have added that the record does not already supply.

covered ammunition "was fired with" the Desert Eagle was not plain error at either the time of trial or the time of appeal. The law was unsettled at the time of trial, and *Abruquah* is a case-specific *Daubert* determination, not a per se rule, the application of which to future cases necessarily turns on the evidentiary record developed in those cases. Where, as here, no *Daubert* challenge was raised below, no hearing was held, and no evidentiary record bearing on the reliability of the methodology was created, the absence of a record reinforces the conclusion that plain-error reversal was inappropriate. We further hold that the State did not bear the burden of initiating its own *Daubert* hearing in the absence of any challenge by the defense, and that Thornton is not entitled to de novo review of an issue he never raised in writing and that he asked the Appellate Court to review for plain error.

The Appellate Court did not err in rejecting Thornton's public trial claim. We adopt the framework set forth in *Kelly v. State* for determining whether a courtroom closure is de minimis. We hold that the closures in this case were not de minimis. We further hold that the closures were nonetheless justified under *Waller v. Georgia*. The trial court advanced an overriding interest in juror safety and the integrity of deliberations, supported by three escalating incidents of spectator misconduct. The court's response was no broader than necessary, considered reasonable alternatives, and was supported by adequate findings on the record.

Because the Appellate Court reversed Respondents' convictions on a basis we now reject, we reverse the judgment of the Appellate Court insofar as it reversed Respondents' convictions and affirm insofar as it rejected Respondent Thornton's public trial claim. We remand the case to the Appellate Court with instructions to affirm Thornton's and Dunbar's convictions.

JUDGMENT OF THE APPELLATE COURT OF MARYLAND REVERSED IN PART AND AFFIRMED IN PART.

CASE REMANDED TO THE APPELLATE COURT OF MARYLAND WITH INSTRUCTIONS TO AFFIRM THORNTON'S AND DUNBAR'S CONVICTIONS. COSTS TO BE PAID BY RESPONDENTS.

Fader, C.J., Booth, and Biran, JJ., concurs and dissents.

Fader, C.J., concurring and dissenting, joined by Booth and Biran, JJ.

I agree that the admission of the firearms examiner's unqualified opinion was not clear or obvious error; that *Kelly v. State*, 195 Md. App. 403, 6 A.3d 396 (2010), is an apt framework to analyze whether a closure is trivial; and that the complete closure of the courtroom when the court read the modified *Allen* instruction was not trivial. Accordingly, I join in Parts I, II.A., and II.B., of the discussion section of the Majority opinion. But I disagree with the Majority's application of *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984). *Waller* requires, among other things, that the closure "be no broader than necessary[,]" and that a trial court "make findings adequate to support the closure." *Id.* at 48, 104 S.Ct. 2210. In my view, the court did not make sufficient findings to support the closure and, as a result, I am unable to conclude, on this record, that the complete closure of the courtroom when the modified *Allen* charge was given was appropriate. So, although I agree with the Majority on most of its conclusions, I respectfully dissent from Parts II.C. and II.D. of the discussion section of the Majority opinion.

I.

"[C]riminal proceedings are presumptively public." *Carter v. State*, 356 Md. 207, 214, 738 A.2d 871 (1999). We have recognized, as has the Supreme Court of the United States, that public trials are "for the benefit of the accused[ ]" and act as a "safeguard against any attempt to employ our courts as instruments of persecution." *Id.* at 215, 738 A.2d 871 (quoting *In re Oliver*, 333 U.S. 257, 270-71, 68 S.Ct. 499, 92 L.Ed. 682 (1948)).

The right to a public trial is, of course, not absolute. *Carter*, 356 Md. at 216, 738 A.2d 871. But any infringement of that right may be justified "only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." *Waller*, 467 U.S. at 45, 104 S.Ct. 2210 (quoting *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984)). We have articulated the test as:

> The party moving for closure has the burden of proving that "higher values" will be infringed by publicity; that closure of the courtroom will prevent such prejudice; and that reasonable alternatives to closure cannot protect the asserted values. Where ... the right asserted in support of closure is a defendant's Sixth Amendment right to a fair trial, a hearing may be closed only if specific findings are made on the record.

Carter, 356 Md. at 216-17, 738 A.2d 871 (citation modified) (quoting *Baltimore Sun Co. v. Colbert*, 323 Md. 290, 302, 593 A.2d 224 (1991)). In short, exclusion of the public must be "pursuant to a narrowly tailored order necessary to protect an overriding state interest." *Carter*, 356 Md. at 217, 738 A.2d 871 (emphasis omitted) (quoting *Watters v. State*, 328 Md. 38, 45, 612 A.2d 1288 (1992)).

II.

In the eyes of the Majority, the trial court "identified juror safety and the integrity of the deliberative process as the overriding interest justifying the closure." Op. at 621, 361 A.3d at 344. I agree that both of those interests are critical and, when properly invoked, can justify closure of a courtroom. But the applicable standard requires the trial court to identify those interests on the record with "findings specific enough" that we "can determine whether the closure order was properly entered." *Waller*, 467 U.S. at 45, 104 S.Ct. 2210 (quoting *Press-Enterprise Co.*, 464 U.S. at 510, 104 S.Ct. 819). That standard was not met here.

In announcing the courtroom closure, the trial court referred to three different incidents that had occurred during the course of this 15-day trial.

First, on the seventh day of trial, the prosecutor informed the court that photographs had been posted to social media depicting bench conferences involving "all of the defendants, the attorneys, and the Court." There is no mention of any photographs depicting any jurors or witnesses. The on-the-record discussion of this incident was:

> [The State]: Your Honor, the State just wants to make the parties and the Court aware that we were made aware today of photographs that were taken yesterday in the courtroom from bench conferences that depict all of the defendants, the attorneys, and the Court. Those photographs were posted on Instagram, and the State is aware of direct connections between the individuals who own those

Instagram accounts and at least one of the defendants. We will be looking into filing charges on this. But we want to make the Court and the parties aware of this so that it does not continue.

THE COURT: The Court made an announcement at the outset of this morning session. I intend to be very clear. If I have not. That if I see it, if anyone in this courtroom sees it, anyone [ ] that works in this courtroom sees it, I'm taking the phone. That's it. And I'm not discussing it. I am very bothered, to say the least, about what the State has just said. And I don't intend to hear about it again. Thank you.

. . .

[Mr. Dunbar's Attorney]: Judge, just to keep the record clear, based on the court proceeding --

THE COURT: I can't hear you.

[Mr. Dunbar's Attorney]: Based on court proceedings, I just maintain a record. Can we approach so the whole courtroom doesn't hear.

THE COURT: Okay.

[Mr. Dunbar's Attorney]: And I'll just say it up here?

THE COURT: All right. Come on up.

. . .

(Counsel and the defendants approached the bench and the following occurred:)

[Mr. Jerry's Attorney]: And Your Honor, if I may ask, Madam State, have you seen them?

[The State]: I have seen these photographs[.]

[Mr. Jerry's Attorney]: And what did it show? Us?

[The State]: It shows a photograph of all of us at the bench from yesterday.

[Mr. Jerry's Attorney]: Does it have any captions?

[The State]: I'm not at liberty to say yet. Who it is connected to, I'm investigating it, but I do know it's two handles from Instagram. I know their first names, their last names, their dates of birth. I know who they've communicated with in this courtroom.

Mr. Dunbar's attorney moved for a mistrial. In response, the prosecutor stated:

> [The State]: I'll share that the hashtag on the photograph is "free dem boys." That's it. There's no names. No one is tagged in the photograph. If you don't know who we are, you would not be able to tell who is up at the bench. It's the back of our heads.

When making its closure ruling, the court recounted the following description of the second incident of concern:

> The second incident the Court was made aware of was the incident that occurred I believe yesterday between family or family members, I don't know, of the victim or victims. And then the Court also learned the same day two individuals approached two other individuals who were in this courtroom watching the trial.

The court referred to the incident again a few transcript pages later:

> The second incident that the Court learned about occurred yesterday. The Court was made aware that there was a disturbance between, amongst the families, and that someone who was watching or observing the trial, was approached by two other people, got out of a Honda and approached them about whatever.

Although it is not entirely clear from the transcript, the court appears to have been referring to interactions occurring outside the courthouse, apparently between family of a victim and other unidentified individuals, that were later described to the court by an unidentified source. The court's description of these interactions does not

mention jurors or witnesses. There is no mention of any further inquiry or investigation.

Third, after the jury had started deliberations following the close of the evidence, immediately following a lunch break, the court was informed by a juror note that the father of Mr. Clark, one of the defendants, had approached a juror in the courthouse hallway. The court addressed counsel:

> I don't know what happened, but [the] Court received a note saying that someone came up to a juror and said I'm Anthony Clark's father, and "gabbed up," those are their words, the juror. Based on what I saw in the note, first I'm going to let you know, nobody is coming back in the Courtroom except for the verdict. Nobody is coming back in the Courtroom. We will bring the juror out. I don't know who wrote the note, but I will bring out juror number 11 and ask juror number 11, because it looks like an 11 to me. I will bring out juror number 11 to discuss and voir dire them about the note.

The court questioned all the jurors about whether they had seen the interaction and, if they had, whether they could remain fair and impartial. Juror 11 stated that a man who had been a childhood friend of his had approached him in the hallway. In response to the court's request to provide "the entire nature of the interaction[,]" Juror 11 stated: "I walked into the hallway. He walked towards me, and I said what's up, and he said my son is Anthony Clark." Juror 11 said that he had not recognized the man as a childhood friend until that morning, that he would have told the court if he had recognized that connection earlier, and that he had not seen the other man for at least 15 years. Juror 11 told the court that the interaction would not affect his ability to be fair and impartial.

Juror 12, the juror who had sent the note, relayed the following account of the incident:

> We are standing near the elevator and juror number 11 was with us. And we were all just waiting for the elevator and then a man who I didn't know [ ] walked over and said what's up to juror 11. They like, shook hands.
>
> Juror 11 didn't really say anything but the guy said something along the lines of I know, I'm tired of this shit or something like that.
>
> . . .
>
> or something like that that didn't have to do with the case or anything.
>
> . . .
>
> And then he said, I believe what he said was I am An[ ]thony Clark's father and then kept walking. Juror 11 didn't react at all, so I don't think it mattered but I just know you said to write a note, so.

Juror 9 had witnessed the interaction and described it as: "Someone approached [Juror 11], said their son was Anthony Clark."[1] Jurors 1, 2, 3, 4, 5, 6, 7, 8, and 10 all informed the court that they had not witnessed anything unusual over the lunch break. The court confirmed with Jurors 9,

1. The transcript appears to be missing a few lines. The transcript reflects the court asking Juror 9 the question "Did you have any interaction with the individual who had a conversation with juror number 11?" The transcript reflects the following response: "I don't think it would." Juror 9's recorded answer is not responsive to the question that preceded it. Given that the court later stated that "[e]very juror has said that they can be fair and impartial," it appears likely that the transcript is missing at least one response—to the court's question about interactions with Mr. Clark's father—and one question—most likely whether the incident would affect Juror 9's ability to be fair and impartial.

11, and 12 that the incident would not affect their ability to be fair and impartial.

In making its ruling, the court characterized the incident involving Juror 11 and Mr. Clark's father as "basically the third incident that is disturbing to this Court that has occurred during the course of this trial." After mentioning the other two, the court continued:

> I am not, for those reasons, comfortable with the public being in this trial or observing it any more. I don't want the jurors to feel that they can not deliberate freely. Every juror has said that they can be fair and impartial, but the Court does not want to impose any (unintelligible). For those reasons, the Court is not going to allow the public back until it's time to hear the verdict.

The defendants objected to the closure and alternatively suggested to exclude only the involved individuals in the incidents. The court overruled the defendants' objections and provided three reasons:

> One, we are at the conclusion of the evidence portion of this trial. Therefore, the public for the past -- we have been in this case since November the tenth. Today is December first, so the public has had an opportunity to not only -- to observe the entire evidentiary portion of the trial.
>
> Second, I warned everyone in the gallery that the Court had already had two other instances, and I thought it was abundantly clear that the Court was not going to tolerate any further disruption of this Court's proceedings by way of phone or any other method.
>
> Third, an interaction with the juror, the Court sees as the highest form of disruption, and I am not going to take a chance on allowing it to occur any further. Therefore, the motion for this Court to consider allowing anyone's family or spectators or supporters is denied.

The court added:

> By not allowing anyone [in the courtroom,] that precludes or foregoes anyone feeling that the Court is treating anybody's family different than the other, that motion is denied.

Leading up to the reading of the modified *Allen* charge, the defendants noted their "continued objection to the closing of the courtroom." The court acknowledged the objections, but did not reconsider its order at that time and did not permit anyone else in the courtroom while it read the modified *Allen* instruction to the jury. The court ultimately made alternative plans for the reading of the verdicts, permitting the victim's family members and two family members for each defendant to sit in the courtroom, over defense objections.

III.

On this record, the court's explanation of the reasons for closing the courtroom do not satisfy the requirement of "findings specific enough" for us to "determine whether the closure order was properly entered." *Waller*, 467 U.S. at 45, 104 S.Ct. 2210 (quoting *Press-Enterprise Co.*, 464 U.S. at 510, 104 S.Ct. 819). Among other things, the court did not explain how the order was "narrowly tailored" "to protect an overriding state interest." *Carter*, 356 Md. at 217, 738 A.2d 871 (quoting *Watters*, 328 Md. at 45, 612 A.2d 1288).

The court referenced three incidents. The first involved taking pictures of bench conferences early in the trial, apparently showing only the backs of the attorneys' and defendants' heads such that they were not identifiable. The court did not link that incident to any concern for the jury or its ability to deliberate freely. Nor was there

any apparent link between that incident and either of the others. And there is no suggestion on the record that the conduct continued after the court's contemporaneous admonishment.

The second incident was only vaguely described, and does not appear to have been investigated, but there is no indication that it had anything to do with the courtroom, any of the jurors, or either of the other incidents.

The third incident, while undoubtedly serious, seems to have involved only a single, known individual who had been in attendance for the proceedings. The court conducted an appropriate and thorough investigation of the incident and concluded, without objection from any of the parties, that all of the jurors could remain fair and impartial.

The Majority describes these incidents as "establish[ing] a pattern of escalating misconduct connected to the parties or their associates that culminated in the direct compromise of juror safety." Op. at 623, 361 A.3d at 345. To the Majority, the "geographic location of each individual incident is less important than the cumulative pattern they established." *Id.*

However, no pattern among the three incidents is apparent from the record and the trial court did not identify one. This is not a case in which we are free to assume that a valid reason exists that is not apparent from the record. Here, due to the sanctity of the Sixth Amendment right to a public trial implicated by courtroom closures, the United States Supreme Court and our own precedent require specific findings reflecting the reason for the closure. *See Waller*, 467 U.S. at 45, 104 S.Ct. 2210; *Carter*, 356 Md. at 216-17, 738 A.2d 871. That precedent also requires consideration of possible alternatives, with findings that are "sufficient to permit meaningful appellate review." Op. at 624, 361 A.3d at 345; *see also Waller*, 467 U.S. at 45, 104 S.Ct. 2210; *Carter*, 356 Md. at 216-17, 738 A.2d 871.

The only alternative to closure that the record reflects the court considering is the defendants' suggestion that the court exclude from the courtroom only Mr. Clark's father, who had approached Juror 11, or to at least allow other family members to remain in the courtroom. The court's three stated justifications for rejecting that were that the courtroom had been open to that point, that the court had warned everyone in the gallery that it would not tolerate further disruptions "by way of phone or any other method[,]" and that the interaction with the juror constituted "the highest form of disruption, and I am not going to take a chance on allowing it to occur any further." As to the first two justifications, having the courtroom open for most critical moments of a trial is no justification for closing it during other critical moments, and the court's warning appeared to have been entirely successful, as the record does not reflect any further, similar incidents in the courtroom.

With respect to the final justification, the court did not explain how the egregious act of one parent of one defendant interacting with a juror outside the courtroom posed any risk of improper conduct by other family members or members of the public within the courtroom. Other than the pictures that had been taken earlier in the trial, which apparently did not include any jurors, the incidents referenced by the court do not reflect improper conduct in the courtroom by anyone throughout the 15-day trial.

Preventing juror tampering and ensuring free deliberations are, without a doubt, state interests of the highest order. But on this record, the court did not make specific findings or explain why its complete closure of the courtroom during jury deliber-

ations, and especially while giving the modified *Allen* charge, was narrowly tailored to advancing those interests.[2] Under *Waller* and *Carter*, the court was required to do so. *See, e.g.*, *Carter*, 356 Md. at 219-20, 738 A.2d 871 (reversing a conviction where the trial court closed the courtroom during the testimony of a child victim without holding a hearing, taking testimony concerning the necessity of a closure, or making specific findings of fact on the record demonstrating a sufficient basis for closure); *Holt v. State*, 129 Md. App. 194, 207-08, 741 A.2d 519 (1999) (reversing a conviction where the trial court closed the courtroom during the testimony of a witness in protective custody in the absence of findings to justify the closure); *People v. Reid*, 40 N.Y.3d 198, 218 N.E.3d 684, 685-86, 687 (N.Y. 2023) (reversing judgment for improper closure of a courtroom where the trial court did not "sufficiently" consider whether "less drastic measures could have resolved troubling spectator behavior," including identifying and "exclud[ing] only [particular offenders] from the courtroom[ ]"); *id.* at 203, 741 A.2d 519 (stating that "it is incumbent on the trial court to ensure that the record adequately justifies its concerns and demonstrates that the identified interest would be jeopardized absent a closure[ ]" and "[w]here closure is warranted, it must be tailored to address the overriding interest[ ]").

As the Supreme Court highlighted in *Waller*, "the right to an open trial may give way in certain cases to other rights or interests," but "[s]uch circumstances will be rare[ ]" and "the balance of interests must be struck with special care." 467 U.S. at 45, 104 S.Ct. 2210. Accordingly, before closing a courtroom, a trial court must make findings on the record that are sufficient to permit a reviewing court to determine whether the closure was justified, which is to say that the closure served an overriding state interest, that it was narrowly tailored, and that narrower options were considered and found insufficient. Without adequate findings, a reviewing court cannot "determine whether the closure order was properly entered." *Id.* (quoting *Press-Enterprise*, 464 U.S. at 510, 104 S.Ct. 819).

As the Majority recognizes, and I agree, "maintaining the fairness and orderliness of the proceeding," *Longus v. State*, 416 Md. 433, 447, 7 A.3d 64 (2010) (quoting *Butler v. Smith*, 416 F. Supp. 1151, 1154 (S.D.N.Y. 1976)), and "protecting the integrity of judicial proceedings," *Longus*, 416 Md. at 454, 7 A.3d 64, are important interests, and "courtroom security is an ultimate determination that rests entirely and solely in the discretion of the trial judge," *Cooley v. State*, 385 Md. 165, 184, 867 A.2d 1065 (2005). But because of the significant Sixth Amendment interests that are implicated by the closure of a courtroom, a trial court should do so only when circumstances necessitate it. And when that occurs, "it is incumbent on the court to ensure that the record adequately supports excluding members of the public." *Reid*, 218 N.E.3d at 688.

The record before us does not demonstrate that circumstances necessitated complete closure of the courtroom. It is possible that there was more that concerned the court than is apparent from the record. It is possible that there was a link among the three incidents that the trial court was aware of that is not apparent from the record. And it is possible that the trial court weighed other alternatives to closure silently and determined that they would not be adequate for reasons that are not apparent from the record. But none of

2. As the Majority concludes, and I agree, providing a modified *Allen* charge is a constitutionally significant moment in a trial. Op. at 619–21, 361 A.3d at 343–44.

that is before us. *Waller* and *Carter* require more. Accordingly, I respectfully dissent from Parts II.C. and II.D. of the discussion section of the Majority opinion.

Justice Booth and Justice Biran advise that they join in this concurring and dissenting opinion.



495 Md. 638

IN RE: D.E.

No. 59, September Term, 2025

Supreme Court of Maryland.

July 22, 2026

Background: Juvenile petition charged 12-year-old juvenile with robbery and four lesser offenses arising from the same incident. Juvenile moved to dismiss after a magistrate found that he was not involved in the robbery but involved in misdemeanor theft. The magistrate denied the motion and found juvenile to be delinquent. Juvenile filed exceptions and renewed his motion to dismiss. The Circuit Court, Baltimore City, No. 324088004J, Emmanuel Brown, J., heard the exceptions and denied them. Juvenile noted an appeal to the Appellate Court, but before that court heard argument, juvenile successfully petitioned the Supreme Court for a writ of certiorari.

Holdings: The Supreme Court, Killough, J., held that:

(1) although magistrate found that juvenile was not involved in the robbery but instead was involved in misdemeanor theft, juvenile court retained jurisdiction and could proceed to disposition on misdemeanor-theft allegation until court's authority terminated under one of the conditions set forth in statute;

(2) there was probable cause for the robbery charge;

(3) on rational-basis review, it was not a violation of equal protection to find juvenile delinquent due to misdemeanor theft; and

(4) it was not selective prosecution to proceed against juvenile on the charge of misdemeanor theft.

Order of circuit court affirmed.

1. Criminal Law ⚿1134.26

Courts may review a moot controversy if collateral consequences flow from the disposition or if the issue merits discretionary review.

2. Infants ⚿2903

Even assuming that expiration of juvenile's probation rendered moot his appeal challenging, among other things, juvenile court's jurisdiction to proceed to disposition in delinquency matter on misdemeanor-theft allegation when a magistrate had not sustained the original robbery charge, the Supreme Court would exercise its discretion and address the questions presented; the case concerned issues of statutory interpretation that were likely to reoccur, involved the same parties within the juvenile justice system, would likely evade judicial review, and concerned a matter of public interest.

3. Infants ⚿2908

Whether the juvenile court has jurisdiction in a juvenile matter is a question of statutory interpretation, which the Supreme Court reviews de novo.

