DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MICHAEL DREJKA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D19-4385

December 29, 2021

Appeal from the Circuit Court for Pinellas County; Joseph A. Bulone, Judge.

Bryant R. Camareno, Tampa, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Peter N. Koclanes, Assistant Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Michael Drejka shot and killed Markeis McGlockton during a clash over a parking space. Rejecting Mr. Drejka's self-defense argument, the jury found him guilty of manslaughter. He now appeals his judgment and twenty-year sentence. We have

jurisdiction. *See* Fla. R. App. P. 9.030(b)(1)(A); 9.140(b)(1)(A), (F). Mr. Drejka brings eight issues to us. After careful review of the record and briefs,[1] we affirm.

Background

On the afternoon of July 19, 2018, Mr. McGlockton picked up his long-time girlfriend, Brittany Jacobs, from work. The couple's three children were also in the car. Mr. McGlockton stopped at a convenience store to buy snacks for the youngsters.

Neither Mr. McGlockton nor Ms. Jacobs had a disabled parking permit or license plate. Nevertheless, Mr. McGlockton parked in a space reserved for persons with disabilities. He exited the car and entered the store with his five-year-old son in tow. Ms. Jacobs and the couple's younger children waited in the car.

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[1] Mr. Drejka requested oral argument in his initial brief. This was improper and, accordingly, we did not grant oral argument. *See* Fla. R. App. P. 9.320(a) ("A request for oral argument shall be in a separate document served by a party . . . ."); *Practice Preferences*, https://www.2dca.org/Practice-and-Procedures (last visited Oct. 18, 2021) ("The Second District Court of Appeal has historically extended oral argument to most litigants who have made a proper request for it. Because the scheduling of oral argument is a function of the clerk's office, it is important to make any request for oral argument in a separate filing . . . ."); *see also Noel Enter. v. Smitz*, 490 So. 2d 95, 96 (Fla. 5th DCA 1986).

While Mr. McGlockton was in the store, Mr. Drejka drove up. He parked adjacent to the disabled parking spot, exited his automobile, and began circling Ms. Jacobs' car. Mr. Drejka, now positioned one foot away from Ms. Jacobs' car, began pointing at her. She was "scared [by] this strange, suspicious man."

Ms. Jacobs cracked open her car window to hear Mr. Drejka rebuking her for parking in a handicapped parking spot. He told her, "People that park here, I give problems to all the time." Ms. Jacobs described Mr. Drejka as "angry and aggressive." She admitted "getting loud with [Mr. Drejka] . . . because [she] just wanted this man to . . . just leave [her] and [her] babies alone." Ms. Jacobs asked Mr. Drejka whether she should "get [her] man." He responded, "Yes, if you want him to fight."

An eyewitness, Vicki Conrad, described Mr. Drejka as the louder of the pair, behaving in an "authoritative" and "argumentative" manner. Another eyewitness, Robert Castelli, was sitting in his car as the confrontation erupted. Mr. Castelli "heard screaming . . . a man basically yelling at a car. . . . He was pointing at the window." Mr. Castelli was concerned for Ms. Jacobs' safety "because [Mr. Drejka] was shouting very loud, and [he] could tell

[Mr. Drejka] was very upset" and behaving "in a threatening manner towards the car, pointing at the car, yelling, screaming." Mr. Castelli went inside the convenience store and told the clerk about the ongoing altercation.

Upon hearing this, Mr. McGlockton left the store. He approached Mr. Drejka and told him to "[g]et away from [his] girl." Mr. McGlockton, who was unarmed, pushed Mr. Drejka to the ground. Mr. McGlockton advanced no further and made no threats. Witnesses say that he turned and retreated several steps. But, Mr. Drejka drew a gun and trained the weapon on Mr. McGlockton. Mr. Drejka fired. The bullet pierced Mr. McGlockton's heart. Mr. McGlockton stumbled back inside the store and died beside his son.

A surveillance video captured the shooting. The entire incident, from Mr. McGlockton's initial confrontation with Mr. Drejka to the shooting, lasted about eleven seconds.[2]

According to Ms. Conrad, after the shooting, Mr. Drejka was "very calm" and "very matter-of-fact." Mr. Castelli observed that Mr.

