COURT OF APPEALS OF VIRGINIA

Record No. 1922-25-2

KEVIN MICHAEL MOORE
v.
COMMONWEALTH OF VIRGINIA

Present: Judges Malveaux, Friedman and Bernhard
Argued at Richmond, Virginia

Opinion Issued September 22, 2026[*]

FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY
Cheryl V. Higgins, Judge

T. Brooke Howard, II (Howard, Clark, and Howard, on brief), for appellant.

Liam A. Curry, Assistant Attorney General (Jay Jones, Attorney General, on brief), for appellee.

MEMORANDUM OPINION BY
JUDGE MARY BENNETT MALVEAUX

Kevin Michael Moore was convicted by a jury of first-degree murder, in violation of Code §§ 18.2-32, -10; conspiracy to commit first-degree murder, in violation of Code §§ 18.2-32, -22; and use of a firearm in the commission of a felony, in violation of Code § 18.2-53.1. On appeal, Moore argues the trial court erred by denying his motion to dismiss the indictments and admitting certain evidence at trial. For the reasons that follow, we affirm the trial court's judgment.

I. BACKGROUND

"We recite the facts in the light most favorable to the Commonwealth, the prevailing party below." *Williams v. Commonwealth*, 85 Va. App. 718, 726 (2025). In doing so, we also "regard as

[*] This opinion is not designated for publication. *See* Code § 17.1-413(A).

true . . . all fair inferences to be drawn" from the credible evidence. *Cappe v. Commonwealth*, 304 Va. 86, 87 (2025) (quoting *Commonwealth v. Perkins*, 295 Va. 323, 324 (2018) (per curiam)).

Jesse Hicks's Disappearance and the Discovery and Investigation of His Remains

Jesse Hicks was last seen alive on September 1, 2004. On that day, Hicks's sister, Margaret Ballard, cut her brother's hair in a Charlottesville salon. Ballard testified at trial that Hicks was "tense and upset" and she asked him "what was going on." Hicks told her that "somebody owed him some money and he was hoping that he would be able to collect that." He characterized the amount of money as "a lot."

Hicks's wife, Nancy, testified at trial that Hicks was supposed to meet Moore's father, Glenn Spradlin, on September 1, 2004. Hicks and Spradlin were friends[1] and Hicks was sometimes a guest at Spradlin's hunt club, but Nancy testified that their relationship had suffered because of a debt. Spradlin had borrowed thousands of dollars from Hicks and never paid it back, and by September 2004 the debt had grown to $70,000. Nancy testified that Hicks "kept asking for it and . . . never got it" and that "[i]t got really nasty. . . . [T]hey would call each other and . . . not talk very nice to each other." Hicks and Spradlin were to meet on September 1 because Spradlin "was supposed to have [Hicks's] money." After Hicks failed to come home that night, Nancy called Spradlin at 2:00 a.m. the following morning. She testified that Spradlin sounded like "[h]e was driving in a vehicle." Police later found Hicks's truck in Nelson County.

Nearly ten years later, on May 7, 2014, John Hensley was hunting at Spradlin's hunt club. While following a deer trail along a bluff, Hensley spotted a "strange looking shiny rock." When he looked more closely at the "rock," Hensley discovered it was "the back of a human skull." Hensley left the hunt club but returned that evening with a sheriff's deputy to show him the remains, which

[1] Nancy also testified that Spradlin is her uncle.

comprised a partial human skeleton. Based on dental records and personal effects found with the remains, the remains were identified as those of Hicks.

On May 8, 2014, the day after Hensley's discovery, Dr. Lauren Huddle, a board-certified forensic pathologist with the Office of the Chief Medical Examiner of Virginia, conducted an autopsy of Hicks's remains. In her "worksheet of investigation" and autopsy report, which were entered into evidence at trial, Dr. Huddle noted that Hicks's remains had been found "in a heavily wooded area . . . on the side of a steep wooded hill." They were "scattered over the hillside" and included a skull, tibia, ribs, pelvis, and vertebrae but no soft tissue. Dr. Huddle's autopsy report, as admitted at trial, did not opine on a cause of death.