APPENDIX B

E-FILED
Gregory Hilton, Clerk,
Supreme Court of Maryland
7/21/2026 11:46 AM

	*	IN THE
STATE OF MARYLAND	*	SUPREME COURT
v.	*	OF MARYLAND
WILLIAM THORNTON AND JAMES DUNBAR	*	No. 46
	*	September Term, 2025

ORDER

Upon consideration of William Thornton's motion for reconsideration of the Court's June 26, 2026 opinion and judgment, it is this 21st day of July 2026, by the Supreme Court of Maryland,

ORDERED that the motion for reconsideration is granted as to Mr. Thornton's contention that it is unnecessary to remand the case to the Appellate Court for the purpose of addressing unresolved issues because there are none. The opinion and judgment of the Court is amended as shown below. The motion for reconsideration is otherwise denied; and it is further

ORDERED that the Clerk shall file the updated opinion in which the final paragraph of the opinion and the judgment are modified to read:

> Because the Appellate Court reversed Respondents' convictions on a basis we now reject, we reverse the judgment of the Appellate Court insofar as it reversed Respondents' convictions and affirm insofar as it rejected Respondent Thornton's public trial claim. We remand the case to the Appellate Court with instructions to affirm Thornton's and Dunbar's convictions.
>
> **JUDGMENT OF THE APPELLATE COURT OF MARYLAND REVERSED IN PART AND AFFIRMED IN PART. CASE REMANDED TO THE APPELLATE**

COURT OF MARYLAND WITH INSTRUCTIONS TO AFFIRM THORNTON'S AND DUNBAR'S CONVICTIONS. COSTS TO BE PAID BY RESPONDENTS.

/s/ Matthew J. Fader
Chief Justice

APPENDIX C

E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
7/21/2025 11:11 AM

Circuit Court for Baltimore City
Case Nos. 119343014, 119343015, 119343016

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 611, 639, 1598

September Term, 2023

CONSOLIDATED CASES

JAMES DUNBAR,
SHAMAR JERRY,
WILLIAM THORNTON

v.

STATE OF MARYLAND

Nazarian,
Reed,
Albright,

JJ.

Opinion by Nazarian, J.

Filed: July 21, 2025

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

Donnell Brockington was shot and killed on November 13, 2019. An unknown number of individuals from among a six-person group shot Mr. Brockington ten to twelve times, then fled the scene. Police apprehended four individuals—Anthony Clark, James Dunbar, Shamar Jerry, and William Thornton—nearby after a short car chase ended when their vehicle crashed into a tree. Police recovered four firearms from the car and one from Mr. Clark's person. Using DNA and firearms identification evidence, investigators connected Messrs. Clark, Dunbar, Jerry, and Thornton to the firearms and, ultimately, to the scene. They faced a joint jury trial in the Circuit Court for Baltimore City and the jury convicted each of various offenses. Messrs. Dunbar, Jerry, and Thornton now raise several issues on appeal pertaining to the court's rulings on courtroom disturbances, evidence, and Mr. Dunbar's waiver of his right to testify. Messrs. Dunbar and Thornton also challenge the sufficiency of the evidence supporting their convictions. We reverse Messrs. Dunbar's and Thornton's convictions based on the erroneous admission of expert firearms identification testimony and remand for further proceedings, and we affirm Mr. Jerry's convictions.

I. BACKGROUND

A. The Investigation

On November 13, 2019, Officer Justin Merson, a member of the Baltimore City Special Weapons and Tactics ("SWAT") unit, was on "crime suppression" duty (*i.e.*, patrolling high-crime areas and assisting patrol officers) in the Eastern District of the city when he received a notification of a shooting nearby. He and other Baltimore City officers

arrived on the scene at McElderry Street and found Mr. Brockington shot, unconscious, and bleeding on the sidewalk. Another officer attempted to provide treatment until medics arrived to render aid and transport Mr. Brockington to Johns Hopkins Hospital.

Sergeant Isreal Villodas, another member of the SWAT unit, was also on crime suppression duty that evening when he received a notification about the shooting. He started driving towards McElderry Street in his unmarked SWAT vehicle when another vehicle, a gold Infiniti SUV, crossed in front of him at an intersection. He noticed that at least six people were in the SUV and that the driver looked surprised when they passed by; one of the backseat passengers started to duck down as if to hide himself. Sergeant Villodas found this odd and decided to follow the SUV. He notified dispatch immediately and requested assistance from "Foxtrot," the police department's aviation unit. Sergeant Villodas and Foxtrot pursued the SUV until it crashed at the intersection of Ashland Avenue and North Caroline Street. Sergeant Villodas arrived at the crash site moments later. He apprehended an individual who was running from the crash but determined later that that individual was not associated with the car chase or Mr. Brockington's murder.

Officer Alan Chanoine, who was also on patrol in the Eastern District that evening, followed the SUV for a short time on Ashland Avenue before it crashed. He saw the driver and several passengers exit the damaged vehicle and flee on foot. He ran after the last person to exit the SUV—Mr. Jerry—and, with assistance from SWAT officers, apprehended him. Mr. Jerry had no weapons on his person.

Officer Richard Cetrone, another Eastern District patrol officer, heard the radio call from Foxtrot about the crash and the fleeing suspects. He responded to Eden Street—one street over from the crash site—where he came upon Officer Burrell[1] apprehending Mr. Dunbar. Officer Burrell brought Mr. Dunbar to the back of Officer Cetrone's patrol car where Officer Villachez, who was on patrol with Officer Cetrone, searched Mr. Dunbar and found no weapons on his person.

Detective Jerry Damestoit and Sergeant Melinda Walp, both members of the police department's District Action Team (a "proactive enforcement" unit) for the Eastern District, responded to the crash site as well. Sergeant Walp saw Mr. Thornton stumbling away from the car and, with Detective Damestoit's help, arrested him. According to Sergeant Walp, Mr. Thornton exited the car from the driver's side and had the car keys attached to his belt loop, although he denied being the driver of the car. Sergeant Walp then conducted a pat down and found no weapons on Mr. Thornton's person.

After assisting Sergeant Walp, Detective Damestoit removed the front passenger, Mr. Clark, from the SUV. Mr. Clark was injured, so Detective Damestoit helped him out of the car to render aid. He then asked Mr. Clark if he had any weapons on him, to which he responded yes and directed Detective Damestoit to the loaded firearm in his waistband. The officers then called for the medics to treat Mr. Clark and Mr. Thornton, who also sustained injuries in the crash.

[1] Officer Burrell's first name doesn't appear in the record, nor does that of his colleague, Officer Vallechez.

Officer Merson, who had heard about the car chase while he was at the scene of the shooting, relocated to the crash site to assist the other officers. He was responsible for recovering any weapons and handing them off to the crime lab technicians for evidence. He collected Mr. Clark's firearm—a Ruger Model EC9S 9mm Luger semi-automatic pistol (the "Ruger")—from Detective Damestoit. He then recovered three firearms in plain view from inside the SUV: a Taurus Model PT140 Millenium .40 S&W caliber semi-automatic pistol (the "Taurus") from the rear passenger-side seat; an IMI Desert Eagle 9mm Luger semi-automatic pistol (the "Desert Eagle") from the front passenger-side floor; and a Romarm/Cugir GP WASR-10/63 7.62x39mm semi-automatic rifle (the "rifle") from the rear passenger-side floor. Later, officers obtained a search warrant and found one additional firearm in the SUV, an RG Industries Model RG31 .38 special revolver (the "revolver"), on the back passenger-side floor underneath some coats.

The primary homicide detective, Frank Miller, remained at the scene of the shooting while officers secured the crash site. He directed crime lab personnel to collect blood samples and projectiles as evidence and canvassed the area for any additional evidence or witnesses. No one witnessed the incident, but during a second round of canvassing the next day, Detective Miller discovered and obtained footage from a residential security camera that faced the crime scene. There was no audio, and the video wasn't clear enough to identify the subjects, but the camera did capture the murder of Mr. Brockington.

The security footage showed Mr. Brockington walking down McElderry Street at approximately 8:35 p.m. with two people later identified as Terrell Smith and his cousin

"Chuck." Mr. Smith and Chuck turned down another street just before Mr. Brockington walked through a group of six individuals headed in the opposite direction on McElderry Street. According to Detective Miller, one of the six individuals appeared to be holding a long gun (the same type of firearm as the rifle). As the group parted around Mr. Brockington, two people stopped and turned towards him. The other four walked past Mr. Brockington, then turned to look back at him and the two others who had stopped. In a matter of seconds, the two individuals began shooting at Mr. Brockington, and he collapsed onto the sidewalk. Immediately, all six individuals fled back in the direction from which they came. One final white muzzle flash indicated that someone fired at Mr. Brockington's fallen body before running away.

Unable to identify the shooters from the video, Detective Miller relied on DNA and firearms identification evidence in his investigation of Mr. Brockington's murder. Dana Keiter, a Technical Leader in the Forensic Processing Unit of the Baltimore City Crime Lab, collected DNA evidence from the recovered firearms, the crash site, the murder scene, Messrs. Brockington, Clark, Dunbar, Jerry, and Thornton, and two other individuals whose connection to the crime (if any) was not discussed at trial. The DNA Analyst, Christy Silbaugh, analyzed the DNA samples and developed a final report that linked Messrs. Clark, Dunbar, Jerry, and Thornton to the recovered firearms: Messrs. Clark's, Dunbar's, and Thornton's DNA matched with the sample from the Desert Eagle; Mr. Jerry's DNA matched with the sample from the Taurus, though Messrs. Clark, Dunbar, and Thornton couldn't be included or excluded as contributors; Mr. Dunbar's DNA matched with the

sample from the rifle, although Messrs. Clark and Thornton couldn't be included or excluded as contributors; Mr. Dunbar's DNA matched with the sample from the revolver; and Messrs. Clark and Dunbar couldn't be included or excluded as contributors to the sample from the Ruger.

As for the firearms identification evidence, Jeremy Monkres, a firearms examiner with the Firearms Analysis Unit of the police department, conducted operability tests and found all five weapons to be operable. Mr. Monkres also examined and compared the markings left on projectiles (*i.e.*, bullets, bullet fragments, and cartridge cases) recovered from the murder scene with the markings left on new, test projectiles that he fired from the five firearms to determine whether the recovered projectiles came from any of those firearms. He then developed a report in which he concluded that two cartridge casings, one bullet, and two bullet fragments "were fired with" the Desert Eagle, and two cartridge cases "were fired with the same unknown firearm." He also confirmed that the five spent casings found inside the revolver "were fired with" that revolver.

B. The Trial

Detective Miller filed charges against Messrs. Dunbar, Jerry, and Thornton on November 15, 2019.[2] They faced a joint jury trial that spanned fifteen days in November and December 2022. The jury returned a verdict on December 6, 2022. They found Mr.

[2] Mr. Clark was charged, tried, and convicted alongside Messrs. Dunbar, Jerry, and Thornton, but is not before us in this appeal. Aside from the relevant facts of the investigation and trial, we will not discuss Mr. Clark's case and will focus on Messrs. Dunbar, Jerry, and Thornton for the remainder of the opinion.

Dunbar guilty of possessing an assault pistol (specifically, the rifle), possessing a handgun with a disqualifying conviction, and conspiracy to use a handgun in a crime of violence. The jury remained deadlocked on his charges for second-degree murder and use of a handgun in a crime of violence. The court declared a mistrial by manifest necessity as to those counts. The jury found Mr. Jerry guilty of transporting the Taurus in a vehicle, possessing a handgun while under the age of twenty-one, and conspiracy to use a handgun in the commission of a crime of violence. Finally, the jury found Mr. Thornton guilty of first-degree murder, use of a handgun in the commission of a crime of violence, transporting the Desert Eagle in a vehicle, possession of an assault pistol (specifically, the rifle), possession of a handgun with a disqualifying conviction, conspiracy to commit murder, and conspiracy to use a handgun in a crime of violence.

The court held separate sentencing hearings. Mr. Dunbar received a total sentence of twenty years' imprisonment; Mr. Jerry received a total sentence of fifteen years' imprisonment; and Mr. Thornton received a total sentence of life plus eighteen years' imprisonment.

The issues on appeal relate to the court's rulings on courtroom disturbances and closures, Mr. Monkres's expert testimony, and Mr. Dunbar's waiver colloquy. Messrs. Dunbar and Thornton also challenge the sufficiency of the evidence as to some of their convictions. We include additional facts throughout the Discussion.

II. DISCUSSION

Messrs. Dunbar, Jerry, and Thornton raise several issues on appeal. We've rephrased their Questions Presented[3] and will address them in the following order:

1. Did the court abuse its discretion when it refused to exclude emotional members of the gallery from the courtroom?

[3] Mr. Dunbar's questions on appeal are as follows:

1. Did the trial court commit plain error in permitting a firearms examination expert to opine that certain projectiles were fired from certain identified weapons?
2. Does the record fail to reflect that Mr. Dunbar knowingly, intelligently, and voluntarily waived his right to testify and elected to remain silent?
3. Was the evidence legally sufficient to sustain a conviction for possession of an assault pistol?
4. Did closures of the courtroom deprive Appellant of the right to a public trial?

Mr. Jerry's questions on appeal are as follows:

1. Did disruptions from individuals in the gallery violate Mr. Jerry's constitutional right to a fair trial?
2. Did removing the public from the courtroom violate Mr. jerry's constitutional right to a public trial?

Mr. Thornton's questions on appeal are as follows:

1. Whether there is insufficient evidence to support appellant's convictions for murder, conspiracy to commit murder, using a firearm during the commission of a crime of violence, and conspiracy to use a firearm during the commission of a crime of violence.
2. Whether the circuit court erred by closing the courtroom to the public during critical stages of appellant's jury trial.
3. Whether the circuit court committed reversible, plain error by permitting a prosecution witness to opine that 9-mm

Continued . . .

2. Did the court abuse its discretion when it closed the courtroom during jury deliberations and limited attendance during the reading of the verdicts?

3. Was it plain error under *Abruquah v. State*, 483 Md. 637 (2023), to allow Mr. Monkres to testify that certain recovered projectiles "were fired with" certain weapons?

---

caliber shell casings and bullet fragments had been discharged by the Desert Eagle 9-mm pistol.

4. Whether there is insufficient evidence that appellant possessed an assault "pistol."

5. Whether disruptions from persons in the courtroom gallery during trial violated appellant's constitutional right to a fair trial.

And finally, the State's Questions Presented are as follows:

1. Should this Court decline to review for plain error the trial court's admission of the firearm examiner's opinion that ballistics evidence recovered from the murder scene and from the victim had been fired from a known firearm?

2. Did Dunbar knowingly and voluntarily waive his right to testify?

3. Should this court decline to review Dunbar's [and Mr. Thornton's] unpreserved claim that the evidence was insufficient to support his conviction for possession of an assault pistol?

4. Is the Sixth Amendment inapplicable to the consideration of jury questions during deliberations, and, if applicable, did the trial court soundly exercise its discretion when it closed the courtroom during jury deliberations and limited attendance when the verdict was announced?

5. To the extent preserved, did the trial court soundly exercise its discretion in handling disruptions from the gallery?

6. Is the evidence sufficient to support Thornton's convictions for murder, conspiracy to commit murder, use of a firearm in the commission of a crime of violence, and conspiracy to use a firearm in the commission of a crime of violence?

4. Does the record support the finding that Mr. Dunbar waived his right to testify knowingly, intelligently, and voluntarily?

5. Is the evidence sufficient to support Messrs. Dunbar's and Thornton's convictions for possession of an assault pistol?

6. Is the evidence sufficient to support Mr. Thornton's convictions for first-degree murder, conspiracy to commit murder, use of a firearm[4] in a crime of violence, and conspiracy to use a firearm in a crime of violence?

We hold that (1) the court did not abuse its discretion when it refused to remove emotional spectators from the courtroom; (2) the court did not abuse its discretion when it closed the courtroom during jury deliberations and limited attendance during the reading of the verdict; (3) it was plain error under *Abruquah* to allow Mr. Monkres to match the recovered projectiles conclusively to specific weapons; (4) the record supports the finding that Mr. Dunbar waived his right to testify knowingly, intelligently, and voluntarily; (5) Messrs. Dunbar and Thornton failed to preserve the issue of whether the evidence was sufficient to support their convictions of possession of an assault pistol; and (6) the evidence was sufficient to support Mr. Thornton's challenged convictions. We reverse Messrs. Dunbar's and Thornton's convictions because of the erroneous introduction of Mr. Monkres's unqualified ballistics opinion and we remand their cases for further proceedings consistent with this opinion. We affirm Mr. Jerry's convictions.

[4] Although Mr. Thornton's verdict sheet indicates he was convicted of use of a *handgun* in a crime of violence and conspiracy to do such, the relevant statute uses the term "firearm" and does not limit the weapon used to a "handgun." *See* Md. Code (2022, 2021 Repl. Vol.), § 4-204(b) of the Criminal Law Article.

A. The Court Did Not Abuse Its Discretion When It Declined To Remove Emotional Spectators From The Gallery Because The Court Was In The Best Position To Determine Whether The Disruptions Caused A Prejudicial Impact.

Messrs. Jerry and Thornton argue that disruptions from individuals in the gallery violated their Sixth Amendment right to a fair trial to the point that the court should have removed certain spectators from the courtroom. The State responds *first* that neither Mr. Jerry nor Mr. Thornton preserved this issue for appeal; *second*, that neither provided a sufficient record for appellate review; and *third*, that, even if the issue were preserved and the record sufficient, the court didn't abuse its discretion when it chose to admonish the disruptive members of the gallery rather than remove them from the courtroom. We conclude that Messrs. Jerry and Thornton preserved this issue and that the record is clear enough for review. On the merits, we hold that the court did not abuse its discretion in managing the courtroom as it did during each disruptive situation.

Multiple disturbances came to the court's attention during the trial, three through defense counsels' objections. The first objection arose just before opening statements. Mr. Clark's attorney informed the court that some members of the gallery were "engaged in some type of display," namely "openly weeping and, like, hugging each other during the Court's instructions [to the jury]." He asked the court to remove the emotional spectators. The court refused, stating that "[t]rials are open to the public," and that it will not remove them "absent any . . . openly disruptive conduct . . . ." Mr. Thornton's attorney spoke next. Although much of what he said is marked "unintelligible" in the transcript, he seemed to

suggest moving the emotional spectators away from the jury rather than removing them from the courtroom completely:

> [MR. THORNTON'S ATTORNEY]: (unintelligible)
>
> [COURT]: Okay. The motion to excuse the victims from the courtroom.
>
> [MR. THORNTON'S ATTORNEY]: (unintelligible) my premise wasn't so much for removing (unintelligible) away from the jury.
>
> [COURT]: Okay. Thank you.

The court then warned the public that it would not tolerate any disruptions:

> I'm speaking to everyone who's seated in the gallery. Before we begin, I just want to make sure that we understand some of the ground rules.
>
> The Court is aware that this case involves very, very serious charges, such as they—many people seated in the gallery may be impacted by them and some of the testimony and images that you may either hear or see. However, this is still a formal proceeding. Therefore, if for any reason it becomes difficult for someone, anyone, seated in the gallery to control themselves or their emotions, please excuse yourselves rather than disrupt the proceedings.
>
> Any disruption to these proceedings will not be tolerated and I will have to ask you to excuse yourselves. Therefore, if you feel like you are not going to be able to control yourself, please step out into the hallway and you will be permitted to return to the courtroom to view the proceedings afterwards.

After opening statements, the State played a recording of the 9-1-1 call about the shooting. Mr. Clark's attorney objected to the victim's mother "looking at the jury and . . . making a spectacle of herself" during the recording. The court asked if anyone else would like to be heard on the matter, and Mr. Thornton's attorney responded, although his response is "unintelligible" in the transcript. The court said it didn't notice any such

behavior, and the State said it hadn't "heard any verbal outbursts by her, nothing drawing attention to her." The court overruled the objection and declined to remove the victim's mother from the courtroom: "[S]ince I have already given a warning, until unless [sic] I notice the jurors making some kind of contact or react in some way, I am not going to excuse her. . . . When I see [disruptive behavior], I will address it again. But I've already addressed it."

The next day, the medical examiner, Pamela Ferreira, MD, testified about the autopsy she performed on Mr. Brockington. Her testimony included descriptions and discussions of several photos that she took during the autopsy. Before the State introduced the first photo, the court warned the public that they should step out if they felt uncomfortable listening to Dr. Ferreira's testimony:

> If for any reason there is somebody in the gallery who does not believe that they will be able to handle this testimony, I'm going to suggest and urge you to step out of the courtroom at this time. No disruptions will be permitted. If you cannot handle the testimony, that's perfectly fine, but you need to step out. Thank you.

Soon after this warning, Mr. Jerry's attorney raised another objection, and the court again refused to remove any spectators from the courtroom:

> [MR. JERRY'S ATTORNEY]: Objection.
>
> [COURT]: Come on up.
>
> Yes?
>
> [MR. JERRY'S ATTORNEY]: (Unintelligible).
>
> [COURT]: They're going to cry, so I'm not going to put them out because they cry. I've already made the announcement. But I'm not going to allow them to do it excessively. But to say they cannot move, I'm not going to do that.

Mr. Clark's attorney added that some people had been going in and out of the courtroom during the testimony and that such behavior was "unfair to the defendants." The court agreed that the public should not be exiting and reentering the courtroom frequently during testimony. The court directed the State to tell the victim's family not to do so and that they must remain outside the courtroom for the duration of Dr. Ferreira's testimony if they couldn't handle it. Mr. Thornton's attorney joined in the objection. The court then reiterated that it was sustaining the objection as to the family going in and out of the courtroom and overruling the objection as to counsel's request to remove the family from the courtroom.

1. Messrs. Jerry and Thornton preserved this issue for appeal.

As a threshold matter, the State claims that neither Mr. Jerry nor Mr. Thornton preserved this issue. We disagree.

Ordinarily, an issue must "plainly appear[] by the record to have been raised in or decided by the trial court" for it to be eligible for appellate review. Md. Rule 8-131(a). In trials with multiple defendants, each must lodge their own objections; they cannot, in most cases, rely on a co-defendant's objection to preserve an issue for appeal. *See Osburn v. State*, 301 Md. 250, 253 (1984) (declining to address merits of claim that State made erroneous statement during closing argument because co-defendant objected, but appellant did not); *Holt v. State*, 129 Md. App. 194, 210 (1999) ("When one co-defendant objects, but the other does not, the latter has not preserved the issue for appellate review.");

Williams v. State, 216 Md. App. 235, 254 (2014) (co-defendants must lodge their own objections or expressly join other co-defendants' objections to preserve issue for appeal).