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[2] The trial court admitted the surveillance video into evidence and allowed the jury to view it. The trial court also allowed the State to present a slowed-down time-lapse version of the video.

Drejka was not confused, disoriented, or in pain. Indeed, Mr. Drejka "calmly" got up, walked to his car, opened the door and placed his firearm inside. Mr. Castelli heard Mr. Drejka muttering, "He shouldn't have pushed me down. What did he think was gonna happen?"

Mr. McGlockton's shooting prompted a sizeable law enforcement presence at the scene. Law enforcement officers detained and questioned Mr. Drejka for less than an hour and released him. Almost a month later, the sheriff's office arrested him.

During his initial interview with detectives, Mr. Drejka offered conflicting and evolving justifications for the shooting. Throughout the interview, Mr. Drejka used tactical jargon. For instance, following his shove to the ground, Mr. Drejka told the interviewing detectives that as he began to sit up "[he] started drawing [his] weapon" and "[a]s [he] start[ed] leveling off [his] weapon [Mr. McGlockton] ma[de] his next step towards me and 21-foot rule." As Mr. Glockton allegedly advanced towards him, Mr. Drejka explained that he had to utilize a "force multiplier" to "[n]eutralize the

immediate threat." Mr. Drejka informed the detective that "a force multiplier is a sidearm."

Seeing the media coverage of the shooting, Richard Kelly recognized Mr. Drejka's car and recalled a run-in with Mr. Drejka five months earlier. Prior to trial, the trial court ruled that evidence of Mr. Drejka's encounter with Mr. Kelly was admissible under section 90.404(2)(a), Florida Statutes (2018), that permits the admission of "[s]imilar fact evidence of other crimes, wrongs, or acts . . . when relevant to prove a material fact in issue, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *See also Truehill v. State*, 211 So. 3d 930, 945 (Fla. 2017) ("Similar fact evidence[is] also known as *Williams*[3]–rule evidence . . . .").

At trial, Mr. Kelly recounted that he had parked his company vehicle in the same handicap spot and ran into the convenience store for a soda. Upon returning, Mr. Kelly saw Mr. Drejka lurking around his truck taking pictures. Mr. Drejka confronted Mr. Kelly about the handicapped parking spot. In fact, Mr. Drejka

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[3] *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

threatened, "I should shoot you, kill you." The confrontation became so heated that Abdalla Salous, the convenience store manager, intervened to de-escalate the situation. Mr. Drejka responded that "I can't help it. I always get myself in trouble for that." Mr. Drejka seemingly was so incensed following his run-in with Mr. Kelly that he called Mr. Kelly's employer, John Tyler, to report that one of his employees had parked in a handicapped parking space. During their conversation, Mr. Drejka told Mr. Tyler that "[Mr. Kelly] was lucky. [Mr. Drejka] said that if [he] had a gun, he . . . could have shot [Mr. Kelly]."

The State called Dr. Roy Bedard, a police trainer, as an expert witness on use of force and defensive tactics. Dr. Bedard testified that he reviewed Mr. Drejka's interview with detectives. Mr. Drejka's use of "jargon police talk" caught his attention. For example, Dr. Bedard testified that Mr. Drejka used the term "force multiplier," a military term, incorrectly, and probably meant "force continuum." *See generally Coit v. City of Philadelphia*, No. 08-4744, 2010 WL 1946911, at *1 (E.D. Pa. May 11, 2010) ("[Police Officer's deposition testimony] described force continuum training as steps an officer is supposed to take in escalating order of severity to

defend himself while doing his job: police presence, verbal commands, control holds, and physical force, including deadly force.").

Dr. Bedard then explained the "21-foot-rule," a police concept about how fast someone with a knife could close the distance before an officer could draw a gun. *See generally Buchanan v. City of San Jose*, 782 F. App'x 589, 592 (9th Cir. 2019) ("The 21-foot rule provides that a person at a distance of 21 feet or less *may* pose a threat to the safety of an officer."). Specifically, Dr. Bedard related that the 21-foot-rule "doesn't mean that if someone's within 21 feet, you can automatically shoot them." To the contrary, he stressed that invoking the rule is inappropriate when the advancing individual is unarmed. Dr. Bedard carefully cabined his testimony, explaining that he "was just defining terms. [He] was not trying to characterize anything that might have gone beyond what [Mr. Drejka] said."