Dr. Elayne Pope, a forensic anthropologist, was the autopsy supervisor for the Chief Medical Examiner's Office in 2014. On May 15, 2014, Dr. Pope conducted an anthropological analysis of Hicks's remains. In her forensic report, which was entered into evidence at trial, Dr. Pope noted that certain bones "had been eroded by rodent modification" or "extensively modified by rodents" and that the skull exhibited a healed nasal fracture and the "right side of the face ha[d] been modified by rodents." She concluded that "[n]o trauma was noted on the elements examined" and that "the areas of rodent modification were documented to show the extent of damage to the bones, including the skull." Dr. Pope's report included numerous detailed photographs of individual bones accompanied by text and arrows indicating areas of "rodent modification." The report did not opine on a cause of death.

On July 3, 2014, after completing its examinations, the Office of the Chief Medical Examiner released Hicks's remains. Dr. William Gormley, the Chief Medical Examiner for the Commonwealth of Virginia, testified at trial that it was typical and appropriate to release human remains to family members after an examination was complete. Hicks's remains initially were

released to the local police who, following the July 4th holiday, released them to Nancy on or about July 7, 2014. One week later, after a memorial service, Hicks's remains were cremated.

Detective Philip Giles of the Albemarle County Police Department was assigned to investigate Hicks's case. He reviewed files related to Hicks's disappearance and also focused on the hunt club property where the remains were found. Detective Giles testified that in 2004, access to the hunt club was secured by a locked gate for which approximately 35 people had keys. At that time, the property was known as "the Spradlin's Hunt Club Property" or the "Woodridge Sportsmen's Hunting Club." Detective Giles decided to place an informant "into the community of Woodridge [to] try to gather intelligence" relating to Hicks's case.

Edward Fitzgerald served as Detective Giles's informant. Fitzgerald first met Moore in July 2016 and secretly recorded conversations with him; both audiovisual recordings and transcripts of those conversations were entered into evidence at trial. After Moore and Fitzgerald "g[ot] comfortable with one another," Fitzgerald told Moore that he was involved in "drug running" and "had a problem with one individual." Fitzgerald offered Moore the opportunity to commit "a murder-for-hire," and Moore initially agreed to participate before later declining the offer. But after the issue of murder was raised, Moore told Fitzgerald that he had used a shotgun to shoot "a guy that's been missing for twelve years." Moore stated he shot the man in the back and upper shoulder and that after shooting and killing him, he destroyed the shotgun so it could not "be traced back to nothing." He also said he drove the man's truck away from the area and was picked up later by Spradlin.

Moore told Fitzgerald that the killing occurred as part of a "set up kind of thing," where the victim arrived for a meeting and Moore "knew the person that was supposed to meet [the victim], and [he] replaced them." The killing took place in conjunction with Moore's "old man's business deal." Moore explained that his "old man" "cut the loss, . . . made the decision and I helped to

follow through with it" because "everybody that knew [the victim], knew my dad and him were good buddies. So [Spradlin] was the first person they wanted to check on."

On October 5, 2018, Moore was indicted for first-degree murder, conspiracy to commit first-degree murder, and use of a firearm in the commission of a felony. On October 11, 2018, police interviewed Moore, and video recordings and a transcript of the interview were entered into evidence at trial. Moore told police that if his father, Spradlin, "asked me today" to kill someone for him, Moore would do so. He also stated that Spradlin "told [him] that he owed [Hicks] some money." Moore recounted a nighttime meeting arranged by Hicks and Spradlin but claimed he "just rode with [Spradlin] to see what was going to happen."