In some cases, however, when the objecting attorney indicates that the objection applies to all defendants or the trial judge indicates that its ruling applies to all defendants, one defendant's objection may preserve the issue for another who didn't object. *See, e.g.*, *Hall v. State*, 233 Md. App. 118, 130–31 (2017) (co-defendant preserved issue for appellant because co-defendant indicated to trial judge that their position applied to defense as a whole, State "included the entire defense" when it raised its objection, and all three defendants "were bound by the same rulings" on the issue); *Bundy v. State*, 334 Md. 131, 146–47 (1994) (co-defendant's objection preserved issue for appellant because trial judge "acknowledge[d] that the codefendant's objection also benefited [the appellant]," and "the manner in which the trial judge summarily overruled the objection . . . adequately reflect[ed] that he assumed the objection was made on behalf of both defendants").

We are satisfied here that the objections raised by Messrs. Jerry and Thornton preserve this issue for appeal. Mr. Thornton objected or joined another attorney's objection to the disturbances on all three occasions. Although his objections were sometimes "unintelligible," the surrounding conversations provided enough context for us to understand that Mr. Thornton was objecting to the spectators' behavior. Despite the less-than-perfect record, Mr. Thornton preserved this issue.

Unlike Mr. Thornton, Mr. Jerry objected only after the third disturbance (of the three noted above—there were others that did not involve objections). Mr. Jerry's objection was

"unintelligible," but the court's response provides enough context to conclude that he objected to the spectators being overtly emotional. We also are satisfied that Mr. Jerry's single objection, raised only after the third disturbance, preserved the overarching issue: that the court refused defense counsels' requests to remove disruptive members of the gallery. We reach this conclusion due to the particular context of the disturbances and objections. In this context, the court's rulings, which implicated the co-defendants' rights to a fair (joint) trial, applied equally to all four defendants regardless of who objected or to whom the court directed its ruling. *See Hall*, 233 Md. App. at 130–31 (preserved in part because all co-defendants were "bound by the same rulings" on the issue, and they "were left with no other option but to comply with those rulings"). There was no significant difference between the three incidents (*i.e.*, of the three disruptions involving objections, no one disruption was more egregious or influential than the others). And no specifics about any one incident drives our holding on this issue. We view this issue less as three separate incidents requiring three separate analyses—although such parsing may be necessary in another case with different facts—and more as one overriding issue that happened to arise more than once in similar situations and with similar results.

Finally, we are satisfied that this conclusion conforms with the purpose of Rule 8-131(a): to "'ensure fairness for all parties in a case and to promote the orderly administration of law.'" *Conyers v. State*, 367 Md. 571, 594 (2002) (*quoting State v. Bell*, 334 Md. 178, 189 (1994)). The parties in this case had ample opportunity to litigate this issue and the court was able to address this issue during the trial more than once. Far from

sandbagging the State or the circuit court on appeal, the issue plainly was raised in and decided by the circuit court, as Rule 8-131(a) requires. Messrs. Jerry and Thornton preserved this issue for our review.

2. The court did not abuse its discretion when it refused to remove the emotional spectators from the courtroom.

Now to the merits. Messrs. Jerry and Thornton argue that the public's "displays, demonstrations, and emotional outbursts" in the courtroom violated their rights to a fair trial because the behavior was directed at, and evoked reactions from, the jury. They contend that the court abused its discretion when it allowed the emotional spectators to remain in the courtroom and, in turn, failed to correct the violation. The State argues in response that "the court's finding of a middle ground was a proper exercise of its discretion," and that we should "defer to the trial court's assessment of what was happening and the best way to address it." We see no abuse of discretion in the circuit court's rulings on this issue.

Generally, "[t]he conduct of criminal trials falls within the sound discretion of the trial judge." *Hunt v. State*, 312 Md. 494, 500 (1988), *aff'd*, 321 Md. 387 (1990); *see also* Jacob A. Stein, *Trial Handbook for Maryland Lawyers* § 2:7, Westlaw (3d ed. database updated Nov. 2024) ("A large measure of discretion must necessarily reside in the court" to manage the conduct of the proceedings.); *Calder v. Levi*, 168 Md. 260, 274 (1935) (trial court must have discretion to "maintain order and assure propriety in the conduct of legal proceedings"). Deference to the trial court's management of its proceedings is "especially appropriate in cases involving emotional displays or outbursts by members of a victim's

family." *Griffin v. State*, 192 Md. App. 518, 551 (2010), *rev'd on other grounds*, 419 Md. 343 (2011). After all, "emotional responses in a courtroom are not unusual, especially in criminal trials," and "the trial judge is in the best position to" determine whether an emotional outburst may have had a prejudicial effect on the jury. *Hunt*, 312 Md. at 501–02.

Messrs. Jerry and Thornton rely on *Parham v. State*, 79 Md. App. 152 (1989), and *Malik v. State*, 152 Md. App. 305 (2003)—both of which involved motions for mistrial following disruptions from gallery members—to argue that the court abused its discretion in the way it handled the outbursts in this case. In *Parham*, Mr. Parham was testifying in his own defense when the victim's mother shouted from the gallery, "Every time you beat my daughter's behind, that is how many times you went [to rehab]." 79 Md. App. at 157. Mr. Parham moved for a mistrial. *Id.* The trial judge denied the motion, instructed the jury to disregard that comment, and reminded the jury that they must reach a decision "based solely on the evidence . . . ." *Id.* at 157–58. Mr. Parham appealed, claiming that the trial court's instructions were not enough to cure the prejudice that resulted from the outburst. *Id.* at 158. We held that the court didn't abuse its discretion in denying the motion for a mistrial:

> [N]either the trial judge nor counsel was in the position to anticipate the outburst in this case. The witnesses had been sequestered and no one was aware that the victim's mother would react as she did during appellant's testimony. The trial judge acknowledged the outburst, assessed its impact upon the jury, and gave curative instructions. Appellant did not request any alternative relief to a mistrial, such as inquiry of the jury to learn if any of them did know what was said. The

> trial judge was in the best position to evaluate any prejudicial effect, and we defer to her assessment. Thus, we find no clear showing of prejudice and no abuse of discretion in the denial of the mistrial.

Id.

In *Malik*, one of the State's witnesses said to Mr. Malik, "you didn't have to put me through this. You put me through this," then left the courtroom crying and shaking. 152 Md. App. at 326–27. Mr. Malik moved for a mistrial. *Id.* at 327. The court denied the motion and gave a curative instruction: "Members of the jury, please disregard anything that the witness may have said or done after she left the witness stand." *Id.* at 327 n.11. The next day, another witness for the State became emotional while on the stand and spoke hostilely to Mr. Malik directly. *Id.* at 327. Mr. Malik moved for a mistrial again. *Id.* The court denied the motion, *id.*, and instructed the jury that they should ignore the outburst and that it was not evidence. *Id.* at 328 n.12. We affirmed the circuit court's rulings on appeal, holding that "the curative instructions were a reasonable and proper way to deal with the outbursts." *Id.* at 329.

Messrs. Jerry and Thornton argue that this case is distinguishable from *Parham* and *Malik* because here they sought removal of the disruptive spectators, not a mistrial; the disruptions started before trial and occurred more frequently than in *Parham* or *Malik*; the court's "sole curative instruction" was ineffective; and there is evidence that the outbursts distracted the jury. We are unpersuaded, however, that the differences in this case change the outcome from that in *Parham* or *Malik*.

First, our review of the court's ruling remains deferential even though the ruling here pertained to a request to remove disruptive gallery members rather than a motion for mistrial. Trial courts "must exercise considerable discretion in excluding family members or other members of the public from the courtroom," and that discretion "should be exercised sparingly." *Hunt*, 312 Md. at 502–03. Likewise, "motions for mistrial, based on the presence of a member of the victim's family, should only be granted under urgent or very extraordinary and striking circumstances," but the court's ruling on such a motion "will not be disturbed absent a clear showing of prejudice to the defendant." *Id.* at 503. The court has discretion both to handle a disruption and to grant or deny a motion for mistrial based on disturbances after considering the potential prejudicial impact. *Id.* at 501–03. Our review of the court's ruling here, then, is not so different from our review of a motion for a mistrial based on similar circumstances.

Second, the record is unclear about the impact of each disruption. There is no evidence aside from defense counsel's own comments, which in some instances contradicted the State's and the court's observations, demonstrating that the jury noticed any disruptions let alone felt swayed by the gallery members' behavior. Additionally, defense counsel did not ask the court to *voir dire* the jury to see if they noticed any emotional outbursts or felt influenced by such behavior. *See Parham*, 79 Md. App. at 158 (noting that appellant didn't ask trial court to *voir dire* jury to see if they heard what spectator said and that "trial judge was in the best position to evaluate any prejudicial effect").

It is the parties' responsibility to create a record "so that the appellate court may easily comprehend what is being complained of on appeal." Lynn McLain, *Maryland Evidence, State & Federal* § 103.21, Westlaw (database updated Aug. 2024); *see also Fields v. State*, 172 Md. App. 496, 513 (2007) ("An appellant has the burden of producing a record to rebut the general presumption that a trial court's actions are correct."). In some instances, an appellant's failure to create an adequate record will prevent us from reviewing their issue on appeal, *see, e.g.*, *Hunt*, 312 Md. at 507–08 (Court "unable to determine whether [appellant] suffered any prejudice" from guards accompanying appellant to bench conferences during trial because record was "silent as to what actually transpired" during bench conferences and unclear as to whether officers did in fact accompany appellant); *Holt*, 129 Md. App. at 211 (Court couldn't "undertake meaningful review of the [trial] court's ruling" because appellants didn't include trial court's written opinion on the subject motion in the record on appeal), but that's not the case here. Although imperfect, the record is sufficient for us to understand the parties' contentions. And in this context, we can defer to the trial court's assessment of the disruptions and its responses to each situation without disposing of this issue for lack of an adequate record. *See Parham*, 79 Md. App. at 158 (deferring to trial court's assessment because there was no inquiry into whether jury heard spectator's comments); *Hunt*, 312 Md. at 501–02 (deferring to trial court's decision not to grant mistrial because courtroom disruption not preserved in the record).

Finally, the relative frequency of the disruptions in this case doesn't sway our analysis, particularly when weighed against the seemingly minor nature of the disruptions

as compared to the outbursts in *Parham* and *Malik*. *See Parham*, 79 Md. App. at 157; *Malik*, 152 Md. App. at 326–27. Moreover, when closing the courtroom later in the trial, the court mentioned multiple other incidents or disturbances that influenced its decision but made no mention of the three disruptions underlying this argument. Again, we defer to the circuit court's assessments of each disruption. On this record, we cannot conclude that the number of emotional outbursts affected the conduct and fairness of the trial. At bottom, the circuit court did not abuse its discretion when it refused to remove emotional spectators from the courtroom.

B. The Court Did Not Abuse Its Discretion When It Closed The Courtroom During Jury Deliberations And Limited Attendance During The Verdict Reading Because Both Closures Were *De Minimis*.

Next, Messrs. Dunbar, Jerry, and Thornton all argue that the court abused its discretion by closing the courtroom to the public during jury deliberations and then allowing all six of the victim's family members, but only two family members per defendant, back into the courtroom for the reading of the verdict. Mr. Thornton contends that the court barred members of the public from entering the courtroom during two "critical stages" of the trial—jury deliberations (including the court's response to jury notes) and the reading of the jury's verdict. All three appellants claim this *sua sponte* action by the court violated their constitutional right to a public trial because it was not a *de minimis* response to the disruptions. Messrs. Jerry and Thornton argue further that the court's decision to close the courtroom constituted structural error that requires reversal whether or not they can establish prejudice.

The State responds that none of the appellants preserved their claim about the court's decision to limit attendance for the reading of the verdict. As for the closure during jury deliberations, the State asks us to adopt its position that the Sixth Amendment right to a public trial does not apply to the trial court's consideration of jury notes. Alternatively, the State argues that the court exercised its discretion soundly when it closed the courtroom due to concerns regarding space and the previous conduct of certain spectators. We hold that both closures qualified as *de minimis* restrictions on the right to a public trial.

The Sixth Amendment of the United States Constitution guarantees all criminal defendants the right to a public trial. U.S. Const. amend. VI. As the Supreme Court of the United States has emphasized repeatedly, this guarantee is a crucial component of our judicial system that is rooted in fairness and accountability. *See, e.g.*, *In re Oliver*, 333 U.S. 257, 270 (1948) ("[T]he guarantee [to a public trial] has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power."); *Press-Enterprise Co. v. Superior Ct. of Cal.*, 464 U.S. 501, 508 (1984) ("Openness . . . enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system."); *Waller v. Georgia*, 467 U.S. 39, 46 (1984) ("In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages

perjury."). "Consequently, criminal trials are to be open to the public as a matter of course . . . ." *Robinson v. State*, 410 Md. 91, 102 (2009).

The right to a public trial, however, is not absolute. As we explained in *Walker v. State*, 125 Md. App. 48 (1999), other interests may take precedence over the defendant's right to a public trial to the extent that a partial or total closure of the courtroom may become necessary:

> The Sixth Amendment does not require a court to forfeit its legitimate and substantial interest in maintaining security and order in the courtroom. To the contrary, prophylactic measures, including closure, may be warranted under some circumstances, in order to maintain order, to preserve the dignity of the court, and to meet the State's interests in safeguarding witnesses and protecting confidentiality.

Id. at 69; *see also Waller*, 467 U.S. at 45 ("[T]he right to an open trial may give way . . . [to] the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information."). This is the exception rather than the norm, however, and "the balance of interests must be struck with special care." *Waller*, 467 U.S. at 45. As our Supreme Court warned in *Robinson*, "any closure of the courtroom for even part of the trial and only affecting some of the public must be done with great caution." 410 Md. at 102.

Due to the nature and significance of a defendant's right to a public trial, a violation of this right—such as an unjustified courtroom closure—is considered a "structural error," and the defendant need not prove prejudice to obtain relief. *Campbell v. State*, 240 Md. App. 428, 441 (2019) ("Because a public trial is a constitutional guarantee that is essential to the 'framework of any criminal trial[,]' the Supreme Court has deemed a violation of

this right to be a structural error that requires 'automatic reversal' when properly preserved and raised on direct appeal." (*quoting Weaver v. Massachusetts*, 582 U.S. 286, 295, 299 (2017))). Additionally, as a structural error, the deprivation of a defendant's constitutional right to a public trial cannot be harmless error. *Watters v. State*, 328 Md. 38, 48 (1992) (*citing Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). In some cases, however, a courtroom closure can be "*de minimis*," or "'too trivial' to constitute a violation of the Sixth Amendment right to a public trial." *Campbell*, 240 Md. App. at 442 (*quoting Gibbons v. Savage*, 555 F.3d 112, 121 (2d Cir. 2009)). *De minimis* closures are "undeserving of constitutional protection," and therefore do not "carry[] with [them] a presumption of prejudice to the defendant." *Watters*, 328 Md. at 46.

To determine whether a courtroom closure was *de minimis*, we consider three factors: (1) "the length of the closure"; (2) "the significance of the proceedings that took place while the courtroom was closed"; and (3) "the scope of the closure, *i.e.*, whether it was a total or partial closure." *Kelly v. State*, 195 Md. App. 403, 421–22 (2010). In *Watters*, for example, the Court held that a bailiff's unilateral decision to close a courtroom to the press, the public, and the appellant's family during the first morning of *voir dire* was not *de minimis* because the closure spanned an entire morning of trial, the public missed *voir dire* and the selection and swearing in of the jury, and the bailiff excluded the public even though some seating was available. 328 Md. at 42, 49; *see also Campbell*, 240 Md. App. at 458 (closure held not *de minimis* where court excluded appellant's family for three to three-and-a-half hours during part of *voir dire* and all of selection and swearing in of jury).

In *Kelly*, on the other hand, we distinguished *Watters* and held that a closure during part of *voir dire* qualified as *de minimis*. 195 Md. App. at 427. There, a sheriff excluded the appellant's family from the courtroom during part of *voir dire* because there was not enough seating for the prospective jurors. *Id.* at 415. Defense counsel learned of the closure and moved for a mistrial. *Id.* at 413–14. In denying the mistrial, the court explained that the sheriff excluded spectators due to space limitations: "a couple of jurors . . . were standing throughout [*voir dire*]," and the court "had no place for anybody else in the courtroom." *Id.* at 415. The court also noted that the closure lasted only a few hours in the morning and that the family was not excluded during the afternoon session (though it was unclear whether the family knew they could attend in the afternoon). *Id.* at 416. Furthermore, unlike in *Watters*, where the public missed the entire *voir dire*, selection, and swearing in process, the individuals excluded from the courtroom in *Kelly* missed only a portion of *voir dire*, much of which "involved questioning of individual jurors at the bench, a procedure that typically cannot be heard by spectators in the courtroom." *Id.* at 426. Finally, the closure was partial—limited to the appellant's family, according to the record—unlike the total closure of the courtroom in *Watters*. *Id.* at 428.

1. The total closure during jury deliberations was de minimis*.*

The *first* closure at issue in this case occurred during jury deliberations. On the twelfth day of trial, the court received a jury note at 2:04 p.m.—about an hour after the court dismissed the jury to have lunch and then begin deliberations—stating that one of the jurors had spoken with Mr. Clark's father during the lunch recess. The court said it no

longer was "comfortable with the public being in this trial or observing it anymore," and closed the courtroom for the duration of jury deliberations:

> This is basically the third incident that is disturbing to this Court that has occurred during the course of this trial. Earlier in the trial, the Court learned that someone had been taking photographs inside of the courtroom.
>
> The second incident the Court was made aware of was the incident that occurred I believe yesterday between family or family members, I don't know, of the victim or victims. And then the Court also learned the same day two individuals approached two other individuals who were in this courtroom watching the trial. And then I hear about this [brief exchange between a juror and Mr. Clark's father]. I am not, for those reasons, comfortable with the public being in this trial or observing it any more. I don't want the jurors to feel that they can not deliberate freely. Every juror has said that they can be fair and impartial, but the Court does not want to impose any (unintelligible). For those reasons, the Court is not going to allow the public back until it's time to hear the verdict.

The court recessed at 3:03 p.m., then reconvened later to hear objections from all four defendants. The court then *voir dired* each juror at the bench for the second time (the first time occurred before the court's closure order). The court asked each juror if they had any "unusual discussions" since they returned to the jury room. All the jurors said "no," and they returned to the jury room at 4:32 p.m. The court then discussed scheduling matters with the parties and adjourned at 5:05 p.m. Even if we don't account for a break between the time of recess (3:03 p.m.) and the time of reconvening (unknown), the court's second round of *voir dire*, which occurred at the bench, likely lasted no more than one-and-a-half hours. Combined with the subsequent thirty-minute scheduling conversation, the public

missed about two hours of proceedings, the bulk of which they would not have been able to hear even if they had been in the courtroom.

On the next day—the first full day of jury deliberations—the court received a jury note at 3:38 p.m. about scheduling. The court brought the jury in at 4:13 p.m. to inform them about a change in the courtroom for the remainder of the trial, then adjourned at 4:15 p.m. All told, this discussion likely lasted approximately thirty to forty-five minutes from the time the court received the note to the time of adjournment.

On the second full day of deliberations, the court received a note at 2:20 p.m. stating that the jury had reached unanimous verdicts on all the charges except the second-degree murder charges for three of the four defendants. The jury asked if the lack of unanimity on those three charges would affect the other verdicts. The court conferred with the parties then wrote the following response to the jury: "Your unanimous verdicts are not impacted by the undecided counts. You may continue to deliberate on the undecided counts." The court recessed at 3:16 p.m. At 3:59 p.m., the court received a second note, stating that the jury remained deadlocked on three charges and would like to end deliberations for the day. The court again conferred with the parties. The court then brought the jury in and repeated Maryland Criminal Pattern Jury Instruction 2:01, which it had given a few days earlier in its initial instructions:

> 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 your deliberations, do not hesitate to re-examine 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.

The court excused the jury at 4:30 p.m. and adjourned at 4:35 p.m. In total, the court was on the record for approximately one-and-a-half hours.

The next day, the court received a final note at 12:05 p.m. explaining that the jury remained deadlocked on two charges specific to Mr. Dunbar but had reached a unanimous verdict on all other charges. The State asked the court to accept the verdicts as to Messrs. Clark, Jerry, and Thornton; accept a partial verdict as to Mr. Dunbar; and declare a mistrial as to the two deadlocked charges. Mr. Dunbar moved for a mistrial as to all charges brought against him. Ultimately, the court accepted the unanimous verdicts and declared a mistrial by manifest necessity as to the two charges on which the jury remained deadlocked. The court brought the jury in at 1:03 p.m. for the reading of the verdict. All told, this discussion lasted approximately one hour, bringing the grand total of on-the-record proceedings that occurred during jury deliberations to about five hours.

Based on this temporal breakdown, we conclude that the *first* factor of the *de minimis* analysis—the length of the closure—is neutral. *Kelly* is informative. In that case, we explained that although "the length of time, by itself, is not dispositive, courts have found that a courtroom closure of less than an hour was *de minimis*" and that a closure "for an entire day or longer" was not. *Kelly*, 195 Md. App. at 422–23. We determined that the

two-to-three-hour closure in *Kelly* was "not extensive, but . . . clearly not inconsequential" and that it fell "within the time frame in which courts have reached conflicting results." *Id.* at 427. As a result, this factor did not strongly support or oppose a *de minimis* conclusion, and we found it necessary to rely on the second and third factors to determine whether the closure qualified as *de minimis*. *Id.*

We reach the same conclusion here. The public in this case missed a total of about five hours of on-the-record proceedings across the three days of jury deliberations. As in *Kelly*, this amount of time "falls within the time frame in which courts have reached conflicting results" on this factor. *Id.* Although this Court has determined that a timeframe as short as three to three-and-a-half hours was not *de minimis*, we reached that conclusion based on factual distinctions and our analyses of the second and third factors. *See Campbell*, 240 Md. App. at 449 (three to three-and-one-half-hour closure held not *de minimis*, and fact that closure spanned part of *voir dire* and all of jury selection and swearing in was "most significant fact" distinguishing *Campbell* from *Kelly*). As we explain below, our analysis of the significance of the proceedings leads us to conclude that this case is more like *Kelly* than *Watters* or *Campbell*. Therefore, this factor weighs neither for nor against a *de minimis* determination.