Based on his review of the surveillance video, Dr. Bedard also opined that Mr. Drejka had full possession and control of the firearm when he fired it. At no point did Dr. Bedard comment upon Mr. Drejka's self-defense claim.

Mr. Drejka's trial lasted five days. Upon returning from a lunch break on the final day, Mr. Drejka's counsel advised the trial court that while in the courthouse cafeteria, he witnessed a woman, "[who] is here with the head of the NAACP," approach a juror. Counsel reported that the two embraced in "a big hug, and they engaged in conversation for about three to five minutes." Counsel asserted that jurors are "not supposed to be having contact with anyone who might be here in the capacity as an activist or something, on behalf of the McGlockton family." Counsel asked that the juror be replaced with an alternate.

The trial judge interviewed the juror. The juror forthrightly admitted that he had spoken with "a friend of my wife." He denied that he had spoken with his wife's friend about the case. The juror told the trial court that the woman did not tell him why she was at the courthouse, and he did not ask.[4] He "just saw a really good friend from the past." The trial court concluded that it "ha[d]n't heard anything to indicate that there's any improper contact." The trial court denied Mr. Drejka's motion to excuse the juror.

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[4] Apparently, the woman watched the trial remotely from another courtroom.

Following deliberation, the jury returned a guilty-as-charged verdict. The trial court sentenced Mr. Drejka to twenty-years' imprisonment.

Analysis

Issue I: Alleged Improper Comments

Mr. Drejka argues that "the State made several objectionable comments" during closing argument.

The numerous allegedly improper comments advanced by Mr. Drejka are not an insurmountable obstacle to our complete and careful review of this issue. We observe, however, that Mr. Drejka's use of lengthy block and/or italicized quotes, failure to accurately quote the record, and omission as to whether the comment was objected to and, in turn, whether the objection was sustained, unnecessarily hinders our ability to easily address Mr. Drejka's claims for relief.

To simplify, we conclude that Mr. Drejka's challenges to the State's comments fall into one or more of four categories: (a) unpreserved and not constituting fundamental error; (b) waived for failure to brief the alleged error adequately; (c) comments that were an "invited response"; or (d) comments that were a fair comment on

the evidence. *See Walls v. State*, 926 So. 2d 1156, 1166 (Fla. 2006) ("A prosecutor's comments are not improper where they fall into the category of an 'invited response' by the preceding argument of defense counsel concerning the same subject."); *Griffin v. State*, 866 So. 2d 1, 16 (Fla. 2003) ("Merely arguing a conclusion that can be drawn from the evidence is permissible fair comment."); *Brooks v. State*, 762 So. 2d 879, 899 (Fla. 2000) ("[F]undamental error . . . has been defined as error that 'reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.' " (quoting *McDonald v. State*, 743 So. 2d 501, 505 (Fla. 1999))); *Davis v. State*, 153 So. 3d 399, 401 (Fla. 1st DCA 2014) ("An appellant who presents no argument as to why a trial court's ruling is incorrect on an issue has abandoned the issue[-]essentially conceded that denial was correct." (quoting *Prince v. State*, 40 So. 3d 11, 13 (Fla. 4th DCA 2010))).

Mr. Drejka makes no compelling argument to reverse on this issue. Thus, he is entitled to no relief.

Issue II: Denial of Mr. Drejka's Motion for Judgment of Acquittal (JOA)

Mr. Drejka contends that the trial court erroneously denied his JOA motion. At trial, he argued that the State failed to rebut his "hypothesis of evidence, he was acting in self-defense."

We review de novo the denial of a JOA motion. *See Sullivan v. State*, 898 So. 2d 105, 108 (Fla. 2d DCA 2005) ("The standard for the review of a trial court's decision on a motion for a judgment of acquittal is de novo."). Generally, a "[trial] court should not grant the [JOA] motion unless, when viewed in a light most favorable to the State, the evidence does not establish a prima facie case of guilt." *Dupree v. State*, 705 So. 2d 90, 93 (Fla. 4th DCA 1998) (en banc) (citing *Proko v. State*, 566 So. 2d 918, 919 (Fla. 5th DCA 1990)). "[I]n moving for a [JOA, a defendant] admits not only the facts stated in the evidence adduced, but also admits every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence." *Lynch v. State*, 293 So. 2d 44, 45 (Fla. 1974). "The trial court has the task of reviewing the evidence to determine whether competent, substantial evidence exists from which the jury could infer guilt to the exclusion of all

other inferences." *Bussell v. State*, 66 So. 3d 1059, 1061 (Fla. 5th DCA 2011) (citing *State v. Law*, 559 So. 2d 187, 189 (Fla. 1989)). "[T]he concern on appeal must be whether, after all conflicts in the evidence and all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the verdict and judgment." *Tibbs v. State*, 397 So. 2d 1120, 1123 (Fla. 1981).