Moore's Motion to Dismiss

Prior to trial, Moore filed a motion to dismiss the indictments. He argued that Hicks's skeletal remains, which had been returned to his family and cremated, "possess[ed] exculpatory value that was apparent before the evidence was destroyed"—specifically, "the absence of any physical evidence of violence" leading to Hicks's demise.[2] Relying in particular on *California v. Trombetta*, 467 U.S. 479 (1984), Moore contended that the failure to preserve skeletal evidence that might have played a significant role in his defense constituted a due process violation. Moore further argued that because he was charged with felony offenses, Code § 19.2-270.4:1 "guaranteed

[2] Moore's motion to dismiss contrasted this exculpatory "absence of any physical evidence of violence" with two documents he received from the Office of the Chief Medical Examiner. The first document was a one-page "case summary" attached to Dr. Huddle's autopsy report, in which she stated that "[e]ven though a definitive cause of death cannot be ascertained due to the skeletonization and incomplete recovery of the remains, with the circumstances surrounding the deceased's disappearance, the cause of death is listed as homicidal violence of undetermined etiology." The summary concluded by reiterating the cause of death and stating that the "manner of death" was "homicide." The second document, labeled "consensus conference," reiterated some of the autopsy findings and also stated that the manner of Hicks's death was homicide and the cause of his death was "[h]omicidal violence of undetermined etiology." But prior to trial, Moore successfully moved to exclude "'homicidal violence' as the cause of death" in Hicks's autopsy report, and neither the "case summary" nor the "consensus conference" document were admitted into evidence at trial.

[his] right . . . to the opportunity to preserve physical biological evidence and that [the] opportunity ha[d] been denied" to him by the cremation.[3]

At the motion hearing, Moore presented testimony from Dr. Julian J. Mason, Jr., a retired supervisor of the firearms and toolmark section of the Virginia Department of Forensic Science's Northern Regional Laboratory. Moore proffered Mason's testimony to rebut the Commonwealth's claim that the existing medical, forensic, and documentary records of Hicks's remains would be sufficient "to go forward without an examination of the bones" by Mason, who would be Moore's own expert witness. Moore contended that "marks left by a sharp instrument such as a knife may be confused with animal molestation and vise versa [sic]," and thus, "if there's any confusion, we need the right expert to have the opportunity to review the evidence." The trial court expressed skepticism at this line of reasoning, noting that "the evidence from the medical examiner and the anthropologist stating that the marks that are found only show rodent modification are an exculpatory [sic] in favor of the defense because potentially they establish no evidence of a gunshot wound or actually any homicidal act."

The trial court denied Moore's motion to dismiss the indictments. It reasoned that the Commonwealth's forensic evidence, "so far [as] it's been presented to the Court[,] does not incriminate the defendant" and that in fact there was "an extremely strong argument that it exculpates the defendant"; thus, "what the defense is now asking for is not exculpatory evidence, the Court finding that [the Commonwealth's] evidence clearly is exculpatory," but rather "evidence [that] could be potentially more exculpatory to the defendant." Accordingly, the trial court found the case "more similar to [*Arizona v.*] *Youngblood*[, 488 U.S. 51 (1988),] than I find that it is to

[3] Code § 19.2-270.4:1 provides, in pertinent part, that upon the motion of a "person convicted of a felony," the trial court "that entered the judgment for the offense . . . shall order the storage, preservation, and retention of specifically identified human biological evidence or representative samples collected or obtained in the case for a period of up to 15 years from the time of conviction."

Trombetta" and held there had been no violation of due process. The trial court did not address Moore's argument that the cremation of Hicks's remains had violated his right to have the remains preserved under Code § 19.2-270.4:1.

Events at Trial

At trial, in addition to the testimony recounted above, Dr. Gormley testified that "[t]here was no evidence of perimortem trauma in the bones" recovered from the hunt club, only "some changes to the bone that were deemed to be postmortem artifact[s]." There were thus "no signs" of trauma "[a]round the time of death." He also specifically noted the lack of any evidence of bullets or shotgun pellets in the surviving bones from Hicks's body, stating that "we didn't see any of that" and agreeing that there was no indication whatsoever of a firearm injury. Dr. Gormley concluded that based on the surviving physical evidence, he could not say "either way" whether Hicks suffered a traumatic injury to his upper back: "The final conclusion is that . . . we really didn't have anything anatomically that could explain why [Hicks] died."