The *second* factor—the significance of the proceedings—weighs in favor of a *de minimis* finding. About one-and-a-half hours of the five hours that the public missed occurred at the bench (the second *voir dire* of the jury) and outside the hearing of the public had they been in attendance, so the public missed "'nothing of significance'" during that

portion of the proceedings. *See, e.g.*, *Kelly*, 195 Md. App. at 426 (closure held *de minimis* partly because spectators excluded during *voir dire* wouldn't have heard much of what occurred, as the court questioned jurors at the bench); *Gibbons*, 555 F.3d at 121 (closure held *de minimis* partly because court interviewed jurors in adjacent room, so spectators excluded from *voir dire* missed "'nothing of significance'"). Another hour or so of the proceedings pertained solely to scheduling, a matter that the judge has discretion to handle even in the absence of the defendants. *See* Md. Rule 4-326(d)(2)(B) (judge determines whether note pertains to the case, and if it doesn't, "the judge may respond as the judge deems appropriate"); Md. Rule 4-311(c) ("The court, either before or after submission of the case to the jury, may permit the jurors to separate . . . ."); Md. Code, (1974, 2020 Repl. Vol.), § 8-422 of the Courts & Judicial Proceedings Article ("At any time before or after submission of a case to a jury, a trial judge may allow the jury to separate . . . ."). And another thirty to forty-five minutes was spent discussing and then delivering, without objection, an instruction that the court had given days earlier while the public was in attendance.

The only matter of significance that occurred during the closure was Mr. Dunbar's motion for a mistrial. But before Mr. Dunbar made this motion, at least one spectator was present and speaking with the State and the court about how many members of the victim's family would be attending the verdict reading. This seems to indicate that the court had lifted its closure order by then, but nothing else in the record suggests the same or clarifies exactly when the court allowed the spectators to return to the courtroom. Even if we

assume, though, that the courtroom was closed at that time, the spectators who attended the verdict reading heard the court's decision on Mr. Dunbar's verdict when, after the jury confirmed that they didn't reach a unanimous verdict on two of his counts, the court ruled that it would accept a partial verdict and declare a mistrial on the deadlocked counts. Aside from Mr. Dunbar's motion, the parties made no objections during the closed proceedings, and the court made no other decisions without the consent of all the parties. *See Gibbons*, 555 F.3d at 121 (public missed "nothing of significance" during closed *voir dire* where court didn't excuse any prospective jurors without both parties' consent, and parties didn't make peremptory challenges or raise objections).

Finally, although the *third* factor weighs against a *de minimis* finding because this was a total closure of the courtroom, we are persuaded that the overall lack of significance in the proceedings carries the analysis here. In concluding that this closure was *de minimis*, however, we do not adopt the State's proposed categorical rule that closures during jury deliberations never implicate a defendant's Sixth Amendment right to a public trial. Each closure must be analyzed in context and any potential infringement on a defendant's constitutional rights considered on its own merits.

2. The partial closure during the verdict reading was de minimis.

The *second* closure at issue occurred during the verdict reading. At the start of the first full day of jury deliberations, the court stated its intention to conduct the verdict reading in segments due to space limitations and earlier disruptions:

> [W]hen the jury reaches a verdict, I'm not bringing everybody up at the same [time]. I'm bringing one co-defendant up at a

> time. When that co-defendant is brought up, their respective family members and the victims will be in the courtroom. After I read the verdict, the verdict is read for that defendant, they will go downstairs, and we'll bring up the other co-defendants one by one until the verdicts are read. My courtroom cannot accommodate all the families, and given the prior incidents, it's too close for me to take that risk, and I'm not going to do it.

The parties did not object to this plan.

The court modified its ruling on the final day of deliberations. Rather than bringing the defendants and their families in one at a time, the court decided to bring all the defendants in at once but limit the number of the defendants' family members who could attend the verdict reading:

> While [Mr. Dunbar confers with his attorney on the final jury note], I've spoken with Lieutenant Spencer and the deputy. I will allow two people from each family so that I can read the verdicts all at one time, and that's for all — that includes the victim's family, but two people from each Defendant's family. Do you all know who's all here for your clients?

The court allowed counsel for Messrs. Clark, Jerry, and Thornton to contact their respective clients' families while Mr. Dunbar conferred with his attorney on the two deadlocked charges. The State then asked the court to clarify its ruling as to the victim's family and discussed the number of family members who would be attending:

> [STATE]: I'm sorry, Your Honor. You sort of dropped off a little bit. Did you say that you're not holding the victim's family to two people, or you are?
>
> [COURT]: I'm not holding the victim's family to two people.
>
> [STATE]: Okay.
>
> [COURT]: Two people for each Defendant's family because there's four Defendants.
>
> [STATE]: Yes, Your Honor. Thank you.

> [COURT]: The Court can only accommodate forty-five basically, and so I have eight corrections officers, eight counsel, so I'm just — [prosecutor], how many people are with the victim's family?
>
> [STATE]: I think there are six. I might be off by one or two.
>
> [COURT]: Okay. I'm sorry —
>
> [STATE]: Is there somebody that can stay outside with the five year old?
>
> [COURT]: I don't allow children in the courtroom.
>
> [UNIDENTIFIED SPEAKER]: That is going to be me . . . .
>
> [COURT]: Yep. Nope.
>
> [STATE]: So, it sounds like there should be five of them coming in.
>
> [COURT]: Okay.
>
> [UNIDENTIFIED SPEAKER]: Six, miss.
>
> [STATE]: Well, we need one to stay out there with the five year old.

All four defendants noted objections to the partial closure. Mr. Dunbar's attorney noted his "continuing argument for Mr. Dunbar and his family being allowed" to attend the verdict reading. Mr. Thornton's attorney then stated, "on behalf of Mr. Thornton, same objection, at the Court's order." And Mr. Jerry's attorney added "[s]ame for Mr. Jerry, Your Honor, same objection. Continuing objection to the limit to — well, the closing of the courtroom, generally, and then the limited number of family members allowed . . . ." The court then reiterated its reasoning for the attendance limitations:

> As to the, I guess, Counsel's reference to the fact that I'm allowing the victim's family, I guess, supporters to come in, and I understand there are six of them. There are four Defendants, and so the total number of people would be eight of them, so the Court is trying to be even-handed there. However, this Court's capacity is forty-five, not 120, and so

> I'm not going to for the sake of space, and given the previous conflicts that the Court has already put on the record, I'm not satisfied or comfortable that such a conflict will not reoccur, and to minimize that, as well as the Court's concern for the jury's safety, the Court is not going to allow more than that number of people in the courtroom.

As a threshold matter, we hold that Messrs. Dunbar, Jerry, and Thornton all preserved this issue for review. The appellants each lodged their own objections to the court's partial closure order and the court understood them that way. *See* Md. Rule 8-131(a); *see also* Md. Rule 4-323(c) (To make a proper objection, "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.").

On the merits, we hold that this closure qualified as a *de minimis* closure as well. With regard to the length of the closure, the jury entered the courtroom at 1:03 p.m. for the reading of the verdict; the courtroom clerk read and confirmed the jury's verdict; the court heard objections at the bench; and the court dismissed the jury from service at 1:32 p.m. The court then discussed the scheduling of the sentencing hearings with the parties before adjourning at 1:43 p.m. All told, the verdict reading lasted approximately thirty minutes. Even if the closure remained in effect during the scheduling discussion that followed the verdict reading, the time increases to just forty minutes. This amount of time weighs in favor of a *de minimis* conclusion. *See Kelly*, 195 Md. App. at 422 (generally, closure of less than one hour is *de minimis*). As to the significance of the proceedings, the verdict reading is an important part of trial that must occur in "open court." Md. Rule 4-327(a). Some courts have said explicitly that it is a "critical stage[] of a criminal trial," *see Siverson*

v. O'Leary, 764 F.2d 1208, 1214 (7th Cir. 1985) (referring to defendant's right to effective counsel), and we don't dispute that notion here. With regard to the scope of the closure, though, this was only a partial closure, because the court excluded some but not all the defendants' family members from the courtroom. So, despite the significance of the proceedings involved, the limited nature of this closure both in time and scope makes it *de minimis* overall. *See Kelly*, 195 Md. App. at 427–29 (partial closure during stage of trial (*voir dire*) was *de minimis* partly because it was limited in time (few hours) and scope (only appellant's family was excluded)).

We hold that both closures were *de minimis* and that neither implicated Messrs. Dunbar's, Jerry's, or Thornton's right to a public trial.

C. It Was Plain Error To Allow A Firearms Expert To Conclude That Certain Projectiles Were Fired From Certain Weapons Because This Testimony Violated *Abruquah*, And It Affected The Outcome And Fairness Of The Trial.

Next, Messrs. Dunbar and Thornton argue that the court committed plain error when it allowed Mr. Monkres to testify that some of the recovered projectiles were fired with specific weapons. They contend that Mr. Monkres's testimony is prohibited under the reasoning of the Maryland Supreme Court's ruling in *Abruquah v. State*, 483 Md. 637 (2023), an opinion the Court issued after their trial but before the resolution of their direct appeals. They argue here that this renders the court's decision to admit Mr. Monkres's testimony plain error.

In response, the State argues that this claim is not appropriate for plain error review. Alternatively, the State claims that plain error review is unwarranted in this case even if

Messrs. Dunbar and Thornton satisfied the usual elements guiding our discretion to exercise plain error review because Messrs. Dunbar's and Thornton's position is "unfair" in light of the anti-sandbagging purpose of Md. Rule 8-131(a) and the limited nature of *Abruquah*'s holding. We disagree and conclude that Messrs. Dunbar and Thornton have satisfied the plain error doctrine and that reversal is warranted.

Rule 8-131(a) restricts appellate review ordinarily to issues that the parties had a chance to litigate or that the trial court had a chance to address. Under the plain error doctrine, however, appellate courts have discretion, in limited circumstances, to consider unpreserved claims of error when doing so would not "work an unfair prejudice to the parties or to the court." *Bell*, 334 Md. at 189. Our discretion to consider an unpreserved error isn't subject to a rigid test, but when considering the possibility, appellate courts typically assess the plainness and significance of an unpreserved error in four ways:

> "(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."

Hallowell v. State, 235 Md. App. 484, 505 (2018) (*quoting Newton v. State*, 455 Md. 341, 364 (2017)); *see also United States v. Olano*, 507 U.S. 725, 731–37 (1993) (explaining plain error review framework).

1. This case involves an error that neither Mr. Dunbar nor Mr. Thornton waived.

The *first* plain error consideration seems obvious: an error must exist. *See Hallowell*, 235 Md. App. at 505 (*quoting Newton*, 455 Md. at 364).[5] Messrs. Dunbar and Thornton assert that permitting Mr. Monkres to testify that the recovered projectiles were fired from specific weapons was "improper as a matter of law." The State argues that it's not "'clear or obvious' that the trial court committed an error" because the law on the admissibility of firearm identification evidence was "very much in flux" at the time of the trial and, even after *Abruquah*, the reliability and admissibility of such evidence remains unsettled. Although relevant to the first consideration, this argument goes to the second: whether the error was "plain." As for the first prong, Mr. Monkres's testimony connecting the projectiles to the guns conclusively was exactly the kind of testimony that *Abruquah* prohibits, and admitting that portion of his testimony was error under the holding of that case.

Although the facts are different, the error here mirrors that in *Abruquah*. In that case, police charged Mr. Abruquah with the shooting death of one of his housemates. *Abruquah*, 483 Md. at 649–50. During Mr. Abruquah's first trial, Scott McVeigh, a firearms expert, testified that he had concluded "'to a reasonable degree of scientific certainty'" that the

[5] The error also must be one that the appellant did not waive at trial affirmatively. *Hallowell*, 235 Md. App. at 505 (citation omitted). The parties do not dispute the issue of waiver, so we need not undertake the waiver versus forfeiture portion of this analysis. *See Olano*, 507 U.S. at 732–34 (discussion on waiver and forfeiture); *Savoy v. State*, 420 Md. 232, 240–41 (2011) (same).

projectiles recovered from the victim's body had been fired from the firearm that Mr. Abruquah had admitted was his. *Abruquah v. State*, No. 246, Sept. Term 2014, 2016 WL 7496174, at *3 (Md. App. Dec. 20, 2016). The jury convicted Mr. Abruquah of first-degree murder and a related firearm offense. *Abruquah*, 483 Md. at 650. He appealed, and we reversed and remanded for a new trial on grounds unrelated to Mr. McVeigh's testimony. *See Abruquah*, 2016 WL 7496174, at *1.

Before his next trial, Mr. Abruquah filed a motion *in limine* to exclude Mr. McVeigh's testimony. *Abruquah*, 483 Md. at 650. The circuit court held a hearing to determine whether Mr. McVeigh's testimony was admissible under the *Frye-Reed* "general acceptance" test. *Id.* at 650 n.3; *see also Reed v. State*, 283 Md. 374, 389 (1978) (adopting *Frye* general acceptance test), *overruled by Rochkind v. Stevenson*, 471 Md. 1 (2020). The court decided that "'firearm and toolmark identification [was] still generally accepted and sufficiently reliable,'" but the matching analysis that firearms examiners engage in was too subjective to permit Mr. McVeigh to "'testify to any level of . . . scientific certainty that a suspect weapon matches certain [projectiles].'" *Id.* Despite this ruling, the circuit court, over the defense's objections, allowed Mr. McVeigh to testify at Mr. Abruquah's second trial that certain recovered projectiles "'at some point had been fired from [Mr. Abruquah's firearm].'" *Id.* at 651. The jury convicted Mr. Abruquah of the same offenses. *Id.* Mr. Abruquah appealed, and we remanded the case to the circuit court to determine whether Mr. McVeigh's testimony would still be admissible under the newly adopted *Daubert-Rochkind* standard. *Id.*; *see also Rochkind*, 471 Md. at 38–39 (overruling

Frye-Reed and adopting *Daubert* standard). The circuit court held another hearing and reached the same conclusion it had at the previous *Frye-Reed* hearing. *Abruquah*, 483 Md. at 651–52.

Mr. Abruquah filed another appeal and while it was pending in this Court, the Supreme Court granted his petition for writ of *certiorari*. *Id.* at 652. The Court began with an extensive background on the methodology of firearms identification in which the examiner compares recovered projectiles to test projectiles that are fired from a suspect weapon, then categorizes the recovered projectiles as identified, eliminated, or inconclusive based on their level of similarity with the test projectiles. *Id.* at 653, 656–73. The Court determined that the scientific community criticizes this methodology for, among other things, its lack of specific protocols; issues in accuracy, repeatability, and reproducibility of results; deficiencies in training; subjective nature; and lack of scientific validity. *Id.* at 663–64. The Court then conducted its own *Daubert-Rochkind* analysis using the testimony and studies introduced in the circuit court and concluded that the evidence "did not provide a reliable basis for Mr. McVeigh's unqualified opinion that" certain projectiles recovered from the crime scene were fired from Mr. Abruquah's firearm. *Id.* at 680–97. Ultimately, the Court held that the circuit court abused its discretion by allowing Mr. McVeigh to provide such an opinion, vacated Mr. Abruquah's convictions, and remanded for a new trial. *Id.* at 697–98.

The error in this case was the same as in *Abruquah*. Like the expert in that case, Mr. Monkres used microscopic comparisons to determine whether the projectiles found at the

murder scene matched the test projectiles that he fired from the recovered weapons. He testified that of the projectiles recovered from the murder scene and Mr. Brockington's body, two cartridge cases, one bullet, and two bullet fragments "were fired with" (*i.e.*, matched) the Desert Eagle, and three cartridge cases were fired with the same unknown firearm. The remaining projectiles collected from the murder scene did not match any of the recovered firearms conclusively. He testified further that the five spent cartridge cases found inside the revolver had been fired from that revolver (*i.e.*, the revolver had been fired five times at some point). The defendants didn't request a *Daubert-Rochkind* hearing, nor were they required to. The State didn't submit any evidence establishing the reliability of Mr. Monkres's conclusive testimony, let alone enough evidence to satisfy *Abruquah*. And without evidence sufficient to support the admissibility of this testimony, which we discuss in greater detail below, it was error for the court to allow him to provide this unqualified opinion.

2. The error was "plain."

The *second* question is whether the error was "plain." According to the State, the alleged error in this case was not "plain" because the law on the admissibility of firearms evidence was unsettled at the time of the trial. The State argues further that the alleged error in this case is "subject to reasonable dispute" because *Abruquah* limited its holding to the facts and data established and introduced *in that case* and did not render a final verdict on the admissibility of conclusive firearm identification evidence. We disagree on the first point—the relevant law was settled, at least in Maryland, at the time of the trial in

this case. On the second point, although the holding in *Abruquah* was specific to the facts and data in that case, the result is nonetheless the same in this case.

a. The law was settled at the time of trial.

In *James v. State*, 191 Md. App. 233 (2010), this Court opined that an error is not "plain" for purposes of plain error review unless the error was wrong at the time of the trial. *Id.* at 247. Eight years later, we recognized an exception to this rule: if "'the law at the time of trial was *settled* and clearly contrary to the law at the time of appeal,' [then] 'it is enough that an error [is] "plain" at the time of appellate consideration'" to satisfy this prong of the analysis. *Hallowell*, 235 Md. App. at 505–06 (emphasis added) (*quoting Johnson v. United States*, 520 U.S. 461, 468 (1997)). We adopted the Supreme Court of the United States's "reason[ing] that were the rule otherwise, defense counsel would be obligated to 'inevitably [make] a long and virtually useless laundry list of objections to rulings that were plainly supported by precedent.'" *Id.* at 506 (*quoting Johnson*, 520 U.S. at 468). Although the Supreme Court later held that this exception applies whether the legal question at issue was settled or unsettled at the time of trial, *see Henderson v. United States*, 568 U.S. 266, 279 (2013), Maryland courts have yet to do the same. And the State, contending that the admissibility of firearms identification evidence was unsettled law at the time of the trial in this case, urges us not to adopt *Henderson*'s expansion of the plain error doctrine. We need not reach the *Henderson* question in this case, however, because the law regarding the admissibility of firearms identification evidence was settled at the time of the trial.

Citing our Supreme Court's lengthy discussion of firearms identification evidence in *Abruquah*, the State points out that after two national research councils released reports in 2008 and 2016 criticizing the validity of firearms identification evidence, "'some jurisdictions began to limit the scope of a ballistics expert's testimony.'" 483 Md. at 678 (*quoting Gardner v. United States*, 140 A.3d 1172, 1183 (D.C. 2016)). The Court cited several out-of-state cases in which courts restricted firearms experts' testimonies and, in most cases, prohibited the expert from providing a conclusive, unqualified opinion that certain projectiles matched with certain firearms. *Id.* at 678–79 (citations omitted). Apart from one United States District Court for the District of Maryland case in which the court applied federal law, *see United States v. Willock*, 696 F. Supp. 2d 536, 546–47, 571–74 (D. Md. 2010), *aff'd sub nom.*, *United States v. Mouzone*, 687 F.3d 207 (4th Cir. 2012), none of the cited cases were decided in Maryland or relied on Maryland precedent on the admissibility of firearms identification evidence. And we are not persuaded that the presence of trends in other state and federal jurisdictions by itself unsettles a legal question in our state. Although our courts sometimes look to other jurisdictions for persuasive authority or to find a majority view on a particular issue, the question of whether Maryland law answered a legal question at a specific point in time is not a question we can or should answer using other jurisdictions' opinions on the matter. To conclude that a legal question was unsettled because courts in other jurisdictions were moving toward a new perspective on that issue would put an unnecessary burden on trial attorneys to always know the state of a legal issue in jurisdictions across the country to determine whether that issue is settled

or unsettled in Maryland. In the plain error context, particularly while Maryland has yet to adopt the expanded doctrine under *Henderson*, this would be a heavy burden indeed.

Despite the complicated nature of scrutinizing and admitting expert testimony in trial court, firearms identification evidence, including conclusive testimony matching specific projectiles with specific firearms, was admissible in Maryland at the time of the trial in this case. *See, e.g.*, *Reed*, 283 Md. at 380 (noting "ballistics" as an example of a "generally accepted" scientific discipline); *Fleming v. State*, 194 Md. App. 76, 80, 106–07 (2010) (concluding (in dicta) that circuit court didn't err when it admitted expert testimony matching conclusively the recovered weapon to the "fatal shots"; noting that, despite *Reed*'s age and widespread debate, "courts have consistently found the traditional method [of firearms identification] to be generally accepted within the scientific community"); *Patterson v. State*, 229 Md. App. 630, 639–43 (2016) (rejecting appellant's claim that firearms identification was "junk science" and that he wouldn't have been convicted if he'd been able to introduce studies criticizing it at trial because such science was still generally accepted). Although the general standard for evaluating expert testimony changed when our Supreme Court adopted *Daubert*, *see Rochkind*, 471 Md. at 38–39, the law on the admissibility of firearms identification testimony did not become unsettled solely as a result of this change. *See, e.g.*, *Williams v. State*, 251 Md. App. 523, 548, 552–55 (2021) (firearms expert gave unqualified opinion matching projectiles with weapons at trial; this Court remanded for a *Daubert-Rochkind* hearing; Court commented that it saw no "analytical gap" and no "error in the firearm examiner's testimony that would prevent the

circuit court from admitting the testimony after remand"), *aff'd*, 478 Md. 99 (2022). Having an opportunity to challenge a law or precedent does not make that legal issue unsettled.

b. *Abruquah*'s holding applies to this case.

As to the State's second point, it's true that the Court in *Abruquah* limited its holding to the evidence introduced during the *Frye-Reed* and *Daubert-Rochkind* hearings in that case. *Abruquah*, 483 Md. at 656. And the Court highlighted that it did not consider additional scientific articles that the State had not presented at the hearings, explaining that "[i]f any of those studies materially alters the analysis . . . , they [would] need to be presented in another case." *Id.* at 656 n.6. The State uses this language to assert that because Messrs. Dunbar and Thornton didn't request a *Daubert-Rochkind* hearing, the State had no opportunity to present those additional studies. The State suggests that had such a hearing occurred, it would have submitted evidence sufficient for the court to find Mr. Monkres's conclusory testimony admissible and that, therefore, the error here was "subject to reasonable dispute." We do not believe the lack of a hearing makes this error subject to reasonable dispute.