The surveillance video, coupled with the eyewitness testimony that Mr. McGlockton was retreating, were sufficient to defeat Mr. Drejka's JOA motion. *See Hernandez v. State*, 842 So. 2d 1049, 1051 (Fla. 4th DCA 2003) ("If the record contains sufficient evidence from which the jury could conclude or infer appellant could have avoided the use of deadly force by retreating safely, the jury is entitled to reject appellant's theory of self-defense."). The jury, not the trial judge, had to resolve whether Mr. Drejka acted in self-defense. *See Fowler v. State*, 921 So. 2d 708, 711 (Fla. 2d DCA 2006) (recognizing "that the question of whether a defendant committed a homicide in justifiable self-defense is ordinarily one for the jury" (citing *Brown v. State*, 454 So. 2d 596, 598 (Fla. 5th DCA 1984), *superseded by statute on other grounds as stated in Thomas*

v. State, 918 So. 2d 327 (Fla. 1st DCA 2005))); *Wilkins v. State*, 295 So. 3d 872, 876 (Fla. 5th DCA 2020) ("If there is competent substantial evidence of each element of the crime and that the defendant was the perpetrator of that crime, the trial court should deny a motion for judgment of acquittal, because it is the province of the jury to determine the weight of the evidence and the credibility of the witnesses.").

Mr. Drejka also argues that the trial court should have granted his JOA motion because the shooting "was either *excusable* or *justified*." However, Mr. Drejka's JOA motion was purely boilerplate:

> We move for judgment of acquittal. We would argue, Judge, one: The State has failed to establish a prima facie case, and they've clearly failed to rebut the self-defense issue in the case.
>
> We would further state that the evidence has not been entirely inconsistent with any reasonable hypothesis of innocence. There are -- there's clearly the hypothesis of innocence, that he was acting in self-defense. There was excusable homicide. And we would ask the Court for consideration in that regard.

Mr. Drejka's JOA motion was insufficient to preserve for our review the ancillary argument(s) he advances on appeal. *See*

Tillman v. State, 471 So. 2d 32, 35 (Fla. 1985) ("In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved."); *Newsome v. State*, 199 So. 3d 510, 513 (Fla. 1st DCA 2016) ("[I]n moving for a judgment of acquittal, a defendant must identify the element, or elements, of a crime for which he or she contends the evidence is lacking, and, if the evidence is purely circumstantial, outline his or her theory of defense and explain why it is not inconsistent with the circumstantial evidence. A 'boilerplate' motion is not enough."); *Freeman v. State*, 174 So. 3d 1104, 1104 (Fla. 5th DCA 2015) ("Limited, boilerplate motions for judgment of acquittal, which are of a technical and pro-forma nature, are inadequate to preserve a sufficiency of evidence claim for appellate review.").

To the extent that we may review the trial court's denial of Mr. Drejka's JOA motion premised upon the claim that the State failed to rebut his theory of self-defense, the trial court properly denied relief. Insofar as Mr. Drejka ventures arguments that were not

raised below or were insufficiently developed, these claims are not properly before us.

Issue III: Admission of *Williams* Rule Evidence

Mr. Drejka contends that the trial court erred in admitting *Williams* Rule evidence about his altercation with Mr. Kelly. Mr. Drejka argues that the incident was not sufficiently similar "and most certainly did not rise to the level of being relevant to rebut any claim of self-defense."

We review a trial court's admission of *Williams* Rule evidence for an abuse of discretion. *Kulling v. State*, 827 So. 2d 311, 313 (Fla. 2d DCA 2002) ("The trial court's decision to admit *Williams* rule evidence is reviewed for an abuse of discretion." (citing *Chandler v. State*, 702 So. 2d 186, 195 (Fla. 1997))); *see also Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980) ("If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial judge should be disturbed only when his decision fails to satisfy this test of reasonableness.").