Dr. Pope testified about her examination of Hicks's remains after qualifying as an expert in forensic anthropology. She opined that based on the limited nature of the recovered remains, she could not say whether or not Hicks had been shot with a shotgun. Dr. Pope noted that she did not find any toolmarks on Hicks's remains and only found "rodent modification" on bones that were exposed above ground when they were found. She also testified that the role of toolmarks experts is to "match" the "serrations of [a] bullet to the barrel of the weapon" and that she had never been involved in a case in which a tool-markings expert identified tool markings left by a ballistic round on skeletal remains. She further stated that she had never had a toolmark expert involved in an autopsy during her career. Dr. Pope concluded that there was no sign of a gunshot wound "in the remains [she] looked at," although she could not rule out that Hicks was shot with a shotgun.

Additionally, the Commonwealth entered into evidence a 2022 report prepared by Dr. Tal Simmons, a professor of forensic science at Virginia Commonwealth University. Dr. Simmons had prepared her report after Dr. Gormley requested that she review the case file on Hicks's remains and comment on two questions: first, whether marks on Hicks's bones were consistent with "scavenger depredation . . . and/or tool marks"; and second, whether there was "any material to affirm or exclude allegations of a shotgun wound to the left shoulder." With respect to the first question, Dr. Simmons concluded "unequivocally that the marks are entirely consistent with rodent scavenging and inconsistent with any type of tool mark." And with respect to the second question, she concluded that "the absence of two of the three bones that comprise the anatomical shoulder makes impossible to either affirm or exclude the presence of a shotgun wound to the left shoulder." Simmons was called to testify as a rebuttal witness to Mason and certified as an expert in anthropology. She reiterated the conclusions from her report and also stated that due to the limited quantity of the remains, she could not rule out death by gunshot wound. She characterized the rodent gnawing present on the remains as "completely typical" and could not "find any reason why there would have been toolmarks in the locations where this rodent gnawing occurred. They're just not typical places where somebody would attempt to use a tool on a human body for any purpose of which I am aware."

Mason testified on behalf of Moore as an expert in firearms, ballistics, and toolmarks. He stated that with respect to the photographs of Hicks's remains, he noted "some damage to the bone . . . which [Dr. Pope] suggested [was] rodent modification. It certainly could be. I'm not saying it's not. But toolmarks and the gnawing of a squirrel or a chipmunk or a mouse can look very similar." Mason further stated that "rodent damage and . . . saw marks or knife marks can be there in the same place," but that "any kind of damage from a firearm projectile or a knife or a saw . . . could be obliterated or hidden by the gnawing that has occurred over top of it." It was

therefore "certainly possible" that toolmarks on Hicks's remains had been destroyed by post-mortem rodent modification. Mason testified that he "saw nothing in any of the [forensic] reports to indicate that the medical examiner or the anthropologist saw any damage that would be consistent with firearm-related damage." He also found nothing in those reports to indicate a cause of death. Mason further stated, during cross-examination, that "you can die from a gunshot that does not do damage to bones."

The jury convicted Moore of all the charges. This appeal followed.

II. ANALYSIS

A. Denial of Moore's Motion to Dismiss the Indictments

Moore argues the trial court erred by denying his motion to dismiss the indictments because Hicks's remains contained apparent exculpatory evidence, and by permitting Hicks's family to cremate the remains the Commonwealth prevented him from "verifying th[e] findings" of the Commonwealth's forensic experts "or searching for additional exculpatory clues." Because this "loss of the skeletal evidence fatally prejudiced [his] defense," Moore contends, "[t]his case falls squarely under *Trombetta*'s protection" and proceeding to trial under the indictments violated his right to due process.[4]

"[D]ue process imposes upon the state an affirmative duty to disclose evidence that tends to exculpate an accused." *Moreno v. Commonwealth*, 10 Va. App. 408, 415 (1990). Evidence is