Again, the law on the admissibility of firearms identification evidence was settled in Maryland at the time of the trial in this case. (*See* Subsection II.C.2.a. of this opinion). That testimony was "generally accepted" and admissible at trial, *see Reed*, 283 Md. at 380; *Fleming*, 194 Md. App. at 106–07; *Patterson*, 229 Md. App. at 639–43; *Williams*, 251 Md. App. at 552–53, and defense counsel was not *required* to request a *Daubert-Rochkind* hearing. Unlike a trial that occurs *after* the Court issued its opinion in *Abruquah*, where

defense counsel is on notice of the inadmissibility of conclusory firearms identification testimony and must request a *Daubert-Rochkind* hearing to challenge its admissibility and preserve that issue for appeal, the trial in this case occurred *before* the Court issued its opinion in *Abruquah*, so defense counsel was not on notice of the potential inadmissibility of such testimony and was free to rely on the fact that it was accepted freely at the time. Defense counsel in this pre-*Abruquah* trial relied on valid precedent that Mr. Monkres's testimony was admissible. The lack of an optional hearing at which the State *may* have submitted evidence sufficient for the circuit court to find Mr. Monkres's testimony admissible even under *Abquruah* does not render the error here "subject to reasonable dispute."

At bottom, the admissibility of firearms identification testimony was settled at the time of this trial, and the admission of Mr. Monkres's unqualified testimony was plain error under *Johnson* and *Hallowell*.

3. The error affected Messrs. Dunbar and Thornton's substantial rights.

The *third* question asks whether the error affected the defendant's substantial rights, or, in other words, affected the outcome of the trial. *Hallowell*, 235 Md. App. at 505 (citation omitted). The State says that in this case, the outcome of the trial would've been the same had the court prohibited Mr. Monkres from providing a conclusive opinion matching the firearms with the cartridge cases. The State suggests that had Mr. Monkres testified that the markings on the projectiles were "'consistent with'" the identified guns

rather than "fired with" those guns, "practically speaking, the jury would [have] likely reach[ed] the same conclusion." We disagree.

Johnson provides a helpful contrast. In that case, Ms. Johnson stood trial for perjury after lying to a grand jury. *Johnson*, 520 U.S. at 463. She had testified that she paid for improvements to her house with cash from her mother when the money in fact came from her boyfriend's drug trafficking activities. *Id.* at 463–64. During her perjury trial, the court, in accordance with the law at the time, concluded that her statements were material and did not submit the question of materiality to a jury. *Id.* at 464. Ms. Johnson didn't object. *Id.* While her case was pending on direct appeal, the law changed to require that the question of materiality go to the jury. *Id.* Ms. Johnson appealed under the plain error doctrine, but the Eleventh Circuit held that "there was overwhelming evidence of materiality and that no reasonable juror could conclude that [Ms.] Johnson's false statements about the source of the money were not material to the grand jury's investigation." *Id.* at 465 (cleaned up). Essentially, it made no difference that the court didn't submit the question to the jury, because the jury likely would've reached the same answer on materiality as the court had. *Id.* The Supreme Court agreed and affirmed. *Id.* at 470.

Unlike *Johnson*, this case lacked "overwhelming" evidence connecting the projectiles recovered at the murder scene to the weapons found at the crash scene. Without Mr. Monkres's testimony, only speculation linked Messrs. Dunbar and Thornton to Mr. Brockington's murder. The security footage couldn't establish this connection because it's impossible to identify any of the six individuals in that video. And the remaining evidence,

if sufficient to connect the defendants to the weapons in the car, didn't connect the weapons (and thus the defendants) to Mr. Brockington's murder. We decline as well to speculate as to whether a jury would find Mr. Monkres's (hypothetical) testimony that the projectiles were *consistent with* certain firearms to be persuasive enough to conclude beyond a reasonable doubt that one or more of the defendants fired a weapon at Mr. Brockington.

Without Mr. Monkres's unqualified opinion linking the recovered projectiles to certain weapons, there is a reasonable possibility that the jury would not have found beyond a reasonable doubt that Messrs. Dunbar or Thornton participated in Mr. Brockington's murder. The error, then, affected Messrs. Dunbar's and Thornton's substantial rights.

4. The error seriously affected the fairness of the trial.

Fourth, and finally, we exercise our discretion to remedy a plain error only if the error "'seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.'" *Hallowell*, 235 Md. App. at 505 (*quoting Newton*, 455 Md. at 364). The State argues that the error in this case doesn't meet this standard because Messrs. Dunbar and Thornton each received a vigorous defense, the State introduced sufficient evidence to warrant a guilty verdict, both had the opportunity but failed to lodge a *Daubert-Rochkind* challenge on the reliability of Mr. Monkres's testimony, and the reliability of Mr. Monkres's testimony was a question best left to the jury.

An error that "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings," *id.* (*quoting Newton*, 455 Md. at 364), is one that "'vitally affects a defendant's right to a fair and impartial trial.'" *Rubin v. State*, 325 Md. 552, 588 (1992)

(*quoting State v. Daughton*, 321 Md. 206, 210–11 (1990), *habeas corpus granted by Rubin v. Gee*, 128 F.Supp.2d 848 (D. Md. 2001), *aff'd*, 292 F.3d 396 (4th Cir. 2002)). In *Hallowell*, for example, the trial court instructed the jury (correctly, at the time) that first-degree assault could serve as a predicate felony for Mr. Hallowell's second-degree felony murder charge. 235 Md. App. at 501. The jury convicted him of second-degree murder and a related firearm offense. *Id.* at 496. The law changed while Mr. Hallowell's direct appeal was pending such that first-degree assault can no longer serve as the predicate offense for second-degree felony murder. *Id.* at 493 (*citing State v. Jones*, 451 Md. 680, 708 (2017)). Although Mr. Hallowell didn't preserve this issue, we held that the erroneous instruction constituted plain error. *Id.* at 506. We determined that the error was plain under *Johnson* and that it affected Mr. Hallowell's substantial rights because "it created the distinct possibility that he was convicted of . . . a 'non-existent crime'" (*i.e.*, second-degree felony murder based on a first-degree assault). *Id.* And we concluded that "the error seriously affected the fairness, integrity or public reputation of judicial proceedings" because we had no way of knowing whether the jury found Mr. Hallowell guilty of second-degree specific-intent murder or second-degree felony murder (the "'non-existent'" crime). *Id.*

Hallowell aids our analysis here. We know the exact crimes of which Messrs. Dunbar and Thornton were convicted, but we don't know whether the jury relied on the connection provided by Mr. Monkres's inadmissible testimony in reaching its decisions. It's not unreasonable to say, as Mr. Thornton argues in his brief, that "[Mr.] Monkres's

testimony was an integral part of the prosecution's evidence against [him]" and the other defendants. Based on our review of the record, Mr. Monkres's testimony played a significant role in connecting the defendants to Mr. Brockington's murder. But that testimony, under these circumstances, is now considered unreliable. *See Abruquah*, 483 Md. at 696. As Mr. Dunbar contends, "it is hard to imagine a more effective means of undermining the fairness, integrity, or public reputation of judicial proceedings than by basing a conviction . . . upon evidence found to be scientifically unsound."

The admission of Mr. Monkres's conclusive testimony matching the recovered projectiles to certain weapons was plain error. It bears emphasizing that this error was neither the fault of the trial judge nor trial counsel, all of whom were following what, at the time, was settled law in Maryland on the admissibility of firearms identification testimony. Under these circumstances, it would disserve the interests of justice to allow this error to go uncorrected, and we reverse Messrs. Dunbar's and Thornton's convictions and remand for further proceedings consistent with this opinion.[6]

D. The Record Supports The Finding That Mr. Dunbar Waived His Right To Testify Knowingly, Intelligently, And Voluntarily.

The *next* issue pertains solely to Mr. Dunbar. He contends that the record fails to establish that he waived his right to testify knowingly, intelligently, and voluntarily. Mr.

[6] Although the jury may have reached a verdict on Messrs. Dunbar's and Thornton's possession-related convictions without relying on Mr. Monkres's expert opinion connecting the weapons to the murder, we decline to speculate about whether Mr. Monkres's testimony affected the jury's decisions on those offenses. And in any event, the State has not argued that any error in admitting Mr. Monkres's testimony was harmless as to any specific convictions, possession-related or not.

Dunbar points to two "ambiguous" answers he provided during the on-the-record waiver colloquy that, he claims, cast doubt on whether his decision to remain silent was constitutionally adequate. He argues the trial court erred by not resolving the ambiguities before finding the waiver to be sufficient.

The State responds that Mr. Dunbar's answers were not ambiguous when viewed in the context of the entire waiver colloquy. The State argues further that the trial court was under no obligation to intervene during the waiver colloquy and that the court found correctly that Mr. Dunbar waived his right to testify knowingly, intelligently, and voluntarily. We conclude that Mr. Dunbar's answers were not ambiguous and that the court did not err in finding his waiver to be constitutionally sufficient.

The Fifth and Sixth Amendments of the United States Constitution guarantee defendants two conflicting yet "inextricably intertwined" rights: (1) the right to testify on their own behalf; and (2) the right to remain silent. *Tilghman v. State*, 117 Md. App. 542, 553–54 (1997); *see also Hamilton v. State*, 79 Md. App. 140, 142–43 (1989) (explaining conflicting nature of right to testify and privilege against self-incrimination). A defendant may waive one of these rights and, inevitably, invoke the other only if they do so "knowingly and intelligently." *Tilghman*, 117 Md. App. at 553. To satisfy this requirement, the defendant, at the time of the waiver, must have had a "'sufficient awareness of the relevant circumstances and likely consequences' that forfeiting his right entails." *Id.* (*quoting Brady v. United States*, 397 U.S. 742, 748 (1970)); *see also Morales v. State*, 325

Md. 330, 335 (1992) ("The decision whether or not to testify . . . must be made with a basic appreciation of what the choice entails.").

Although a trial court must advise a *pro se* criminal defendant of their constitutional rights, the court is not required to do so itself when the defendant is represented by counsel. *Tilghman*, 117 Md. App. at 554. Instead, "Maryland law recognizes a presumption, premised on the permitted inference that attorneys, as officers of the court, 'do as the law and their duty require them,' that a represented defendant has been told of his constitutional rights, by his attorney." *Id.* at 554–55 (*quoting Stevens v. State*, 232 Md. 33, 39 (1963)). Indeed, "the trial court is entitled to assume that counsel has properly advised the defendant about [their right to testify] and the correlative right to remain silent." *Id.* at 555. Only if "it becomes clear to the trial court that a defendant 'does not understand the significance of his election not to testify or the inferences to be drawn therefrom and where the presumption is rebutted,' [must the court] advise a represented defendant of" these rights. *Morales*, 325 Md. at 336 (*quoting Gilliam v. State*, 320 Md. 637, 652–53 (1990)).

Here, with consent from the State and the other defense attorneys, Mr. Thornton's attorney advised all four defendants of their right to testify or remain silent and engaged in short questioning with each of them. While speaking with Mr. Dunbar, the defense attorney asked two questions back-to-back about Mr. Dunbar's state of mind:

> [MR. THORNTON'S ATTORNEY]: Is your mind free and clear? Are you under the influence of any alcohol or narcotics or other substances?
>
> [MR. DUNBAR]: *Yes and no.*

(Emphasis added). Mr. Dunbar's attorney did not object or intervene at the time. Now, Mr. Dunbar claims that his answer was ambiguous and that the court was obligated to ask follow-up questions to clarify the ambiguity.

We disagree. Although this answer might be troubling if Mr. Dunbar had been responding to a single question (*i.e.*, Q: "Is your mind free and clear?" A: "Yes and no."), the structure of his answer follows the structure of the defense attorney's questioning. It's reasonable to conclude that Mr. Dunbar intended to answer "yes" to the first question about the clarity of his mind and "no" to the second question about substance use. To be sure, the best practice is to ask and answer questions one at a time to avoid confusion, but we perceive no ambiguity in this portion of the conversation.

The second question at issue pertained to whether Mr. Dunbar was waiving his right to testify under duress:

> [MR. THORNTON'S ATTORNEY]: Okay. And no one is threatening you, forcing you, or coercing you in any way, shape, or form if you decide not to testify, *is that correct?*
>
> [MR. DUNBAR]: *No.*

(Emphasis added). Mr. Clark answered the same question in this manner, stating "no" despite the added "is that correct" question. Messrs. Jerry and Thornton answered the same question in the affirmative. Neither the defense attorneys nor the court raised concerns about these questions or answers. The court and the parties seemed to understand, as do we, that those who responded "no" answered the substantive question, and those who responded "yes" answered the "is that correct" question. Again, it is best to ask a single

question to avoid this type of confusion, but we are comfortable that everyone, especially the court, understood all the answers.

We note as well that on the following day, each defense attorney, including Mr. Dunbar's, had their clients confirm that they still wished to remain silent. Later that same day, when asked if he had evidence or testimony to present, Mr. Dunbar's attorney reiterated that "Mr. Dunbar wishe[d] to exercise his right not to testify and asked . . . [the court] to advise the jury not to hold that against him." The court had the discretion to presume that Mr. Dunbar's attorney advised him of his right to testify adequately before stating not once but three times that he wished to remain silent. *See Tilghman*, 117 Md. App. at 554–55 (*quoting Stevens*, 232 Md. at 39). We see no error in the court's decision not to interfere during the waiver colloquy, and we conclude that Mr. Dunbar's waiver was constitutionally sufficient.

E. Messrs. Dunbar And Thornton Failed To Preserve A Claim As To Their Convictions For Possession Of An Assault Pistol.

Next, Messrs. Dunbar and Thornton argue that the evidence in this case is insufficient to support their convictions for possession of an assault pistol because the only assault weapon that the evidence linked to Messrs. Dunbar and Thornton was the rifle, which is not an assault *pistol*. The State argues that neither Mr. Dunbar nor Mr. Thornton preserved this claim because they did not argue during trial that the recovered weapons were not assault pistols. We agree that this issue is not preserved.

To preserve a sufficiency claim, a defendant must make a motion for judgment of acquittal at trial and "'argue precisely the ways in which the evidence should be found

wanting and the particular elements of the crime as to which the evidence is deficient.'" *Arthur v. State*, 420 Md. 512, 522 (2011) (*quoting Starr v. State*, 405 Md. 293, 303 (2008)); *see also* Md. Rule 4-324(a) (defendant must "state with particularity all reasons why the motion [for judgment of acquittal] should be granted"). The defendant is limited to the reasons articulated in their motion at trial and may not raise new sufficiency arguments for the first time on appeal. *See Starr*, 405 Md. at 303 (defendants who moved for judgment of acquittal at trial are "not entitled to appellate review of reasons stated for the first time on appeal"); *Poole v. State*, 207 Md. App. 614, 633 (2012) (refusing to consider appellant's sufficiency argument because he didn't include it in his motion for judgment of acquittal at trial).

In this case, Mr. Thornton moved for judgment of acquittal at the close of the State's evidence. He argued, among other things, that the evidence was insufficient to convict him of possession of an assault pistol because "there [was] no evidence that [he] was the individual carrying what appears to be a long gun in" the video of Mr. Brockington's murder. He did not challenge the fact that the State listed the rifle (a type of long gun) as the weapon underlying his charge for possession of an assault pistol. Mr. Thornton renewed his motion at the close of all the evidence. He incorporated his prior arguments and the arguments of the co-defendants, and he added one additional ground unrelated to the assault pistol charge.

Mr. Dunbar also moved for judgment of acquittal at the close of the State's evidence. He incorporated Messrs. Thornton's and Jerry's arguments, both of whom had made their

motions before Mr. Dunbar. Mr. Thornton had argued that he wasn't the one holding the long gun in the video, and Mr. Jerry argued that his DNA was not on the rifle. Mr. Dunbar did not add further argument as to his charge for possession of an assault pistol other than a blanket statement that he "was not found with any weapons." He renewed his motion at the close of all the evidence, incorporating his earlier arguments and those of his co-defendants. None of the defendants raised the issue of whether the rifle qualified as an assault pistol, so neither Mr. Dunbar nor Mr. Thornton incorporated that argument in their motions for judgment of acquittal. This issue is not preserved, and we decline to reach it.

F. The Evidence Is Sufficient To Support Mr. Thornton's Convictions For First-Degree Murder, Conspiracy To Commit Murder, Using A Firearm In A Crime Of Violence, And Conspiracy To Use A Firearm In A Crime Of Violence.

Finally, Mr. Thornton argues that the evidence was insufficient to support his convictions for first-degree murder, conspiracy to commit murder, use of a firearm in a crime a violence, and conspiracy to use a firearm in a crime of violence. Specifically, he contends that the evidence was insufficient to find beyond a reasonable doubt that he acted with premeditation or that there was a conspiratorial agreement between him and another person. The State counters that when viewed in the light most favorable to the State, the evidence admitted at trial was sufficient to find all essential elements of each challenged conviction. We conclude that the evidence was sufficient to support Mr. Thornton's convictions.

The "'critical inquiry'" in a sufficiency analysis "'is whether, after viewing the evidence [and any reasonable inferences supported by the evidence] in the light most

favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Smith v. State*, 415 Md. 174, 184, 185–86 (2010) (*quoting Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). In conducting this analysis, we acknowledge that the jury was in the best position to view the evidence and assess the credibility of the witnesses. *Id.* at 185. We therefore defer to the jury's reasonable inferences, *id.*, and their "ability to choose among differing inferences . . . ." *State v. Manion*, 442 Md. 419, 431 (2015) (*quoting State v. Smith*, 374 Md. 527, 534 (2003)). Our role simply is to "determine whether [those inferences] are supported by the evidence." *Smith*, 415 Md. at 185.

This standard remains the same even though Mr. Thornton's convictions rest solely on circumstantial evidence. *See id.* 185–86 (citations omitted). Although circumstantial evidence must produce more than a "'strong suspicion'" that the defendant committed the subject offense, *id.* at 185 (*quoting Bible v. State*, 411 Md. 138, 157 (2009)), "'generally, proof of guilt [beyond a reasonable doubt] based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.'" *Manion*, 442 Md. at 431–32 (*quoting Smith*, 374 Md. at 534). What matters is that the circumstantial evidence "'afford[s] the basis for an inference of guilt beyond a reasonable doubt.'" *Smith*, 415 Md. at 185 (*quoting Taylor v. State*, 346 Md. 452, 458 (1997)).

In addition, as Mr. Thornton concedes in his brief, all the evidence introduced at trial, including the firearms identification testimony that we have deemed inadmissible

under *Abruquah* (*see* Section D above), must be considered in this sufficiency analysis. *See Emory v. State*, 101 Md. App. 585, 629–30 (1994) (holding that the appellate court must consider the evidence heard by the jury in its sufficiency analysis, even if it was admitted improperly (*citing Lockhart v. Nelson*, 488 U.S. 33 (1988))).

The jury in this case convicted Mr. Thornton of first-degree murder, conspiracy to commit murder, use of a firearm in a crime a violence, conspiracy to use a firearm in a crime of violence, and a few other offenses not challenged in this appeal. As for Mr. Thornton's non-conspiracy-related convictions, to convict him of the use of a firearm in a crime of violence, the jury had to find beyond a reasonable doubt that he used a firearm "in the commission of a crime of violence," in this case, murder in the first degree. Md. Code (2002, 2021 Repl. Vol.), § 4-204(b) of the Criminal Law Article ("CL"); *see also* Md. Code (2003, 2022 Repl. Vol.), § 5-101(c)(11) of the Public Safety Article (listing first-degree murder as a "crime of violence"). To convict him of first-degree murder, the jury had to find beyond a reasonable doubt that he murdered Mr. Brockington deliberately, willfully, and with premeditation. *See* CL § 2-201(a)(1). Mr. Thornton argues only that the evidence failed to establish premeditation. To establish premeditation, the State must prove that the defendant contemplated killing the victim before doing so:

> [For a killing] to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate. It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time. Their existence is discerned from the facts of the case. If the killing results from a choice made as the result of thought, however short the struggle between the

> intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder.

Tichnell v. State, 287 Md. 695, 717–18 (1980) (citations omitted).

As for Mr. Thornton's conspiracy-related convictions, conspiracy to commit murder and to use a firearm in the commission of that murder required the jury to find beyond a reasonable doubt that he and at least one other person agreed to use a firearm to kill Mr. Brockington. *See Mitchell v. State*, 363 Md. 130, 145 (2001) (defining common law conspiracy (citation omitted)). "'The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design.'" *Id.* (*quoting Townes v. State*, 314 Md. 71, 75 (1988)).

The State introduced evidence establishing that Mr. Thornton was in the SUV that crashed that evening and that he may have been the driver of that vehicle. Sergeant Walp, the officer who arrested Mr. Thornton, testified that she saw Mr. Thornton exit the car from the driver's side and that he had the car keys attached to his belt loop, even though he denied being the driver. A reasonable jury could credit Sergeant Walp's testimony, which was corroborated by footage from her body-worn camera. The jury then could conclude from this evidence that Mr. Thornton was the getaway driver and that he was fleeing the scene of the murder. Moreover, as the court instructed, the jury was permitted to consider flight as evidence of consciousness of guilt. *See Thompson v. State*, 393 Md. 291, 303 (2006) ("[F]light may be indicative of a consciousness of guilt by the defendant.").

The State also introduced evidence linking Mr. Thornton to some of the weapons found in the SUV. Officer Merson collected the Desert Eagle from the floor of the front

passenger side of the SUV, next to where Mr. Thornton would have sat as the alleged driver. Ms. Silbaugh, the DNA analyst, concluded that Mr. Thornton's DNA matched the sample from the Desert Eagle and that the match was "971 billion times more probable than a coincidental match to an unrelated individual in the African American population." Although Messrs. Clark's and Dunbar's DNA matched the sample on the Desert Eagle as well, the probabilities of their matches being non-coincidental were much smaller (94.9 thousand times and 37.5 million times more probable, respectively). Ms. Keiter testified that she swabbed two "red-brown stain[s]" on the Desert Eagle and its magazine as well, and that both came back positive for blood. Ms. Silbaugh's report confirmed that Mr. Clark was the "major contributor" to those two samples. The State, however, introduced photos of the SUV, photos of Mr. Clark after the crash, Ms. Silbaugh's report, and testimony from Detective Damestoit indicating that Mr. Clark sustained injuries during the crash and that his blood was on the front passenger airbag. Based on this evidence, a reasonable jury could dismiss these two strong matches as the likely result of Mr. Clark bleeding on the Desert Eagle, which was below his feet in the car. Finally, the State introduced Mr. Monkres's expert testimony that multiple projectiles recovered from the murder scene "were fired with" the Desert Eagle, the weapon that Mr. Thornton's DNA matched.