Section 90.404(2)(a) provides that similar fact evidence of collateral crimes "is admissible when relevant to prove a material fact in issue," such as "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity." The trial court's *Williams* Rule order carefully analyzed the evidence and found it admissible. *See Austin v. State*, 48 So. 3d 1025, 1027 (Fla. 2d DCA 2010) (stating that before admitting *Williams* Rule evidence, the trial court must determine "[(1)] whether the defendant committed the prior crime, [(2)] whether the prior crime meets the similarity requirements necessary to be relevant as set forth in our prior case law, [(3)] whether the prior crime is too remote so as to diminish its relevance, and [(4)] whether the prejudicial effect of the prior crime substantially outweighs its probative value." (quoting *Robertson v. State*, 829 So. 2d 901, 907-08 (Fla. 2002))).

The trial court's detailed and thorough order provided, in part, as follows:

> As to the second determination, **the evidence was extraordinarily similar to the charges in this case**. The witnesses indicated that Mr. Kelly parked in the

> same parking space as the victim in this case. In both this case and the incident with Mr. Kelly, Defendant used the same car and parked in the same parking spot. In both cases, Defendant approached the car parked in the handicapped space and began taking pictures, from which a confrontation ensued with the occupants of the car. In the prior incident, Defendant threatened to shoot Mr. Kelly, and in this case, he is accused of shooting the victim. Further, as to the third determination, these incidents occurred less than six months apart. Courts have admitted other crimes or acts that were far more remote. *See, e.g., Duffey v. State*, 741 So. 2d 1192, 1197 (Fla. 4th DCA 1999) (12 years). The prior act and the crime charged in this case are therefore extremely similar, and the six-month period that passed between it and the crime charged does not diminish its relevance.

(Emphasis added).

Of course, the *Williams* Rule evidence did not involve pushing or shooting. However, "[t]his Court has never required collateral crime to be absolutely identical to the crime charged. The few dissimilarities here seem to be a result of differences in . . . opportunities . . . ." *Gore v. State*, 599 So. 2d 978, 984 (Fla. 1992). For that matter, similar fact evidence used to prove facts other than identity need not meet the "rigid" similarity requirement. *See Triplett v. State*, 947 So. 2d 702, 703 (Fla. 5th DCA 2007) ("[S]imilar fact evidence relevant to prove a material fact other than identity does not need to meet the rigid similarity requirement applied when

such evidence is used to prove identity"). And in this case, the State was not using the *Williams* Rule evidence for purposes of identity; rather, Mr. Drejka's state of mind and the issue of self-defense were implicated.

As the trial court correctly assessed, the *Williams* Rule evidence was admissible to rebut Mr. Drejka's self-defense claim:

> Finally, the prior act is highly relevant and . . . the relevance outweighs any prejudicial value. Similar fact evidence is admissible when relevant to prove a material fact in issue, § 90.404, Fla. Stat., and caselaw demonstrates that evidence of other acts can be admissible to rebut a claim of self-defense. Whether the defendant actually believed that deadly force was necessary is a material fact at issue in a self-defense case. *See* Fla. Std. Jury Instr. (Crim.) 3.6(f). In *Wuornos v. State*, 644 So. 2d 1000, 1006-[0]7 (Fla. 1994) evidence of a serial killer's prior similar murders was admissible as relevant to whether the defendant had acted in self-defense when killing someone in a manner similar to previous murders. Similarly, in *Zack v. State*, 753 So. 2d 9, 14, 16-17 (Fla. 2000), the defendant contended that he grabbed a knife in self-defense because he believed the victim was running into the master bedroom to get a gun. Evidence that the defendant had previously robbed, raped, or murdered people after meeting them in bars and leaving with them was admissible to refute this claim and show that he murdered the victim. Finally, in *Irizarry v. State*, 905 So. 2d 160, 163-[6]4 (Fla. 3d DCA 2005), evidence of a prior domestic violence incident between the defendant and the victim was admissible to prove that the defendant had not acted in self-defense when he beat the victim. In all of these cases, evidence of