[4] Although Moore argued in the trial court that Code § 19.2-270.4:1 "guaranteed [his] right . . . to the opportunity to preserve physical biological evidence," on appeal he argues merely that the "spirit" of that statute "underscores that authorities should not destroy such evidence when a prosecution is foreseeable." Moore also acknowledges on brief that Code § 19.2-270.4:1 addresses the retention of trial evidence "post-conviction for possible re-testing." Because Moore no longer argues that Code § 19.2-270.4:1 required the pretrial preservation of Hicks's remains, we deem that argument waived. *See Smith Dev., Inc. v. Conway*, 79 Va. App. 360, 380 (2024) (holding that appellant's "particular argument" presented in the trial court "ha[d] been abandoned for purposes of appeal because it was not raised in appellant's opening brief" (quoting *Farmer v. Commonwealth*, 62 Va. App. 285, 295 (2013))).

exculpatory if it is "evidence favorable to the accused that is material to guilt or punishment." *Church v. Commonwealth*, 71 Va. App. 107, 117 (2019). To the extent that Moore's argument raises a constitutional question, we review it de novo. *Wilkins v. Commonwealth*, 292 Va. 2, 7 (2016). "But the factual findings of the [trial] court are not to be disturbed unless they are plainly wrong or are without evidence to support them." *Id.* "[W]hen an exculpatory evidence claim is reviewed 'on appeal, the burden is on [the] appellant to show that the trial court erred.'" *Tuma v. Commonwealth*, 60 Va. App. 273, 289 (2012) (en banc) (second alteration in original) (quoting *Gagelonia v. Commonwealth*, 52 Va. App. 99, 112 (2008)), *rev'd on other grounds*, 285 Va. 629 (2013).

In *Trombetta*, "the seminal case involving the government's destruction of evidence," the Supreme Court held that a defendant's due process rights are violated "if the evidence possessed 'exculpatory value that was apparent before the evidence was destroyed, and [the evidence is] of such a nature that the defendant would be unable to obtain comparable evidence by any other reasonable means.'" *Park v. Commonwealth*, 32 Va. App. 407, 420 (2000) (alteration in original) (quoting *Trombetta*, 467 U.S. at 489). Together, these two factors establish a "standard of constitutional materiality" whereby states have a duty to preserve evidence that is "limited to evidence that might be expected to play a significant role in the suspect's defense." *Trombetta*, 467 U.S. at 488-89. Whether evidence has apparent exculpatory value is a factual determination. *Prieto v. Commonwealth*, 278 Va. 366, 396 (2009) (noting that the trial court "stated that the missing evidence was as likely to hurt [the defendant] as help him," and holding that the "court's findings are supported by the evidence, which renders the exculpatory value of the lost [evidence] inconclusive"); *see also United States v. Newsome*, 322 F.3d 328, 334 (4th Cir. 2003) (finding, in a *Trombetta*/*Youngblood* analysis, "no error . . . by the [trial] court" where "[n]othing in the record suggests that the [evidence] that [the defendant] would have had the government . . . preserve had

any exculpatory value so as to support a due process claim"). "We are bound . . . by the trial court's factual findings unless those findings are plainly wrong or unsupported by the evidence." *Poulson v. Commonwealth*, 304 Va. 188, 196 (2025); *cf. United States v. Zaragoza-Moreira*, 780 F.3d 971, 982 (9th Cir. 2015) (applying federal "clear error" review standard to trial court's finding that "the apparent exculpatory value of [the evidence] was not known" at the time of its destruction).