The State also introduced evidence sufficient for a reasonable jury to find that Mr. Thornton conspired with others to murder Mr. Brockington with the Desert Eagle, which in turn served as evidence of premeditation. *See Mitchell*, 363 Md. at 149 ("[T]he kind of awareness and reflection necessary to achieve the unity of purpose and design for a

conspiracy is essentially the same as that required for deliberation and premeditation."); *Alston v. State*, 414 Md. 92, 117 (2010) ("[T]he conspiracy [to murder] necessarily supplies the elements of deliberation and premeditation."). The security footage introduced at trial showed a group of six people approach Mr. Brockington. One of them was holding what appeared to be a long gun, the same type of gun as the rifle that police later found in the SUV. Two of the six people turned towards Mr. Brockington and began shooting at him. All six individuals then fled the scene, which again can be considered evidence of consciousness of guilt. *See Thompson*, 393 Md. at 303. A reasonable jury could consider the actions of at least the two individuals who stopped, if not all six individuals in the group, as evidence of a planned course of action.

Alongside this seemingly coordinated action, the number of wounds inflicted, "the intensity of the wounds[,] and the brutal manner in which the wounds were inflicted" serve as evidence of premeditation as well. *Purnell v. State*, 250 Md. App. 703, 715 (2021). In this case, after conducting Mr. Brockington's autopsy, Dr. Ferriera concluded that he'd been shot ten to twelve times. Additionally, the security footage showed that one person in the group fired a final shot at Mr. Brockington after he'd fallen on the sidewalk from the previous barrage of bullets. A reasonable jury could consider this as evidence of premeditation due to the number of gunshot wounds Mr. Brockington had and the brutal nature of the shooting.

The firearms identification evidence also supported a finding of conspiracy and premeditation. Mr. Monkres's report and testimony indicated that two cartridge casings

and one bullet recovered from the murder scene were fired with the Desert Eagle; two of the recovered cartridge casings "were fired with the same unknown firearm"; and one bullet and one bullet fragment extracted from Mr. Brockington's body were fired with the Desert Eagle. Based on his examination, he concluded that at least two, but potentially four, firearms were fired at the murder scene.

Mr. Monkres confirmed that the revolver had been fired five times, leaving behind five spent casings. He confirmed as well that the Taurus and Ruger were both fully loaded. Officer Merson's body-worn camera footage showed him removing ten rounds of ammunition from the rifle and its magazine, about one-third of its capacity according to Mr. Monkres's assessment. This evidence shows that the six individuals who approached Mr. Brockington that night were carrying at least five fully or partially loaded weapons and had fired at least two of those weapons at the scene. The fact that the long gun was visible in the security footage indicates further that all six people knew that at least one person in the group was armed. Viewing this evidence in the light most favorable to the State, a reasonable jury could conclude beyond a reasonable doubt that Mr. Thornton conspired with at least one other individual, which could include the two individuals who escaped apprehension at the crash site, to use the Desert Eagle to murder Mr. Brockington.

* * *

Based on these holdings, we reverse Messrs. Dunbar's and Thornton's convictions due to the *Abruquah* violation and remand for further proceedings consistent with this opinion. We affirm Mr. Jerry's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY IN CASES NOS. 1598/2023 AND 611/2023 REVERSED AND CASES REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. THE MAYOR AND CITY COUNCIL OF BALTIMORE TO PAY THE COSTS.

JUDGMENT IN CASE NO. 639/2023 AFFIRMED. APPELLANT TO PAY THE COSTS.

APPENDIX D

MARYLAND JUDICIARY

☑ CIRCUIT COURT ☐ DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at Court Address 100 North Calvert Street Zip Code 21202 Telephone (410) 333-3750

STATE OF MARYLAND vs. Defendant William Thornton

Case No(s). 119343014
Tracking No. 191001724690
Other Reference Numbers
District Court Number
Date Sentence Imposed 10-12-2023

DOB 5/16/93 SID # 3177267 FBI # Inmate No:

COMMITMENT RECORD / ☐ CORRECTED COMMITMENT RECORD

TO: ☑ Commissioner of Correction ☐ Warden/Sheriff of Facility:

YOU ARE DIRECTED to receive the above named defendant who has been sentenced and is committed to your custody by JUDGE Dana M. Middleton. The defendant has been found guilty of:

Count/Offense No. 014/Ct#1 Citation/Charge Murder 10
Art. 9L CR2 Sec. 201,208 CJIS Code 1 0990
Sentence Life ☑ Life
Suspended ☐ Concurrent with ☐ Consecutive to Count/Offense No.
(PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

☐ PAROLE ELIGIBILITY RESTRICTIONS Art. Sec. Arrest Tracking Number
☐ Eligible for parole ☐ Eligible for Drug Treatment Program under HG §8-507
Additional sentencing information:

Count/Offense No. 014/Ct#1 Citation/Charge Use of firearm in commission of Crime of Violence
Art. CR4/PS5 Sec. 201,204,205/101 CJIS Code 1 5299
Sentence 18 years ☐ Life
Suspended ☐ Concurrent with ☑ Consecutive to Count/Offense No. 014/Ct#1
(PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

☑ PAROLE ELIGIBILITY RESTRICTIONS Art. CR4/PS-5 Sec. 201,204,205/101 Arrest Tracking Number 191001724690
☐ Eligible for parole ☐ Eligible for Drug Treatment Program under HG §8-507
Additional sentencing information: 1st 5 years without parole

SPLIT SENTENCE All but is/are suspended and the defendant is placed on ☐ supervised ☐ unsupervised probation for a period of commencing upon:

CHECK ONE
☐ Release of defendant from physical incarceration.
☐ Release of defendant from parole, or mandatory supervision pursuant to Correction Services Article § 7-501.
☐ Pursuant to Criminal Procedure Article, § 6-220, the court imposes probation before judgment, with the above sentence of confinement to be a condition of that probation.

Additional sentencing information:

The total time to be served is ☑ Life 18 Years Months Days Hours to run:
☑ concurrent with any other outstanding or unserved sentence and begin on 11/13/2019
☐ consecutive to the last sentence to expire of all outstanding and unserved sentences.
☐ consecutive to the sentence imposed in Case No.

The defendant has been awarded Years Months Days credit for time served prior to and not including date of sentence (Criminal Procedure Article § 6-218). Total Time Life plus 18 years

In accordance with Criminal Procedure Article §§ 11-701 to 11-727, defendant to be registered as a: Count #'s 3 and 4 Not guilty verdict
☐ *TIER I SEX OFFENDER* ☐ *TIER II SEX OFFENDER* ☐ *TIER III SEX OFFENDER*
☐ *SEXUALLY VIOLENT PREDATOR* ☐ *LIFETIME SEXUAL OFFENDER AND BE SUBJECT TO LIFETIME SEXUAL OFFENDER SUPERVISION*

$ Wd court cost(s) have been waived due to indigency.
☐ Commitment is for execution of previously suspended sentence after defendant was found in violation of probation.
☐ Sentencing modification. This commitment supersedes commitment issued on:

ATTACHMENTS HERETO INCLUDE: ☑ Additional sentence(s) ☐ Order for probation ☐ Conditions of parole
☐ Statement of charges ☐ DPSI ☐ DNA ☐ Sentencing guidelines ☐ Appeal bond set at $
☐ Order for reimbursement of Public Defender ☐ Other:
☐ Restitution of $ To: By: Order ☐ attached ☐ to follow
☐ Victim notification request Date

PROVIDE ADDITIONAL SENTENCING INFORMATION, PAROLE ELIGIBILITY RESTRICTIONS, OR PAROLE RECOMMENDATIONS ON ADDENDUM CC-DC-CR-028A.
TRULY taken from the record of this court.
Witness my hand and the seal of this court this date:
October 12th, 2023

Karen A. Conaway / PB
Clerk/Judge ID Number

CC-DC-CR-028 (Rev. 07/01/2021) Print Date (07/2021)

MARYLAND JUDICIARY ☐ CIRCUIT COURT ☐ DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at Court Address 100 North Calvert Street | Zip Code 21202 | Telephone (410) 333-3750

STATE OF MARYLAND

vs.

Defendant William Thornton

D.O.B. 5/16/93

Case No(s). 119343014

Tracking No. 191001724690

Date Sentence Imposed 10-12-2023

I.D. No. 31777267

ADDENDUM TO COMMITMENT RECORD
ADDITIONAL SENTENCES

Case/Count/Offense No. '014/Ct# 5 | Charge wear, carry transport gun in vehicle | Art. CR4 | Sec. 201, 203 (a)(1) 2031(c), 205

Sentence Merge with Ct# 2 | Concurrent with / Consecutive to Case/Count/Offense No.

☐ PAROLE ELIGIBILITY RESTRICTIONS Art. | Sec. (PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

Case/Count/Offense No. '014/Ct# 6 | Charge poss assault pistol | Art. | Sec.

Sentence 3 years | Concurrent with / Consecutive to Case/Count/Offense No. '014/Ct#2

☐ PAROLE ELIGIBILITY RESTRICTIONS Art. | Sec. (PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

Case/Count/Offense No. '014/Ct#7 | Charge poss regulated firearm after conviction | Art. PS-5 | Sec. 101, 101 (g)(3) 133, 133 (b)(1) 144

Sentence 5 years | Concurrent with / Consecutive to Case/Count/Offense No. '014/Ct#2

☐ PAROLE ELIGIBILITY RESTRICTIONS Art. | Sec. (PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

ADDITIONAL SENTENCING INFORMATION:

Xavier P. Conway

Clerk/Judge

CC-DC/CR 28A (Rev. 9/2002) (Print 03/2008)

MARYLAND JUDICIARY

☒ CIRCUIT COURT ☐ DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at Court Address 100 North Calvert Street | Zip Code 21202 | Telephone (410)3333750

STATE OF MARYLAND

vs.

Defendant William Thornton

D.O.B. 5/16/93

Case No(s). 119343014

Tracking No. 191001724690

Date Sentence Imposed 10-12-2023

I.D. No. 3477267

ADDENDUM TO COMMITMENT RECORD
ADDITIONAL SENTENCES

Case/Count/Offense No. 014/Ct#8 | Charge Conspire to Murder | Art. 27 CR1, CR3 | Sec. 202, 203 201

Sentence Life | Concurrent with Consecutive to Case/Count/Offense No. 014/Ct#1

☐ PAROLE ELIGIBILITY RESTRICTIONS Art. | Sec. (PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

Case/Count/Offense No. 014/Ct#9 | Charge Conspire to Use Handgun in Commission of Felony or Crime of Violence | Art. | Sec.

Sentence 18 years | Concurrent with Consecutive to Case/Count/Offense No. 014/Ct#2

☐ PAROLE ELIGIBILITY RESTRICTIONS Art. | Sec. (PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

Case/Count/Offense No. | Charge | Art. | Sec.

Sentence | Concurrent with Consecutive to Case/Count/Offense No.

☐ PAROLE ELIGIBILITY RESTRICTIONS Art. | Sec. (PROVIDE DETAILS IN ADDITIONAL SENTENCING INFORMATION)

ADDITIONAL SENTENCING INFORMATION:

Xavier A. Conaway

Clerk/Judge

CC-DC/CR 28A (Rev. 9/2002) (Print 03/2008)

APPENDIX E

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs. Criminal Docket

WILLIAM THORNTON, No. 119343014

Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS

DISPOSITION HEARING

VOLUME II OF II

Baltimore, Maryland

Thursday, October 12, 2023

BEFORE:

THE HONORABLE DANA M. MIDDLETON, JUDGE

APPEARANCES:

For the State of Maryland:

ELIZABETH STOCK, ESQUIRE

For the Defendant:

JOHN COX, ESQUIRE

Transcribed from electronic recording by:

Chelsea Soto

Transcriber

CRC Salomon

2201 Old Court Rd, Baltimore, MD 21208

410-821-4888

T A B L E O F C O N T E N T S

	Page
Motion for New Trial	3
Disposition	13
Victim Impact Statement - Deonna Perry	18
Sentencing	30

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:
None				

EXHIBITS:	IDENTIFICATION:	EVIDENCE:
None		

P R O C E E D I N G S

THE COURT: State, can you call the case?

MS. STOCK: Thank you, Your Honor. Good morning. Calling the matter of State of Maryland v. William Thornton, case number 119 --

UNIDENTIFIED SPEAKER: (Unintelligible).

MS. STOCK: -- 343014. Elizabeth Stock for the State.

MR. COX: And good morning, Your Honor. For the record, John Cox on behalf of Mr. Thornton, who is present at trial table to my right.

THE COURT: All right, thank you. Good morning. This matter is scheduled for disposition. Are the parties ready to move forward?

MS. STOCK: Yes, Your Honor.

THE COURT: Okay.

MR. COX: Yes, Your Honor, although there was a motion for new trial that I filed. I would like to argue that first.

THE COURT: Thank you.

MR. COX: If you're ready --

THE COURT: I'll hear from you.

MR. COX: -- Your Honor? Thank you. Your Honor, I'll be brief because I know I wrote and filed a motion for new trial, although there are a couple of things I'd like to point out. Some things that have -- there is one change that has happened since I filed this motion.

But first of all, the first part is the fact that the Court did limit or actually exclude the public from the courtroom in this case. I know the Court remembers the circumstances for it, but the case law is very specific that it has to be narrowly tailored to suffice in terms of any type of outbursts and safety for jurors and things of that nature. In this case, it was the codefendant's family member that had approached a juror. It was never an allegation that my client's family members were ever in any type of violation or had any wrongdoing, any outburst, anything at any point in time during the trial. I know there were a couple other points in time in which there were some admonishments by the Court, but again, those were never directed at my client's family.

So we objected at the time, objected at every relevant portion at the time. I understand that the State's response in my motion was that the testimony and the closing arguments were done, but what they were excluded from were the jury questions, the responses from the jury questions, and motions that were made by Counsel, motions for -- you know, all the motions and things that were done at that point in time. So although they were allowed in a limited fashion to come back in for the reading of the -- rendering of the verdict, but everything between that part, they were not allowed, and there was -- quite frankly, there was no reason to exclude my client's family, as his sisters and mother and family had not been admonished, had

not been directed, had not done anything to disturb these proceedings. So my client was not given the privilege of a public trial, which is mandated by the Courts.

The second and most important part, or not most important part, but the part that I would like to expand upon a little bit today, because of the fact that there's new case law, is that this was a matter in which the -- I know the Court knows the facts of it, but in terms of my client, the main evidence against my client in terms of -- and I would note the distinction that the Jury made in this case, was all the individuals that were at trial were placed at the scene of the crime. All of them were placed at the scene of the crime via DNA and the video evidence, being arrested on the scene or arrested near scene.

Three of the four were acquitted of the murder charge, and the only real difference between those individuals and my client, in terms of the evidence, was the fact that the 9-millimeter Desert Eagle was the one that was testified to being matched to the shell casings at the crime scene, that the rest of the weapons were not -- there was no assertion they were fired at the crime scene. Their shell casing did not match to that of the crime scene. So the only logical conclusion to explain why the Jury acquitted the three codefendants and convicted my client was the fact that the two -- the -- was the 9-millimeter Desert Eagle, and that was connected to my client

in two ways, or I should say, was connected to my client in one way and collected to the -- connected to the crime scene in one.

The connection to the crime scene is by the firearms examiner testifying that it was an exact match, which has now been in Abruquah v. State, which is 483 Md. 637. The -- our highest Court has indicated that a firearms examiner cannot testify to that. So you have that piece of information that has now been placed in question by our highest Court. So you couple that with the DNA on it, and the DNA -- the argument that the State made in closing was that my client had the most DNA on the gun, and therefore it was his gun. He was the last one to have the gun.

When the cross-examination of the DNA expert, we had elicited that there was at least three contributors to that DNA on that 9-millimeter, that Mr. Clark, Mr. Thornton, and Mr. Dunbar's DNA was on that 9-millimeter handgun. My client had the highest percentage of epithelial cells on that handgun, but I had asked, and it was very specific on cross-examination, that that couldn't say anything as to who owned the gun, who had the gun, who held the gun the longest, or who held the gun most recently. And the State argued on their closing argument that the DNA showed that it was my client's gun, over that of Mr. Clark's or Mr. Dunbar's. They specifically, in essence, excluded the other two, based on the notion that there was more epithelial cells, a higher contribution, on that handgun, which

is misleading to the Jury.

So the Jury is misled about the possession and the importance of the DNA evidence linking my client to that gun, and then the firearms examiner misled the Jury as to the gun being the match to the crime scene. And if you notice, Judge, all the other weapons that were involved in this case, the -- all the other Defendants were convicted of those guns, and the charges that are associated with that, but were acquitted from the murder, and the only logical conclusion on that was that that -- those guns were not used in the murder, based on the examiner's testimony.

So on this one, you have the 9-millimeter handgun, based on that testimony, being the sole gun that was used and connected to the murder, and my client's DNA was on that gun, and therefore, my client's guilty of the murder. So for that -- those reasons, I would make the motion for new trial. Believe that the -- there's unfair prejudice on that -- from that testimony and rendering my client's not receiving a fair trial.

THE COURT: Thank you. Madam State?

MS. STOCK: Thank you, Your Honor. Your Honor, first addressing the issue of the alleged error that the Court may or may not have made in closing the courtroom. As I responded in my response to Defense's motion for new trial, the courtroom was not closed until Jury deliberations had begun. I took notes, and when this Court decided that it was necessary to close the

courtroom, it was stated on the record this was the third incident during the trial that inappropriate behavior had happened from the spectators in the courtroom. There were photographs taken in Court. There were spectators that had been approached, and so the Court made the decision to close the courtroom to anybody until the verdict. Even though Defense objected, the Court did not grant a mistrial. The Court allowed the -- continued with her ruling to close the courtroom.

The only notes that were sent back by the Jury after the courtroom was closed were essentially scheduling notes. There was a note from the Jury indicating that they wanted to leave at 5:30 and return the next day. Juror note number 4 on December 2nd was that one of the Jurors had a doctor's appointment and needed to leave by 4:05. There was a note on December 5th in the afternoon, indicating that they had no unanimous verdict on some of the charges, and they looked for guidance on that. It wasn't a substantive note about legal questions about the law or the evidence or any of the facts of the case. There was a note at 4:00 on December 5th about the Jury asking to leave for the day because they were still stuck on some of the charges. And then finally, on December 6th, when the Jury finally reached their verdict, they indicated that they had a unanimous verdict to all of the counts, except for one of the codefendants, where they were deadlocked on two charges.

So there were no substantive notes sent back by the

Jury that would have prejudiced the Defendant, had the public been or not been in the courtroom for the reading of those notes. There was no questions asked by the Jury that were substantive questions that would've required legal analysis and presenting of, essentially, answers to the Jury. It was either scheduling issues or the Jury updating the parties in the Court to where they were in their deliberations. So there was no error and no prejudice in keeping the courtroom closed for those portions of the note.

As far as the argument being made about the firearms evidence and the DNA evidence, closing arguments are simply that, arguments. The jury heard the testimony of the DNA analyst. There were questions during the DNA analyst's testimony about the weight of the contributors. The Jury had in their DNA report the likelihood ratios for each of the Defendants, and it was clear from those likelihood ratios that Mr. Thornton's likelihood ratios for a match between his DNA and that on the weapon was higher than anyone else's in that contribution. So it was simply argument made by the State that that likelihood ratio should carry some weight for the Jury.

As far as the firearms evidence, the Abruquah case is a case that talks about projectiles being matched to firearms. It actually doesn't address shell casings being matched to firearms. I'm not sure if down the road another Court will take up the issue of whether shell casings identification is

different than projectile identifications, because the shell casing, or cartridge case, has more unique characteristics that would be left by impressions from a firearm than a projectile would. But the ruling on Abruquah was that a firearms examiner cannot give an unqualified opinion that a firearm matches a projectile.

In this instance, you had testimony from Mr. Monkers (phonetic), where he talked about the firearm having the same characteristics as both the shell casings found at the scene, as well as the projectiles found from the victim's body. So I would argue to this Court that it wasn't an unqualified opinion. The examiner explained why he came to the conclusion that he did, and the Courts have not held in Abruquah that firearms evidence is now unreliable evidence, simply that they cannot use the language that it is a match.

And so I'm not sure that it would have changed the outcome of the verdict had the examiner said that it's his opinion that this -- these firearms evidence, the casing and the projectile, were most likely fired from this weapon, as opposed to that they were fired from this weapon. He gave enough basis for his opinion to support that opinion. So I don't think that the new case law would have affected the outcome of this trial, and it certainly wasn't error at the time that the trial was held to allow this testimony to come in. So for all of those reasons, we're asking that the Court deny the motion for new

trial.

THE COURT: Thank you. To address, first, Counsel's assertion that when the Court excluded people from the -- the public from the courtroom, it deprived Mr. Thornton of his right to a public trial, this Court does specifically remember the number of disruptions and made clear at the time that the Court excluded persons who were seated in the gallery from this trial, the reasons for it. There were approximately three instances.

One, the Court had received information that persons were taking photographs during the course of the trial. The Court did not -- was not alerted as to whom was taking the photographs. There was a second -- there was a second incident where the Court had learned that someone, some persons, had approached other persons outside of the courthouse. Those persons being involved or members of one another's families, and caused concern, a security concern, for this Court. The third instance involved someone approaching a member of the Jury, whom the Jury was familiar with. While -- and so the Court made clear after -- not only after each incident, but at the time of exclusion, the reason for it being a security risk to the Jury.

Not only to that, there are other members of the public who were viewing the trial. And it is within the province of this Court to protect the proceedings and the Jury. Therefore, the motion -- and the Court did not do it immediately, but rather waited until one -- two of the -- until

the third instance, when the trial itself had been concluded. The motion for new trial on that ground is denied.

With respect to the -- Counsel's argument regarding ballistics evidence and the State's comments during closing arguments about the DNA evidence, or the characterization of DNA evidence, first, with respect to the State's characterization of the DNA evidence. The Court instructs the Jury in its instructions that the comments and closing arguments from both parties are not evidence. And further, the Jury did have possession of the DNA report. So therefore, the Court cannot find that the Jury determined or relied upon the State's characterization of the DNA evidence.

Regarding the ballistic evidence, Counsel is correct regarding his statement of the case law regarding the ballistics evidence. However, at the time that the trial -- of the trial, the -- that case had not yet been settled. Further, it cannot be said that the testimony of examiner Monkers was not qualified such that the determination that they were -- that the shell casings came from the, I want to say, the firearm that was recovered, that that would not have been a qualified opinion, based on his knowledge, training, experience in examination of the evidence that was recovered.