> prior similar violent acts were admissible to rebut a claim of self-defense.
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> The *Williams* rule evidence is admissible as it tends to refute [Mr. Drejka]'s likely defense-that he shot the victim in self-defense-and is not substantially outweighed by the risk of unfair prejudice. As Defendant has previously stated to law enforcement that the victim pushed him over and he shot the victim in self-defense, he is likely to raise that defense at trial. The testimony of Mr. Kelly, Mr. Tyler, and Mr. Salous shows that, in an extremely similar situation, [Mr. Drejka] threatened to use deadly force in a situation where he was not at risk of imminent death or great bodily harm. Arguably, this suggests that [Mr. Drejka] shot the victim not because he believed it was necessary to prevent imminent death or great bodily harm, but because he was upset about the victim parking in a handicapped parking space.

The *Williams* Rule evidence was sufficiently similar and relevant to rebut Mr. Drejka's self-defense claim. The trial court did not abuse its discretion in admitting that evidence.

Issue IV: Slow Motion Surveillance Video

Mr. Drejka asserts that the trial court "erred in allowing the video of the shooting to be played in slow motion" for the jury. He maintains that "it unfairly represented the incident as if it had occurred [over] several minutes giving the jurors the unfair impression that [he] had time to reflect on the nature of his danger."

Again, we review the admission of this evidence for an abuse of discretion. *See Baez v. State*, 235 So. 3d 1028, 1032 (Fla. 2d DCA 2018) ("We review a trial court's evidentiary rulings for an abuse of discretion, but the trial court's discretion is limited by the rules of evidence." (citing *Masaka v. State*, 4 So. 3d 1274, 1279 (Fla. 2d DCA 2009))).

Mr. Drejka suggests that the jury viewed only the slow-motion video. This is not the case. The State first played the surveillance video for the jury in real time. Thereafter, the State played the slowed-down video.

The trial court's admission of the slowed-down surveillance video was proper. After all, the State used that video to assist the jury in seeing Mr. Drejka's and Mr. McGlockton's movements prior to the shooting. The State never claimed that Mr. Drejka perceived the incident in slow-motion. And, "the time-lapse nature of a video does not make the video per se inadmissible." *Smith v. Geico Cas. Co.*, 127 So. 3d 808, 811 (Fla. 2d DCA 2013).

In *Jefferson v. State*, 818 So. 2d 565, 566 (Fla. 1st DCA 2002), for instance, the court found "no error in allowing in evidence a copy of a 'time lapse' videotape over the objection that fewer frames

per second in the original videotape (than standard videotaping entails) 'inaccurately portray either the speed or the range of motion' by their very infrequency." The First District also observed that:

> Appellant cites no authority for her blanket objection to time lapse videotapes and copies thereof. Nor does she explain why ten frames per second are too few or thirty frames per second enough. The copy the jury saw, moreover, did have thirty frames per second, and the trial judge found, on the basis of uncontroverted expert testimony, that the copy was "an accurate depiction of what's on" the original.

Id.

Mr. Drejka fails to offer any case law categorically prohibiting the presentation of a slowed-down video. The video depicts what it depicts; presentation of a slowed-down video afforded the jury the ability to review the parties' actions more carefully as the incident unfolded.

The trial court did not abuse its discretion in admitting the slowed-down surveillance video.

Issue V: Dr. Bedard's Use of Force Testimony

Mr. Drejka contends that Dr. Bedard's testimony invaded the jury's province. Specifically, he claims that Dr. Bedard's testimony

"as to what is justifiable use of force" amounted to a legal conclusion that "Mr. Drejka's actions were not justified."

We review this issue, too, for an abuse of discretion. *See Williams v. State*, 209 So. 3d 543, 559 (Fla. 2017).