Subsequently, in *Youngblood*, the Supreme Court considered the due process implications of the government's failure to preserve evidence lacking apparent exculpatory value, and of which "no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." 488 U.S. at 57. The Court noted that such evidence, which is merely "potentially useful" for exculpation, must be treated differently when evaluating a due process claim. *Id.* at 58. It explained that "[p]art of the reason for the difference in treatment is found in the observation made by the Court in *Trombetta*, that '[w]henever potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed.'" *Id.* at 57-58 (second alteration in original) (quoting *Trombetta*, 467 U.S. at 486); *see also Park*, 32 Va. App. at 420. And in part the differential in treatment "stems from our unwillingness to read the 'fundamental fairness' requirement of the Due Process Clause as imposing on the police an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution." *Youngblood*, 488 U.S. at 58 (citation omitted). The Court in *Youngblood* concluded that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Id.*

Youngblood's requirement for a bad faith showing by a defendant "both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to . . . cases where the interests of justice most clearly require it, *i.e.*, those . . . in which the police themselves by their

conduct indicate that the evidence could form a basis for exonerati[on]." *Id.* A trial court's "determination that there was an absence of bad faith [is] a finding of fact, not of law, because that finding rest[s] on the knowledge of the Commonwealth's agents concerning the exculpatory value of the evidence at the time it was destroyed." *Lovitt v. Warden*, 266 Va. 216, 241 (2003) (applying a *Youngblood* analysis in the context of a habeas petition). "Such factual findings made by the [trial] court are entitled to deference and are binding . . . unless they are plainly wrong or without evidence to support them." *Id.*; *cf. United States v. Ray*, 899 F.3d 852, 863 (10th Cir. 2018) (applying federal "clear error" review standard in a *Trombetta*/*Youngblood* analysis of the trial court's bad faith holding).

Here, the trial court rejected Moore's argument that Hicks's remains possessed apparent exculpatory value at the time they were destroyed, finding instead that any evidence of knife or tool marks on the remains could only have been "potentially more exculpatory" than the existing forensic evidence. The record supports this finding. As noted by the trial court, the Commonwealth's forensic evidence from the remains did not directly inculpate Moore, because neither Dr. Huddle nor Dr. Pope reported any evidence of homicide—"any evidence of a gunshot wound, any evidence of any marking or tool. In fact, [there was] no evidence whatsoever" from the remains that Hicks was the victim of a homicide. And the Commonwealth's theory of the case was solely that Moore killed Hicks through "use [of] a firearm"—specifically, a shotgun. Given that the forensic evidence from Hicks's remains did not inculpate Moore in Hicks's death by gunshot, it would not have been apparent to police that any additional evidence respecting knife or tool marks—either finding their presence or noting their absence on Hicks's remains—would exculpate Moore.[5] Instead, as noted by the trial court, such evidence could only have been "potentially more

[5] Moore contends that the Commonwealth was aware of the exculpatory value of Hicks's remains at the time the remains were released and cremated, because "[a]t minimum, law enforcement knew that Hicks's remains contained no inculpatory evidence of murder." But this

exculpatory" in light of the Commonwealth's theory of the case. And because the trial court did not err in finding that Hicks's skeletal remains lacked apparent exculpatory value at the time they were destroyed, and instead possessed only potential exculpatory value, the trial court did not err in finding this case "more similar to *Youngblood* than . . . it is to *Trombetta*." Indeed, the evidence Moore contends he should have had the opportunity to develop falls squarely within the type of evidence the Court in *Youngblood* referred to as merely "potentially useful evidence," or "material that might be of conceivable evidentiary significance in a particular prosecution," and for which the Court refused to find "an undifferentiated and absolute duty [on police] to retain and to preserve."[6] *Youngblood*, 488 U.S. at 58.

Having found that this case is controlled by *Youngblood*, rather than *Trombetta*, the trial court held that there had been no due process violation and denied Moore's motion to dismiss the indictments. In doing so, the trial court necessarily found that Moore had failed to demonstrate bad faith on the part of the Commonwealth when it permitted the destruction of Hicks's remains. *See id.* (holding that where, as here, there is a "failure to preserve potentially useful evidence," there is no "denial of due process of law" absent a "show[ing] of bad faith on the part of the police"). We agree with the trial court that Moore fails to show bad faith by the Commonwealth. Doctors Huddle and Pope, who examined Hicks's remains and whose examination reports were admitted at trial,