In addition, because of the nature of the ballistics evidence in -- the nature of the ballistics evidence, combined with the DNA evidence, the Court and a reasonable person could

find that the Jury used both kinds of evidence in order to reach its conclusions and determinations of guilt regarding Mr. Thornton. In light of that, and because this Court is not able to pierce the veil of the Jury deliberations, the Court does find otherwise that there was -- there would have been sufficient evidence for the Jury to convict the Defendant.

Further, the Court does not see any other irregularities in these proceedings that would lead it to find that a motion for new trial should be granted on those grounds. The motion for new trial is denied.

Are you all ready to proceed to disposition?

MR. COX: I am, Your Honor. If I just may make one comment for the record? I'm not challenging --

THE COURT: Yes.

MR. COX: -- the Court's ruling, but it was my memory, my notes, that would indicate that the first disturbance by the Jury was attributed to Mr. Dunbar's family, and the person that approached the Jurors was attributed to Mr. Clark -- codefendant Clark's family members.

THE COURT: Thank you. Are you all ready to go to disposition?

MS. STOCK: Yes, Your Honor.

MR. COX: Yes, Your Honor.

THE COURT: All right. State, I'll hear from you.

MS. STOCK: Thank you, Your Honor.

APPENDIX F

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs. Criminal Docket

WILLIAM THORNTON, No. 119343014

SHAMAR JERRY, No. 119343015

JAMES DUNBAR, and No. 119343016

ANTHONY CLARK, No. 119343017

Defendants

OFFICIAL TRANSCRIPT OF PROCEEDINGS

POST-CONVICTION HEARING

VOLUME XII OF XVI

Baltimore City, Maryland

Thursday, December 1, 2022

BEFORE:

THE HONORABLE DANA MIDDLETON, JUDGE

and a Jury

APPEARANCES:

For the State of Maryland:

MEGAN GALLO, ASSISTANT STATE'S ATTORNEY

ELIZABETH STOCK, ASSISTANT STATE'S ATTORNEY

For Defendant William Thornton:

JOHN COX, ESQUIRE

For Defendant Shamar Jerry:

BRANDON PATTERSON, ESQUIRE

For Defendant James Dunbar:

ROLAND BROWN, ESQUIRE

For Defendant Anthony Clark:

DONALD WRIGHT, ESQUIRE

Transcribed from electronic recording by:

ANGELA MEADOR

Transcriber

CRC Salomon

2201 Old Court Rd, Baltimore, MD 21208

410-821-4888

T A B L E O F C O N T E N T S

	Page
Closing Argument by Mr. Brown	5
Closing Argument by Mr. Patterson	26
Closing Argument by Mr. Cox	58
Rebuttal by Ms. Gallo	73
Alternate Jurors Excused	87
Defense Motion for Mistrial	112
State’s Response	115
Court’s Ruling	126
WITNESSES:	
For the State:	
None	
For the Defendant:	
None	
EXHIBITS: IDENTIFICATION: EVIDENCE:	
For the State:	
None	
For the Defendant:	
None	

I'm not getting tired of you.

MS. STOCK: Your Honor, may I go use the restroom?

THE COURT: Yes.

MS. STOCK: Thank you.

THE COURT: Okay. Call the case.

MS. STOCK: Good afternoon, Your Honor. Calling the matter of the State of Maryland v. William Thornton, Shamar Jerry, James Dunbar, and Anthony Clark. Case number 119343014, 015, 016, and 017. Elizabeth Stock and Megan Gallo for the State.

MR. COX: And good afternoon, Your Honor. For the record, John Cox, on behalf of Mr. Thornton who is present at the trial table to my left.

MR. PATTERSON: Brent Patterson on behalf of Shamar Jerry who is present at the trial table.

MR. BROWN: Roland Brown on behalf of Mr. James Dubar to my left.

MR. MATTHEWS: Singleton Matthews on behalf of Mr. Clark who is standing to my left, Your Honor.

THE COURT: Thank you. Come on up and receive the note.

(Counsel and Defendants approached the bench, and the following occurred:)

Please sign. I want every attorney to sign. After you have read the note, please acknowledge that you have seen

the note by signing your name. I don't know what happened, but Court received a note saying that someone came up to a juror and said I'm Anthony Clark's father, and "gabbed up," those are their words, the juror.

Based on what I saw in the note, first I'm going to let you know, nobody is coming back in the Courtroom except for the verdict. Nobody is coming back in the Courtroom. We will bring the juror out. I don't know who wrote the note, but I will bring out juror number 11 and ask juror number 11, because it looks like an 11 to me.

I will bring out juror number 11 to discuss and voir dire them about the note. Have a seat.

Did you initial it? Did everybody get to see the note? Can you pass the note down so the State can initial the note?

We got a note. The jurors are saying that they can't operate the remote for the television in the jury room.

You all can return to your seat. Yes. Have a seat, please.

COURT CLERK: Your Honor, juror number 11.

(Counsel and Defendants approached the bench, and the following occurred:)

THE COURT: Counsel, come on up.

Sir, is your number juror number 11? I just need some information about an interaction that you had, or a man had with

somebody in reference to this case. Did you have any interaction with anybody in reference to this case?

JUROR NUMBER 11: He just said hi. He said hi.

THE COURT: What was the nature of the interaction?

JUROR NUMBER 11: Just hi.

THE COURT: Who was the friend?

JUROR NUMBER 11: He's not.

THE COURT: How do you know him?

JUROR NUMBER 11: Childhood friend.

THE COURT: Did he say anything to you?

JUROR NUMBER 11: No. Just hi. And I said what's up. That's it.

THE COURT: Did you see him in the Courtroom today?

JUROR NUMBER 11: Yes, ma'am.

THE COURT: Did he tell you what, if any relationship he has with anybody involved in this case?

JUROR NUMBER 11: Yes, ma'am.

THE COURT: Okay. And so, what was said?

JUROR NUMBER 11: (unintelligible).

THE COURT: No. I need to know what was said?

JUROR NUMBER 11: He said his son, Anthony.

THE COURT: And what's his son's name?

JUROR NUMBER 11: Anthony Clark.

THE COURT: And so, what did he say to you?

JUROR NUMBER 11: That's it.

THE COURT: I need to know the entire nature of the interaction?

JUROR NUMBER 11: I walked into the hallway. He walked towards me, and I said what's up, and he said my son is Anthony Clark.

THE COURT: He said my son is Anthony Clark? Not just Anthony Clark?

JUROR NUMBER 11: Well, yes. My son is Anthony Clark.

THE COURT: Did you have any other conversations with him after that?

JUROR NUMBER 11: No.

THE COURT: Do you know whether or not there was any other jurors present during the conversation or the interaction that you had with him?

JUROR NUMBER 11: In the hallway. Yes.

THE COURT: There was?

JUROR NUMBER 11: Yes.

THE COURT: Do you know how many other jurors were present with you in the hallway?

JUROR NUMBER 11: (unintelligible).

THE COURT: Would the fact that -- does counsel have any other additional questions of juror number 1?

MS. GALLO: Sir, at what point, oh. I'm sorry.

THE COURT: Do you have any other questions for juror number 11?

MS. GALLO: I have a question.
THE COURT: Okay.
MS. GALLO: Sir, at what point did you realize that you were a childhood friend of his father?
JUROR NUMBER 11: I seen him in the hallway this morning. (unintelligible).
MS. GALLO: So, today was the first day that you made that connection?
JUROR NUMBER 11: Yes, ma'am.
MS. GALLO: Okay. Had you noticed him in the Courtroom prior to today?
JUROR NUMBER 11: No. Because if I did, I would have said something to the Court, because I'm honest. Like, when I came up and you asked me about my son, and I said well, he was guilty, because he was.
THE COURT: You're talking about during the voir dire process?
JUROR NUMBER 11: Yes, ma'am.
THE COURT: Okay.
JUROR NUMBER 11: And yes, so it was just today when that happened.
MS. GALLO: And prior to today, when was the last time that you had any interaction with this childhood friend?
JUROR NUMBER 11: Oh, my goodness. It's been years. I mean, years. Yeah. I, it's been at least fifteen years.

THE COURT: Any other questions?
MR. BROWN: No, Your Honor.
MR. COX: No, Your Honor.
MR. MATTHEWS: None, Your Honor.
THE COURT: Would the fact that you had this interaction with the Defendant's father affect your ability to be fair and impartial?
JUROR NUMBER 11: No, ma'am.
THE COURT: Any other questions?
MR. BROWN: No, Your Honor.
MR. COX: No, Your Honor.
MR. MATTHEWS: No, Your Honor.
MR. PATTERSON: None, Your Honor.
THE COURT: Thank you. You may return to the jury room.
JUROR NUMBER 11: Okay.
THE COURT: I'm getting juror number 1. You all might as well stay up here. I am getting juror number 1.
Where's juror number 1?
COURT CLERK: Oh. You want him here?
THE COURT: Yeah.
COURT CLERK: (unintelligible).
THE COURT: Who wrote the note?
COURT CLERK: I'm not sure who wrote the note.
THE COURT: Okay. Where did y'all get juror number 1

at?

MR. COX: Oh. Juror note one. I'm sorry. I apologize.

THE COURT: Good afternoon.

JUROR NUMBER 12: Good afternoon.

THE COURT: Did you write this note?

JUROR NUMBER 12: Yes.

THE COURT: Okay. Tell me what you saw. First off, you are juror number 12?

JUROR NUMBER 12: Yes.

THE COURT: All right. Thank you. Tell me what you saw?

JUROR NUMBER 12: So, me, juror 1, I can't remember the other numbers--

THE COURT: Mmhmm.

JUROR NUMBER 12: --but I can find out.

THE COURT: Mmhmm.

JUROR NUMBER 12: We are standing near the elevator and juror number 11 was with us. And we were all just waiting for the elevator and then a man who I didn't know and walked over and said what's up to juror 11. They like, shook hands.

Juror 11 didn't really say anything but the guy said something along the lines of I know, I'm tired of this shit or something like that.

THE COURT: Mmhmm.

JUROR NUMBER 12: (unintelligible) or something like that that didn't have to do with the case or anything.

THE COURT: Mmhmm.

JUROR NUMBER 12: And then he said, I believe what he said was I am Anothony Clark's father and then kept walking. Juror 11 didn't react at all, so I don't think it mattered but I just know you said to write a note, so.

THE COURT: I appreciate that.

JUROR NUMBER 12: And the other jurors wanted to write a note, so I just did it for them.

THE COURT: How many jurors?

JUROR NUMBER 12: There was three of us there along with 11.

THE COURT: Twelve?

JUROR NUMBER 12: It was me, juror 12.

THE COURT: Uh huh.

JUROR NUMBER 12: And then, I want to say juror, it's either 8 or 9. She was a woman, 8 or 9. So, 9, wait, maybe 7, 7 or 9. Whichever one it was. I will have to check, to be honest.

THE COURT: Okay. Thank you. Mr. Clerk, bring out the entire jury.

Go back to the jury room.

You all may be seated. I am bringing out the entire jury.

(Counsel and Defendants returned to trial tables, and the following occurred in open court:)

MR. MATTHEWS: Yes. Thank you, Your Honor.

THE COURT: What I am going to do is bring up each juror one by one. I'm not going to say it out loud to the entire jury panel because I don't know who, if anybody said anything or saw anything. But I am going to bring up each and every juror, one through twelve one by one--

COURT CLERK: All rise for the jury.

(At 2:49 p.m., jury entered the courtroom, and the following occurred:)

THE COURT: --and see who, if anybody saw anything.

MS. GALLO: Yes, Your Honor.

THE COURT: Counsel, come up.

(Counsel and Defendants approached the bench, and the following occurred:)

THE COURT: Juror number 1, come up. Good afternoon. Did anything unusual occur on all's lunch break?

JUROR NUMBER 1: No.

THE COURT: Thank you. Any other questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: Juror number 2, come up. Good afternoon. Did anything unusual occur during the lunch break?

JUROR NUMBER 2: No.

THE COURT: Thank you. Any other questions?

MR. MATTHEWS: No, Your Honor.
THE COURT: Thank you. You may be seated. Good afternoon.
JUROR NUMBER 3: Hi.
THE COURT: Did anything unusual occur during the lunch break?
JUROR NUMBER 3: No.
THE COURT: Thank you. Any questions?
MR. MATTHEWS: No, Your Honor.
THE COURT: Juror number 4? Good afternoon.
JUROR NUMBER 4: Good afternoon.
THE COURT: Did anything unusual occur during the lunch break?
JUROR NUMBER 4: No.
THE COURT: Thank you. Any questions?
MR. MATTHEWS: No, Your Honor.
THE COURT: Juror number 5? Good afternoon.
JUROR NUMBER 5: Good afternoon.
THE COURT: Did anything unusual occur during the lunch break?
JUROR NUMBER 5: No.
THE COURT: Thank you. Any questions?
MR. MATTHEWS: No, Your Honor.
THE COURT: Juror number 6? Good afternoon.
JUROR NUMBER 6: Hello.

THE COURT: Did anything unusual occur during the lunch break?

JUROR NUMBER 6: No.

THE COURT: Thank you. Any questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: Juror number 7? Good afternoon.

JUROR NUMBER 7: Hi.

THE COURT: Did anything unusual occur during the lunch break?

JUROR NUMBER 7: No.

THE COURT: Thank you. Any questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: Thank you. Juror number 8? Good afternoon.

JUROR NUMBER 8: Good afternoon.

THE COURT: Did anything unusual occur during the lunch break?

JUROR NUMBER 8: No.

THE COURT: Thank you. Any questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: Thank you. Juror number 8?

MR. BROWN: Nine.

MR. COX: Nine.

THE COURT: Good afternoon.

JUROR NUMBER 9: Good afternoon.

THE COURT: Did anything unusual occur during the lunch break?

JUROR NUMBER 9: Yes, ma'am.

THE COURT: What occurred?

JUROR NUMBER 9: Someone approached someone, said their son was Anthony Clark.

THE COURT: Do you who the someone, when you say someone approached someone, who was approached?

JUROR NUMBER 9: Number 11.

THE COURT: And you were you by yourself? You were standing with juror number 11?

JUROR NUMBER 9: No. I was just walking by.

THE COURT: Okay. Did you have any interaction with the individual who had a conversation with juror number 11?

JUROR NUMBER 9: I don't think it would.

THE COURT: Thank you. Any further questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: Juror number 10?

COURT CLERK: Number 10.

THE COURT: Good afternoon. Did anything unusual happen during your lunch break?

JUROR NUMBER 10: No.

THE COURT: Thank you. Any questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: I spoke to juror number 11 and juror

number 12. I always bring them up just to be (unintelligible) since I brought everyone else up.

COURT CLERK: Number 11?

THE COURT: I'm sorry. I have already spoken to you. I don't know if I asked you before if this interaction would affect your ability to be fair and impartial?

JUROR NUMBER 11: No, Your Honor.

THE COURT: All right. Any other questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: Okay. Thank you. You may be seated.

COURT CLERK: Juror number 12.

THE COURT: Juror number 12, I know we have already spoken with you, but I don't know if I asked you if witnessing that interaction would impact your ability to be fair and impartial?

JUROR NUMBER 12: Not at all.

THE COURT: Thank you. Any questions?

MR. MATTHEWS: No, Your Honor.

THE COURT: Thank you. You can be seated. I don't have anything else. Do you all have anything else?

MR. MATTHEWS: No.

THE COURT: You do? Do you have anything else?

MR. BROWN: Oh. No.

THE COURT: All right. Thank you.

Okay. I want to be abundantly clear. This is

basically the third incident that is disturbing to this Court that has occurred during the course of this trial. Earlier in the trial, the Court learned that someone had been taking photographs inside of the courtroom.

The second incident the Court was made aware of was the incident that occurred I believe yesterday between family or family members, I don't know, of the victim or victims. And then the Court also learned the same day two individuals approached two other individuals who were in this courtroom watching the trial. And then I hear about this. I am not, for those reasons, comfortable with the public being in this trial or observing it any more. I don't want the jurors to feel that they can not deliberate freely. Every juror has said that they can be fair and impartial, but the Court does not want to impose any (unintelligible). For those reasons, the Court is not going to allow the public back until it's time to hear the verdict. Any questions?

MS. STOCK: Your Honor, may the State just take a few minutes to digest this information, if I may just pardon the Court why. The State does have some concerns that juror number 11 is childhood friends with one of the defendant's fathers.

I understood that when he was voir dired, he said that it would not affect his ability to be fair and he hadn't had any interaction with him in fifteen years, but had this information been known to the State prior to jury selection, we would not

have sat this juror.

Additionally, this juror indicated that he wasn't the one that wrote the note, and he didn't even, it didn't sound like he was going to let the Court know. It wasn't until juror number 12 said that we should write the note that this Court was made aware of the situation.

I don't know how I want to handle that, but I have some concerns with proceedings with this juror on this jury deliberations because of that.

THE COURT: Okay. So, you need a few minutes?

MS. STOCK: Yes.

THE COURT: Okay.

MS. STOCK: I don't know if it will change anything, but I just need to digest and just think if there is a motion that the State wants to make at this time.

THE COURT: Okay. All right.

MR. BROWN: Are they already deliberating?

THE COURT: They started deliberating at two.

MR. BROWN: Sure.

THE COURT: Anything else?

MR. COX: May we also have a few minutes?

THE COURT: Yes.

MS. STOCK: Thank you, Your Honor.

MR. COX: Thank you, Your Honor.

(Counsel and Defendants returned to trial tables, and

the following occurred in open court:)

MS. STOCK: Your Honor, I'd like to make a phone call but--

THE COURT: You can go out.

MS. STOCK: --the hallway is very crowded. May I do it in the back somewhere?

COURT CLERK: In the hallway.

MS. STOCK: I'm going to do it around the corner by Judge Vin's courtroom, if that's okay?

THE COURT: Okay.

MS. STOCK: Thank you.

THE COURT: I don't know if you all are able to hear the record of the Court, but it's been, this will be the third instance the Court has had during the course of this trial. The Court is not allowing the public back into the Court until a verdict is reached.

The Court has had three incidents, the last juror note being the third during the course of this trial. The first incident occurred I want to say a couple of days ago, when the Court learned that someone was taking photographs of the people involved in the trial in the Court.

The second incident that the Court learned about occurred yesterday. The Court was made aware that there was a disturbance between, amongst the families, and that someone who was watching or observing the trial, was approached by two other

people, got out of a Honda and approached them about whatever.

The third was a note from a juror indicating that the Defendant, Anthony Clark's father approached a juror today, and they had an exchange, and he told the juror that he was his father. Based on three incidents, the Court is not going to allow the public back into the courtroom for the duration of the trial until the verdict is read.

MS. STOCK: Thank you, Your Honor. Your Honor, at this time, the State is not imparting on the Court, not making any objections, but I put my concerns on the record. I am aware of who the individual was. If this individual comes to the State's attention again, we may ask that the Sheriff's office would assist us in investigating a contempt of Court charge.

THE COURT: Thank you. The Court will stand in recess until we get another note. Thank you.

COURT CLERK: All rise. The Court is in recess. (unintelligible).

(Court is in recess at 3:03 p.m.)

(Jury not present upon reconvening.)

COURT CLERK: All rise. The Circuit Court of Baltimore City, part eight is in session. The Honorable Judge Dana Middleton presiding.

THE COURT: Thank you. You all may be seated. Can you call the case please?

MS. STOCK: Yes, Your Honor. Thank you. Good

afternoon. Calling the matter of the State of Maryland v. William Thornton, Shamar Jerry, James Dunbar, and Anthony Clark. Case numbers 119343014, 015, 016, and 017. Elizabeth Stock and Megan Gallo for the State. Thank you.

MR. COX: For the record, Your Honor, John Cox on behalf of Mr. Thornton who is present at trial table.

MR. PATTERSON: Brent Patterson for Shamar Jerry who is present at trial table to my left.

MR. BROWN: Your Honor, good afternoon. May it please the Court, Roland Brown, on behalf of Mr. Dunbar standing to my left.

MR. MATTHEWS: Good afternoon, Your Honor. For the record, Singleton Matthews. I represent Mr. Clark. He is standing to my immediate left at the Defense trial table, Your Honor.

THE COURT: Okay. Thank you.

MR. COX: Your Honor, I asked for this and I think my other counsel are in agreeance with this request. I guess because we stepped away, the State asked for a few minutes, you know, to think about whether or not they wanted to ask anything further.

I had stepped away from the Court and when I came back, I guess they didn't want to ask for anything further and the Court recessed, which I understand that. But I just wanted to place on the record that on behalf of Mr. William Thornton, I

do object to clearing the Courtroom. I understand the Court's position, but I think that the appropriate remedy would be to bar that individual that approached.

There has been no accusations in regards to Mr. Thornton's family. His sister is the only person here throughout the course of this case, and I would object on behalf of my client as to the Courtroom being cleared as to family.

MR. PATTERSON: Your Honor, I make the same objection for Mr. Jerry. To my knowledge and I have spoken with his mother. His mother has been coming to observe the proceedings, and I did speak with her at the lunchbreak, and I was told that the only other, there were other individuals I think the God brothers of Mr. Jerry who are present as well.

I haven't heard about any altercations or any problems with those members of the family, and his mother was very clear that she had instructed anyone who was coming to support Mr. Jerry not be involved in any of that, and not be involved in any of the conflict that occurred either outside of the Courtroom, or outside in the street.

So, on behalf of Mr. Jerry, as it relates to his family members and his supporters, I would make the same objection.

THE COURT: Okay.

MR. BROWN: Your Honor, thank you. Mr. Dunbar joins in that objection.

MR. MATTHEWS: Your Honor, I would make the same objection, but my argument obviously would be somewhat different from my colleagues, Your Honor. I would posit that there are several members of Mr. Clark's family who are here, who had absolutely nothing to do with any of the disturbances that the Court has made and advised of, Your Honor.

And I believe to bar all of those members who had nothing to do with the alleged incidents involved is prejudicial not only to the family, but also to Mr. Clark and that would be the basis of my objection.

THE COURT: Thank you. Yes?

MR. BROWN: And Your Honor, may it please the Court? I forgot. Just for the record, Mr. Dunbar requests a mistrial.

THE COURT: Just for the record?

MR. BROWN: Yeah. For the record. I just want to maintain.

THE COURT: I will hear arguments for the basis of the mistrial.

MR. BROWN: Oh. Me? Your Honor, the Court's indulgence please, Your Honor? May I?

THE COURT: Yeah.