The State called Dr. Bedard to explain tactical terms that Mr. Drejka peppered throughout his interview with detectives. Dr. Bedard's testimony was admissible for purposes of defining these terms (i.e., force multiplier, force continuum). He conceded that he was only defining these terms. He did not attempt to characterize anything Mr. Drejka told detectives or to otherwise comment upon any other witnesses' credibility or the substance of their testimony. Dr. Bedard's testimony did not invade the province of the jury. He did not opine upon whether Mr. Drejka's use of deadly force was justified. *See Christian v. State*, 693 So. 2d 990, 993 (Fla. 1st DCA 1994) ("It is improper to permit an expert to express an opinion which applies a legal standard to a set of facts."), *quashed on other grounds by*, 692 So. 2d 889 (Fla. 1997); *see generally Claudio-Martinez v. State*, 324 So. 3d 45, 48 (Fla. 2d DCA 2021) ("In Florida, a person is justified in using deadly force if that person reasonably believes that such force is necessary to prevent imminent death or

great bodily harm to himself or another person or to prevent the imminent commission of a forcible felony." (citing § 776.012(2), Fla. Stat. (2018))).

Mr. Drejka's use of law enforcement/military terms created a false air of necessity, legitimacy, lawfulness, and/or implied training that the State was entitled to explore in response to Mr. Drejka's self-defense argument. *See generally* §§ 776.012(2) ("A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony."); 032(1) ("A person who uses or threatens to use force as permitted in [section] 776.012 . . . is justified in such conduct and is immune from criminal prosecution . . . for the use . . . use of such force by the person . . . against whom the force was used . . . ."). It was entirely appropriate for the State to interpret and define Mr. Drejka's words, actions, and thought processes. Mr. Drejka's use of specialized terminology was simply beyond common knowledge. The trial court did not abuse its discretion in allowing Dr. Bedard's testimony.

Issue VI: Denial of Motion to Allow Jury to View Crime Scene

Mr. Drejka claims that the trial court erred in denying his "Motion for Jury View of Crime Scene." *See* § 918.05, Fla. Stat. (2018) ("When a court determines that it is proper for the jury to view a place where the offense may have been committed or other material events may have occurred, it may order the jury to be conducted in a body to the place, in custody of a proper officer."). He asserts that a jury view was necessary for the jury to understand his "point of view . . . and the respective locations of the different [witnesses]" as well as the "parties' lines of sight" for purposes of understanding what the witnesses could and could not have observed. Additionally, he claims that there was an "apparent incline" that afforded Mr. McGlockton a tactical advantage from which to launch his attack.

"A motion for jury view is a determination that is left to the discretion of the trial court and there is a presumption of correctness as to its rulings absent a demonstration to the contrary." *Kilgore v. State*, 55 So. 3d 487, 513 (Fla. 2010). "The purpose of a jury view is to assist the jury in analyzing and applying the evidence presented at trial. A motion for a jury view may be

granted if it appears that a useful purpose would be served." *Thomas v. State*, 748 So. 2d 970, 983 (Fla. 1999) (citation omitted); *Rankin v. State*, 143 So. 2d 193, 195 (Fla. 1962) (observing that a jury view "is designed to aid the jurors in analyzing and applying the evidence").

We cannot ascertain what, if any, useful purpose a jury view would serve. After all, with the admission of numerous photographs, video, and eyewitness testimony, all of the relevant and necessary details of the incident were conveyed to the jury.

In denying the motion, the trial court observed as follows:

> [W]e hardly ever do this and whenever we do, it seems like it ends in disaster. Something happens that is inappropriate, that there's an inappropriate discussion or people doing inappropriate things and it just ends up being a disaster. I can't really anticipate what the disaster would be, but I can anticipate a disaster. So we do have a video of the actual incident. We have crime scene video. We have photographs. If you want to take additional photographs and additional video, you can go ahead and do that.
>
> . . . .
>
> *But I think with all the photographic evidence and all the video evidence, that it's not really necessary in this case. So I'll deny.*

(Emphasis added).

We agree. Aside from the trial court's logistical concerns, Mr. Drejka fails to explain why the admitted evidence was inadequate or insufficient to communicate the points he now raises on appeal. A jury view would have been redundant and, thus, would not have served a useful purpose. *E.g.*, *Ferguson v. State*, 28 So. 2d 427, 430 (Fla. 1946) (holding that the trial judge did not abuse his discretion in denying defendant's motion for a jury view requested in order to allow the jury to determine for themselves whether the witness had the opportunity to see defendant); *see Kilgore*, 55 So. 3d at 513 ("Kilgore has failed to provide any explanation with regard to why a jury walkthrough was essential or why the photographs in evidence were insufficient.").

The trial court did not abuse its discretion in denying Mr. Drejka's motion for a jury view.