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argument misconstrues the nature of the evidence as it was apparent to the Commonwealth at the time. It conflates the Commonwealth's knowledge that the remains lacked any indication of death by gunshot, and thus did not directly inculpate Moore in Hicks's death, with the idea that the Commonwealth should have anticipated potential, additional negative indications of Moore's guilt from future testing. *See Youngblood*, 488 U.S. at 56 n.* (noting that Youngblood's failure to "show[] that the police knew the [biological] samples would have exculpated him when they failed to perform certain tests" did not rise to the level of a due process violation, because "this evidence was simply an avenue of investigation that might have led in any number of directions").

[6] Much of Moore's own argument on brief supports the conclusion that any additional examination of Hicks's remains would have been merely speculative in nature, given his contention that further testing would have allowed him to possibly "verif[y] th[e] findings" of the Commonwealth's forensic experts or to "search[] for additional exculpatory clues."

reported no indications of foul play in Hicks's death. Dr. Pope testified at trial that she could not determine from the remains whether or not Hicks had been shot with a shotgun, as theorized by the Commonwealth. And Dr. Gormley, the Chief Medical Examiner, likewise testified that there were "no signs" of trauma to Hicks "[a]round the time of death." Dr. Gormley also noted there was no evidence of bullets or shotgun pellets in the surviving remains and agreed there was no indication of a firearm injury, opining that "we really didn't have anything anatomically that could explain why [Hicks] died." There was thus no evidence from the remains that was apparent to any of the Commonwealth's examiners at the time to indicate Moore was either incriminated in or exculpated from Hicks's death. Accordingly, once the examinations were complete, there was no reason not to release Hicks's remains to his family, as per Dr. Gormley's testimony that this was the typical and appropriate course of action. Because Moore fails to demonstrate that the Commonwealth acted in bad faith when it did not preserve Hicks's remains for additional testing and examination, but instead released those remains to Hicks's family, we find no error by the trial court in denying Moore's motion to dismiss the indictments.[7]

[7] Moore presents an additional argument that Rule 3A:11 "guaranteed [him] the right to inspect tangible objects and evidence material to the case," and thus he had a "right to examine the remains himself." Rule 3A:11(b)(3) provides in pertinent part that, upon written motion of the accused, the trial court must order the Commonwealth's attorney to permit an accused "to inspect, review and copy or photograph designated . . . tangible objects . . . known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to preparation of the accused's defense and that the request is reasonable." Here, the trial court entered a discovery and inspection order, based upon Moore's second motion to amend a prior discovery order, which permitted him to "inspect and copy or photograph . . . tangible objects . . . which are within the possession, custody, or control of the Commonwealth" which were material to his preparation of his defense or "intended for use by the Commonwealth as evidence in chief at the trial." And pursuant to other provisions of Rule 3A:11, the trial court also ordered the Commonwealth to allow Moore to inspect and copy all examination reports within its possession, custody, or control. Moore thus was afforded all his rights under the Rule to the tangible objects that were "within the possession, custody, or control of the Commonwealth" and which it intended to introduce into evidence in its case in chief. "When an accused is represented by counsel, the requirements of Rule 3A:11 . . . are satisfied when defense counsel is afforded the opportunity to inspect the Commonwealth's evidence." *Bell v.*

B. Admission of Evidence at Trial

In Moore's second assignment of error, he argues the trial court erred "by allowing the evidence of the human biological evidence to be admitted and presented to the jury, coupled with the assertion that a firearm was used to cause [Hicks's] death," because this evidence "was unduly prejudicial to [Moore], pursuant to [Virginia Rule of Evidence] 2:403."[8]

"Generally, we review a trial court's decision to admit or exclude evidence using an abuse of discretion standard and, on appeal, will not disturb a trial court's decision to admit evidence absent a finding of abuse of that discretion." *Murray v. Commonwealth*, 87 Va. App. 12, 22 (2026) (quoting *Avent v. Commonwealth*, 279 Va. 175, 197 (2010)). "A reviewing court can conclude that 'an abuse of discretion has occurred' only in cases in which 'reasonable jurists could not differ' about the correct result." *Atkins v. Commonwealth*, 68 Va. App. 1, 7 (2017) (quoting *Commonwealth v. Swann*, 290 Va. 194, 197 (2015)). "'[B]y definition,' however, a trial court 'abuses its discretion when it makes an error of law.'" *Id.* (alteration in original) (quoting *Coffman v. Commonwealth*, 67 Va. App. 163, 166 (2017)).