MR. BROWN: Your Honor, Mr. Dunbar respectfully requests a mistrial. He feels like juror number 11 is in a, between a rock and a hard place. If he feels like juror number 11, if he votes not guilty, he feels like the jurors will be on

some, or say he is voting because that is your childhood friend's son, and Mr. Dunbar is just uncomfortable with the jury, with the interaction between one of his codefendants allegedly with a juror.

Someone related to this case has been harassing juror number 11. He thinks that juror number 11 is in a position where the other jurors may try to accuse him of looking out for his friend's child and vote not guilty. That sounds about right?

THE COURT: Thank you. Does anybody else wish to be heard on the motion for mistrial on behalf of Defendant for Mr. Clark, Defendant for Mr. Clark, or speaking for him on behalf of Mr. Clark if necessary? Matthews?

MR. MATTHEWS: Yes, Your Honor. If I may?

THE COURT: Mmhmm.

MR. MATTHEWS: I would incorporate Mr. Brown's arguments. I would also add that I think that the prejudice for Mr. Clark is even more severe as the allegations pertain to his father, Your Honor. I do believe that it has more to do with just than juror 11.

I believe that now, because the Court has polled all of the jury as to what actually happened and were they affected by it, even if they come up before Your Honor and said that they haven't, by now, going back and deliberating, they all definitely know that this incident did in fact happen, and I

think that that could cause them to think negatively about Mr. Clark if there is an allegation that Mr. Clark's father had tried to, in some way tried to persuade one of the members of the jury based on their prior relationship, Your Honor.

I believe that by doing that, there is no way that this jury of twelve impaneled citizens can truly be fair and impartial at this point, Your Honor.

THE COURT: Thank you.

MR. PATTERSON: Your Honor, (unintelligible), I would make the same motion for mistrial for the same reasons articulated by the counsel for Mr. Clark and by Mr. Dunbar. There is a concern that the interaction between the person and juror number 11 could have an effect unknowingly or inadvertently, but it's still a concern. So, out of an abundance of caution, we would make that motion for mistrial on behalf of Mr. Jerry.

THE COURT: Thank you.

MR. COX: Your Honor, on behalf of Mr. Thornton, I would join in the motion. I would incorporate what was already placed by these other defendants. I understand that juror number 11 said he could be fair and professional.

The other note I would point, is that I asked the Court, and I don't know if the Court heard me or not. I asked that I wanted the jury to be instructed to the issue of what we talked about at the bench. So, my concern now is that all

twelve have gone back and are aware of an interaction that occurred.

Now, assuming that all twelve are aware of it, if there is an interpretation that there was an effort to be made to compromise the jury or the integrity of the jury, I would just be afraid that that would have a particular implication, even though it was not done by my client or in reference to my client, that my client may be inadvertently harmed by that.

The jury may think that if someone is going to have the audacity to approach the jury and try to influence the jury in any way, shape, or form, that that would be almost indicated with evidence of guilt and that would have an adverse effect on my client, even though it wasn't (unintelligible).

THE COURT: The State?

MS. STOCK: Your Honor, before, before we respond, can I ask if this Court will consider ruling on Mr. Cox's objection to the closing of the Courtroom? If we are discussing a mistrial right now, and it could affect whether or not this case terminates, I think that the victim's family has a right to be here for, at least that ruling.

THE COURT: Mmhmm. With respect to the request for the Court to reconsider or at least the motion on behalf of Counsel to allow the other parties into the Courtroom, the Court is not going to change its ruling--

MS. STOCK: Okay.

THE COURT: --for the following reasons. One, we are at the conclusion of the evidence portion of this trial. Therefore, the public for the past -- we have been in this case since November the tenth. Today is December first, so the public has had an opportunity to not only -- to observe the entire evidentiary portion of the trial.

Second, I warned everyone in the gallery that the Court had already had two other instances, and I thought it was abundantly clear that the Court was not going to tolerate any further disruption of this Court's proceedings by way of phone or any other method.

Third, an interaction with the juror, the Court sees as the highest form of disruption, and I am not going to take a chance on allowing it to occur any further. Therefore, the motion for this Court to consider allowing anyone's family or spectators or supporters is denied.

By not allowing anyone that precludes or foregoes anyone feeling that the Court is treating anybody's family different than the other, that motion is denied.

Do you want to be heard on the mistrial?

MS. STOCK: I do, Your Honor. I did express to the Court the concerns that the State had at the bench about juror number 11 and his ability to be fair given the new information. However, he did articulate to the Court, presumably under oath, we have been under oath this whole time, that he could be fair.

We have, as this Court stated, been in this trial for the better half of three weeks and I think that if this juror is asserting to this Court that he can be fair, that he has had no interaction with this individual in fifteen plus years and he does not know how this individual was related to the case prior to them saying that he was Mr. Clark's father, that it will not affect his ability to render a fair and impartial verdict.

And the other two jurors that saw the interaction stated that it would not affect their ability either. So, the State is not joining in the request for a mistrial. We will defer to the Court.

THE COURT: Thank you. We had, when the Court had or received the first juror note, the Court believed that it exercised the most reasonable alternative, and I am sure Counsel is aware that before the Court declares a mistrial, it must explore all reasonable alternatives to declaring a mistrial.

In this particular case, it was only one alternative discussed and that is the one that I put forward. As to hearing any other alternatives, I don't know if counsel had any other alternatives. Nonetheless, the Court did not announce what the reason for the Court bringing each individual up to the bench to be voir dired about the occurrence that took place during the lunch recess.

Every juror during the Court voir dire indicated, both those who were part of the occurrence and those who were not,

indicated that they could still be fair. The, in this particular case, I believe that the juror that wrote the note was juror 12, with the reference to juror number 11.

Juror number 11 was voir dired at the bench, indicated that he didn't have any interaction with the person we learned was, who said that they were the father of Defendant Four, Anthony Clark. He then stated that he, that he, I think he said, that he was approximately fifty years of age, but had not seen Mr. Clark's father, or the person that he said was Mr. Clark's father for at least fifteen years.

He then further accepted to this Court that he could be fair. Despite that interaction as to the juror number 11, I'm sorry. As to jurors 8 or 9, in light of the fact that all jurors said that they could be fair, that they were outside of the presence and of the other jurors, the Court is going to take those jurors for their word.

The Court does not find that there is a manifest necessity to declare a mistrial. The motion for a mistrial is denied. Anything further?

MR. BROWN: Yeah. I just want to put on the record again, Mr. Clark, whose family member allegedly had communication with the juror, we don't know that, but the juror number 11 wasn't even the person who wrote the note. There was another juror who observed it. And, Your Honor, just for the record, and I would say this is a trial before codefendants, the

issue with the jury as far as Mr. Clark, who has an attorney here, but his trial attorney is not here, who, his trial attorney had effect of the whole trial, knows the juror, knew the background of the juror, knows the background of the jurors involved.

And at this particular time, if we were in, if Mr. Clark was just in trial, I would understand it, but Mr. Dunbar and two other gentlemen are at trial, and I just don't want the issue with Mr. Clark to effect my client, Mr. Dunbar. A juror could see that Mr. Clark's family's actions and apply them and punish these three gentlemen for actions that they had nothing to do with.

And I would submit to the Court that it's kind of like when an attorney has a conflict, it's not about if it can happen. If you represent two clients and one client agrees to testify against another, and you know it never happened but it's the possibility of it happening and in this particular case, I believe juror number 11, he's behind a rock and hard place.

One, he had 12 tell on him in a way. He didn't write the letter himself, so I believe juror number 11 is in a position where he is going to have to defend himself to the jurors, which won't allow him to focus on deliberating. He's--

THE COURT: But Mr. Brown, You are making a record of things that were not said, so everything you are saying right now is not anything that we heard from the juror. So, you're

making a record of things that were not said--

MR. BROWN: Right. Well--

THE COURT: --the juror did not say.

MR. BROWN: You are absolutely correct, Your Honor.

THE COURT: Right. So he said none of that actually--

MR. BROWN: Right.

THE COURT: --What he said was that he could be fair--

MR. BROWN: Yes, ma'am.

THE COURT: He did not say that now he is between a rock and a hard place. That's not at all what he said. As a matter of fact, he said --

MR. BROWN: Yes.

THE COURT: --I am fifty years old. I have known him for fifteen, for over fifteen years. It's been over fifteen years since I have seen him. So, your record is contradictory to what the juror said.

MR. BROWN: Well, that's again--

MR. DUNBAR: (Unintelligible).

MR. BROWN: Wait. Pardon me, son. That's why I brought up the example of, like an attorney getting knocked off a case because of a conflict. It's not about what happened. It's about what could happen. And I know he didn't say that when he was on the spot. He even said something, I was going to tell the Court anyway because I'm an honest guy, and he wasn't the one that told the Court.

So, I just want to put on the record that juror number 11 is in a position that at least three other jurors know, he is going to have to defend his decision if it is favorable to Mr. Clark.

THE COURT: Defend it to who?

MR. BROWN: To the jury.

THE COURT: Who said he was going to have to defend his decision?

MR. BROWN: Because other jurors were aware that allegedly Mr. Clark's father approached him, and the other jurors could say well, sir, you're only voting not guilty because you are a friend of his father's and then he'd have to defend himself and talk about the irrelevant stuff.

And I'll submit, Judge, and I understand what you are saying, and I acquiesce to the honorable Court. The juror did not say that. He said he could be fair. I'm just talking about the possibilities that could happen. And I submit -- I just wanted to make the record, Judge.

THE COURT: Thank you.

MR. BROWN: You made your ruling and thank you.

THE COURT: Thank you. Anything further?

MR. MATTHEWS: Your Honor, if the Court would allow me?

THE COURT: Go ahead.

MR. MATTHEWS: Your Honor, I apologize. I don't

believe that I really articulated the basis for my request and I--

THE COURT: Is this further argument about the ruling that I have already made?

MR. MATTHEWS: Your Honor, I just wanted to put on the record that the issue that we have with the, it's not just with juror number 11. It's with all twelve jurors. I do understand that they all did come before the Court and say that they could be fair and impartial. However, that was at that point.

At that point, those other jurors didn't even exactly know why they were actually before the Court. They didn't know that the reason they were up there is because we were trying to decide if they, if they knew that Mr. Clark's father had allegedly spoken to one of the jurors.

There was no other instruction given to them to not discuss the reason why they were brought up to the bench and once they went back to deliberate, I believe that it's quite possible that they all did talk about it.

THE COURT: Okay. We are back to possibilities? Okay. This is what the Court is going to do.

MR. MATTHEWS: Yes, Your Honor.

THE COURT: Because the Court is charged with exploring all reasonable alternatives to a mistrial. so the Court is going to bring up, bring the jury back in and ask each and every juror if they had any unusual discussions during the

course of their deliberations. Call the jury in. Court stands in recess.

COURT CLERK: All rise. Court stands in recess.

(At 4:24 p.m., recess in proceeding.)

All rise for the jury.

(Jury returned to courtroom.)

THE COURT: Thank you. You all may be seated. Juror number 1, come on up. Counsel, come on up.

(Counsel and Defendants approached the bench, and the following occurred:)

THE COURT: Good afternoon. Can you all slide some?

MR. COX: Sorry, Your Honor.

THE COURT: Thank you. Can you slide down some? Thank you. Since the Court brought the jurors in moments ago, was there any unusual conversation or any type of discussion amongst the jurors about why you all were here?

JUROR NUMBER 1: No.

THE COURT: Okay. Thank you. Any other questions? Any other questions? Okay. Thank you. You may be seated. Juror number 2, come on up. Good afternoon.

JUROR NUMBER 2: Hi.

THE COURT: Since you all returned to the jury room, since the last time I brought you all in here and brought you up individually, has there been any unusual conversations about why you all were at the bench?

JUROR NUMBER 2: No.

THE COURT: Thank you. Please be seated. Juror number 3, come on up. Good afternoon.

JUROR NUMBER 3: Hey.

THE COURT: Since you were all here the last time, has there been any unusual discussions amongst the jurors about why you all were here at the bench?

JUROR NUMBER 3: About the reason what?

THE COURT: Why you all were here at the bench the last time?

JUROR NUMBER 3: No.

THE COURT: Thank you. Juror number 4, come on up. Good afternoon. Since you all have started deliberations, have there been any discussion amongst you and the other jurors about why you all were here for the discussions we had at the bench?

JUROR NUMBER 4: No.

THE COURT: Thank you. You may be seated. Juror number 5, come on up. Good afternoon.

JUROR NUMBER 5: Good afternoon.

THE COURT: Since you all were here the last time when I brought you all up to the bench, have there been any unusual conversations about the reasons why the jurors were at this bench?

JUROR NUMBER 5: No.

THE COURT: Thank you. You may be seated. Juror

number 6, come on up. Juror number 6, good afternoon.

JUROR NUMBER 6: Hello.

THE COURT: Since you all were here a few moments ago, has there been any conversation, unusual conversations about amongst the individuals about why you were here at the bench?

JUROR NUMBER 6: No.

THE COURT: Thank you. You may be seated. Juror number 7, come on up. Hello. Since you were last here, was there any unusual conversation during the course of the deliberations about why the jurors were at the bench last time?

JUROR NUMBER 7: No.

THE COURT: Thank you. You may be seated. Juror number 8, come on up. Good afternoon.

JUROR NUMBER 8: Hello.

THE COURT: Since you were here the last time, moments ago, has there been any unusual conversations during the course of deliberations amongst the jurors regarding the reason why you were here at the bench?

JUROR NUMBER 8: No.

THE COURT: Thank you. You may be seated. Juror number 9, come on up.

Good afternoon. Since you were here moments ago, has there been any unusual conversations amongst you and your fellow jurors about why you were here at the bench?

JUROR NUMBER 9: No.

THE COURT: Thank you. You may be seated. Juror number 10, come on up. Good afternoon.

JUROR NUMBER 10: Hello.

THE COURT: Since you were here moments ago, have there been any unusual conversations amongst you and your fellow jurors during the course of your deliberations concerning the reason you were here at the bench moments ago?

JUROR NUMBER 10: No.

THE COURT: No?

JUROR NUMBER 10: No.

THE COURT: Thank you. You may be seated. Juror number 11, come on up. Good afternoon. Since you were here, moments ago--

JUROR NUMBER 11: Yes.

THE COURT: --have there been any unusual conversations during the course of deliberations with your fellow jurors regarding the reason that you were here at this bench?

JUROR NUMBER 11: No.

THE COURT: Thank you. You may be seated. Juror number 12, come on up. Good afternoon.

JUROR NUMBER 12: Hey.

THE COURT: Since you were here last, moments ago, have there been any unusual conversations between you and your fellow jurors during the course of deliberations about the

reasons why you were here at this bench?

JUROR NUMBER 12: No.

THE COURT: Thank you. You may be seated. Anything further? Have a seat.

(Counsel and Defendants returned to trial tables, and the following occurred in open court:)

THE COURT: Ladies and gentlemen of the jury, in resuming your deliberations, please do not discuss anything or any of the conversations that we have had at the bench. Thank you. All rise for the jury.

COURT CLERK: All rise for the jury.

(At 4:32 p.m., jury excused to the jury room to continue deliberations.)

THE COURT: Thank you. The Court has now polled each and every juror regarding the conversations that were had at the bench. The Court's ruling on the motion for a mistrial is the motion for mistrial is denied. The record will reflect the objections of Counsel. Thank you.

MR. COX: Thank you, Your Honor.

THE COURT: I will wait for another note.

MR. MATTHEWS: Thank you, Judge.

COURT CLERK: All rise. Court is in recess waiting on a further note from the jury.

(At 4:33 p.m., recess in proceeding.)

(Jury not present upon reconvening.)

THE COURT: So, the jury sounds like they want to leave at 5:30. I am going to allow the jury to leave at 5:30 and they are going to come back to start deliberations around 9:00. You all need to be here when the start deliberations.

MS. STOCK: Your Honor?

MR. COX: Remember you said 9:30?

THE COURT: Oh. Yes. 9:30. Yes. I know why you said that. Yes.

MS. STOCK: I'm fine to not be here, but if we could be notified once all twelve have resumed deliberations, so that we know that they have arrived and started by email as opposed to us coming?

THE COURT: Yes. I can--

MS. STOCK: No. I know, so if somebody could--

THE COURT: Yeah.

MS. STOCK: --call us and let us know all twelve have arrived and got started.

THE COURT: We will send an email. We will send an email when they arrive and get started.

MS. STOCK: Thank you.

MR. BROWN: What time?

THE COURT: 9:30. I will tell them to come to return to the jury room to continue deliberations at 9:30 tomorrow morning.

MR. BROWN: Gotcha.

THE COURT: Does anybody need to be here, because I am probably going to check in, but I am probably going to be back across the street as well.

MR. BROWN: I do not need to be here.

MS. GALLO: No, Your Honor.

MS. STOCK: And do you need us here when you dismiss them for the day today or may we be excused?

THE COURT: No. I am going to excuse them from the jury room.

MS. STOCK: Okay.

MS. GALLO: And Your Honor, if the jurors want to see the weapons, we will have them in our office. We can bring them.

THE COURT: Okay. We'll, so, when we get a note, we probably will call like we would call any other time.

MS. GALLO: Yes.

THE COURT: Okay.

MS. GALLO: Thank you.

THE COURT: All right. Thank you so much. That is it. Thank you.

(At 5:05 p.m., proceeding adjourned until December 2, 2022.)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of State of Maryland v. James Dunbar, 119343016, heard in the Circuit Court for Baltimore City, Maryland, on December 1, 2022, were recorded by means of digital audio.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 128 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 17th day of September, 2023.



Angela Meador

Transcriber

APPENDIX G

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY
2022 DEC 14 PM 1:30
CRIMINAL DIVISION

STATE OF MARYLAND	*	IN THE CIRCUIT COURT FOR
V.	*	BALTIMORE CITY
WILLIAM THORNTON	*	CASE NO: 119343014

MOTION FOR NEW TRIAL

COMES now, Willaim Thornton, by and through his attorney, John Cox Esq., Law Offices of John Cox LLC and respectfully requests that this Honorable Court, pursuant to Maryland Rule 4-331, to grant a new trial in this matter and in support thereof states:

1. On December 6, 2022 the Defendant was found guilty in the above captioned matter of Murder in the first degree murder and related charges.
2. The defendant was denied his right to a public trial when the Court excluded the defendant's family from the proceedings and closed the trial to the public.
3. The verdict as to the assault pistol is not supported by the evidence in this matter.
4. The State's improper closing argument misled the jury as to the weight of the DNA evidence with regard to the Desert Eagle 9mm semi-automatic handgun.

ARGUMENT IN SUPPORT

The Court closing the courtroom to the public was improper.

The Court denied the defendant's right to a public trial when it closed the courtroom to the public and excluded the defendant's family from the proceedings. During the course of the trial, there were several disruptions to the proceedings that caused concern for the

cc: Judge D. Middleton

Court. The first, was that an individual had taken a picture of counsel and the four co-defendants at a bench conference and posted the picture on Instagram. This action was later attributed to an individual associated with the co-defendant James Dunbar. This action was not attribibuted to the defendant or his family in any way. Additionally, the Instagram post, although inappropriate, made no comments or remarks that would threaten the security of the courtroom. The second issue was when co-defendant Anthony Clark's father approached a juror during the lunch recess. Again, this action was not attributable to the defendant or any of his family members. At no time was the defendant's family accused of disrupting the Court or acting inappropriately in any way.

After the Court learned of the interaction between Mr. Clark's father and the juror, the Court closed the Courtroom for the remainder of the proceedings with the exception of the rendering of the verdict in which the Court limited the defendant's family to two people for the verdict.

The United States' Supreme Court has noted several factors with respect to evaluating the proper closure of a court proceeding. These are: (1) a party seeking closure "must advance an overriding interest that is likely to be prejudiced"; (2) "the closure must be no broader than necessary to protect that interest"; (3) "the trial court must consider reasonable alternatives to closing the proceeding"; and (4) "the trial court must make findings adequate to support the closure." *Waller v. Ga., 467 U.S. 39 (1984)*

Excluding the defendant's family when they had not been accused of any wrongdoing was an abuse of discretion. A narrowly tailored fact specific closure would have been to remove the

59

co-defendant's father from the Courtroom. Anything beyond that can simply not be construed as no broader than necessary to protect the interest of the Court.

The conviction on assault pistol was not supported by the evidence.

The defendant was convicted of being in possession of an assault pistol. The weapon in question met the definition of an assault rifle, not an assault pistol. The jury instruction given to the jury specifically enumerated the weapons that fit under both categories, assault pistol and assault rifle. The AK47 type long rifle fit under the assault rifle and was not enumerated under the listings for assault pistol. There was no evidence at any point that the an assault pistol was recovered, let alone attributable to the defendant.

The State's Improper Closing Argument prejudiced the defendant.

The State in it's closing argument, misrepresented the testimony of the State's Expert with respect to the DNA on the Dessert Eagle 9mm semi-automatic handgun. In closing, the State asserted that since the defendant's statistical probability was higher than the other two contributors (co-defendants Clark and Dunbar) that the gun belonged and was used by the defendant. This assertion is in direct contradiction to the testimony of DNA expert Christy Silbaugh. Her testimony was that no inference could be made between the three contributors by the probabilistic statistics of each individual contributor. This misleading statement by the State in closing argument was improper and significant. The Dessert Eagle 9mm handgun was the only handgun that could be definitively shown to have been fired of the weapons recovered. It should be noted that although DNA on other weapons contained sole

contributors to other defendants, they were acquitted of the crimes of violence and only convicted of possession of those handguns.

WHEREFORE, the Defendant respectfully requests this Honorable Court:

1. To hold this matter *sub curia* until the sentencing in this matter.;
2. Allow the Defendant to supplement this motion;
3. Grant a new trial in this matter;
4. Any and all other relief this Honorable Court deems appropriate.

Respectfully submitted,

John Cox, Esq.
217 N. Charles St. 3rd Floor #172046
Baltimore, Maryland 21201
410-385-2020

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2022 a copy of the foregoing Motion for New Trial was electronically delivered to the Assistant State's Attorneys in this matter, Elizabeth Stock and Megan Gallo, of the Baltimore City State's Attorney's Office.

John Cox, Esq.

60

STATE OF MARYLAND	*	IN THE CIRCUIT COURT FOR
V.	*	BALTIMORE CITY
WILLIAM THORNTON	*	CASE NO: 119343014

ORDER

It is this ____ day of _____, 2022 hereby ordered that the foregoing Motion for New Trial is _____.

_____
Judge Dana Middleton