Issue VII: Trial Court's Failure to Remove Juror

Mr. Drejka complains that the trial court erred in failing to strike a juror when, "[Mr.] Drejka brought it to the Court's attention that one of the jurors . . . had contact with an observer and that this observer had a relationship with the NAACP. This was particularly worrisome, because the case was . . . racially charged."

We review a trial court's decision on the removal of a juror for an abuse of discretion. *See McNeil v. State*, 158 So. 3d 626, 627 (Fla. 5th DCA 2014) ("The trial judge is vested with discretion in determining whether a juror has engaged in misconduct that warrants removal from the jury." (citing *Dery v. State*, 68 So. 3d 252 (Fla. 2d DCA 2010))); *Orosz v. State*, 389 So. 2d 1199, 1200 (Fla. 1st DCA 1980).

Juror misconduct must be established during the trial court's interview with the juror. *See Tapanes v. State*, 43 So. 3d 159, 162 (Fla. 4th DCA 2010) ("Once . . . juror misconduct is established by juror interview, the moving party is entitled to a new trial *unless* the opposing party can demonstrate that there is no reasonable possibility that the juror misconduct affected the verdict." (omission in original) (quoting *Norman v. Gloria Farms, Inc.*, 668 So. 2d 1016, 1020 (Fla. 4th DCA 1996))); *Washington v. State*, 955 So. 2d 1165, 1172 (Fla. 1st DCA 2007) ("A party seeking to remove a juror for improper behavior in the course of a trial must first show that the juror's actions amount to misconduct. . . . Whether removal is initiated by a party or by the trial judge, a finding of misconduct requires evidence that the juror violated an order or instruction by

the court."). Moreover, "[i]t is necessary to show that prejudice resulted or that the misconduct was of such character as to raise a presumption of prejudice." *Nationwide Mut. Fire. Ins. Co. v. Tucker*, 608 So. 2d 85, 88 (Fla. 2d DCA 1992) (citing *Amazon v. State*, 487 So. 2d 8 (Fla. 1986)).

Our record is devoid of any juror misconduct. As the trial court's interview with the juror revealed, the juror did not know that the individual that approached him was observing the trial in an overflow courtroom. Importantly, the two did not discuss the case at all. Certainly, then, the juror did not violate any court order.

Mr. Drejka's claim suggests that "the appearance of impropriety," alone, was a sufficient basis to remove the juror. This argument is unavailing. For instance, in *Walt Disney World Co. v. Althouse*, 427 So. 2d 1135, 1135 (Fla. 5th DCA 1983), the Fifth District reversed the trial court's order awarding the plaintiff a new trial. Similar to the case at hand, the Fifth District rejected the trial court's rationale that "the circumstances surrounding the entry of the defendant's witness into the jury room in this case are such as to cast a shadow of impropriety over the result of the jury in this

case." *Id.* at 1136 ("[The trial court] did not find any actual improper contact had occurred, but relied solely upon the 'appearance' of impropriety."). As in *Walt Disney World Co.*, Mr. Drejka failed "to show the witness-juror contact was anything other than innocent and momentary." *Id.*

The trial court did not abuse its discretion in declining to remove the juror.

Issue VIII: Cumulative Error

Mr. Drejka contends that his many alleged errors, in the aggregate, were so pervasive that he was denied a fair trial.

Having determined that each issue is either individually without merit or barred from our consideration, this claim necessarily fails. *See Bush v. State*, 295 So. 3d 179, 214 (Fla. 2020) ("However, where the individual claims of error alleged are either procedurally barred or without merit, the claim of cumulative error also necessarily fails." (quoting *Israel v. State*, 985 So. 2d 510, 520 (Fla. 2008))); *cert. denied sub nom. Bush v. Fla.*, 141 S. Ct. 1271 (2021); *Roderick v. State*, 284 So. 3d 1152, 1156 (Fla. 1st DCA 2019) ("A cumulative error claim must fail where individual claims of error alleged are either procedurally barred or without merit.

Here, since all the individual claims have been denied, there can be no cumulative error." (citing *Griffin*, 866 So. 2d at 22)).

Conclusion

We affirm Mr. Drejka's conviction and sentence.

Affirmed.

NORTHCUTT and LABRIT JJ., Concur.

Opinion subject to revision prior to official publication.