Moore did not object to any of the Commonwealth's evidence at trial on the grounds that it was more prejudicial than probative, and therefore should have been excluded under Rule 2:403(a)(i) (permitting the exclusion of relevant evidence if "the probative value of the evidence is substantially outweighed" by "the danger of unfair prejudice"). Our contemporaneous objection rule, Rule 5A:18, provides in pertinent part that "[n]o ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at

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Commonwealth, 24 Va. App. 208, 212 (1997) (alteration in original) (quoting *Pope v. Commonwealth*, 234 Va. 114, 120 (1987)).

[8] To the extent that in his second assignment of error, Moore "incorporate[s] by reference and re-state[s], as if fully set forth herein," his "[a]rgument as set forth in [his] First Assignment of Error," we do not address that argument here because it has been fully addressed and resolved in Section II.A of this opinion.

the time of the ruling." "To satisfy the rule, 'an objection must be made . . . at a point in the proceeding when the trial court is in a position, not only to consider the asserted error, but also to rectify the effect of the asserted error.'" *Scialdone v. Commonwealth*, 279 Va. 422, 437 (2010) (alteration in original) (quoting *Johnson v. Raviotta*, 264 Va. 27, 33 (2002) (discussing the Supreme Court's analogous Rule 5:25)). Additionally, "a specific, contemporaneous objection gives the opposing party the opportunity to meet the objection at that stage of the proceeding." *Id.* (quoting *Weidman v. Babcock*, 241 Va. 40, 44 (1991)). This requirement of a contemporaneous objection achieves "[t]he purpose of the rule," which is "to 'afford the trial court an opportunity to rule intelligently on the issues presented, thus avoiding unnecessary appeals and reversals.'" *Id.* (quoting *Weidman*, 241 Va. at 44). It further protects against appeals based upon grounds undisclosed in the trial court. *Id.* Accordingly, because Moore failed to object to the Commonwealth's evidence on grounds of unfair prejudice when the evidence was "admitted and presented to the jury," he has waived his unfair prejudice argument on appeal. And although Rule 5A:18 includes exceptions "for good cause shown or to enable this Court to attain the ends of justice," Moore does not invoke those exceptions, and where a party "has not invoked either exception . . . we do not consider them *sua sponte*." *Spanos v. Taylor*, 76 Va. App. 810, 827-28 (2023).

Moore further argues the trial court erred in admitting the "human biological evidence" because "the Commonwealth was not required to present foundational evidence – i.e. that the remains were deemed, from a forensic standard, . . . [to] reflect[] trauma indicative of 'intentional, willful and maliciously inflicted injury/death', whether inflicted by a premediated mortal shotgun wou[n]d, or otherwise." For the same reason noted with respect to Moore's unfair prejudice argument, this argument is also waived: Moore failed to object at trial to the

admission of the forensic evidence or related testimony on grounds of inadequate foundation.[9] *See* Rule 5A:18.

III. CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed.

Affirmed.

[9] We also note that the only forensic evidence indicating homicide as a cause of death—the "consensus conference" document and comments in the one-page "case summary" initially appended to Dr. Huddle's autopsy report—were excluded from admission at trial upon Moore's own pretrial motion; accordingly, as a result of Moore's own actions, they were unavailable for the Commonwealth to use as "foundational evidence . . . reflect[ing] trauma indicative of 'intentional, willful and maliciously inflicted injury/death.'"