MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Brandon E. Murphy
Cannon Bruns & Murphy
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kelly A. Loy
Assistant Section Chief Criminal Appeals
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

William Balfour, III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 30, 2022

Court of Appeals Case No. 21A-CR-1710

Appeal from the Delaware Circuit Court

The Honorable Marianne L. Vorhees, Judge

Trial Court Cause No. 18C01-1708-MR-7

Brown, Judge.

[1] William Balfour, III, appeals his conviction for felony murder. Balfour raises a number of issues on appeal, which we revise and restate as:

I. Whether the trial court erred in allowing the State to amend the charging information;

II. Whether the court erred in admitting evidence of a prior identification of Balfour;

III. Whether the trial court erred in the admission of jail phone calls between Balfour and others; and

IV. Whether the trial court erred in not admitting two exhibits offered by Balfour.

We affirm.

Facts and Procedural History

[2] On July 2, 2015, Balfour and Artie Thomas decided to purchase marijuana from C.O. at his and S.J.'s home,[1] with Daveon Hendricks, Jamel Barnes, and Darius Covington ("Darius") accompanying them. While riding in Barnes's car, Thomas and Darius discussed robbing C.O. When they arrived, Thomas and Darius entered C.O.'s residence where C.O. and S.J. were present. S.J. sold marijuana to Thomas and Darius in C.O.'s room, and Darius then used the bathroom. Two people, unannounced, came through the front door with guns, Thomas and S.J. dived into bedrooms, and a shot was fired. Darius and

[1] C.O. and S.J. were under the age of eighteen, which is why we refer to them using initials. *See* Ind. Code § 35-40-5-12 (2019) (in court documents open to the public, child victims of violent crimes shall be identified by means other than their names).

Thomas separately fled the house on foot until Thomas was picked up by Barnes, Hendricks, and Balfour, and Darius returned to the house of his sister, Brionna Covington ("Brionna"). S.J. found C.O. shot, lying on his back in the back room of the house, and he called 911.

[3] On August 9, 2017, the State charged Balfour with felony murder, attempted robbery resulting in serious bodily injury as a level 2 felony, and conspiracy to commit robbery resulting in serious bodily injury as a level 2 felony.

[4] In May and June of 2019, Balfour, while incarcerated, spoke with Darius, Hendricks, and an unknown female in recorded phone and video conversations. In the calls, the participants used oblique language to discuss the upcoming trial and mentioned continuing to contact various people in connection with the trial and the importance of keeping people "on the team." Exhibits Volume I at 244.

[5] On June 24, 2019, Balfour's first jury trial began, and it ultimately ended in a mistrial. During the first trial, the prosecutor's closing argument included the following:

> I asked [Darius] multiple times, you understand that deal that I have with you, that you have with the State is based on your truthful testimony? And he lied. We know he lied. So he won't be getting that deal. The Defense says they're going to – they want you to return that. You don't have to return it. I'm returning it. [Darius] got up on that stand. He did not give the full truth.

Transcript Volume IV at 219.

[6] On June 14, 2021, the second jury trial commenced.[2] During the trial, Brionna's counsel moved to prevent her from having to testify due to perjury charges that had been filed against her resulting from her testimony during Balfour's first trial. After discussing the possibility of Brionna's testimony, the court sustained the objection to her testifying.

[7] Darius testified in part that he and Thomas had agreed to steal marijuana from C.O. while riding to C.O. and S.J.'s house, they were the only people involved in the conversation, he was unsure whether other people in the car heard the two of them planning but did not think they had, and when asked if Balfour had been involved in a robbery agreement, he stated "[n]o, I've never stated that he was." Transcript Volume VII at 172. During direct examination, the following exchange occurred:

> Q In the vehicle on the way to [C.O.'s] house, did you see any guns?
>
> A No.

---

[2] On July 25, 2019, before the start of the second trial, the State filed a motion seeking to amend Counts I and III in the charging information, the charges of felony murder and conspiracy to commit robbery resulting in serious bodily injury, and added Count IV, a charge of conspiracy to commit obstruction of justice as a level 6 felony. The State sought to change the theory of culpability underlying the charges and to add Count IV "based on conduct that occurred immediately prior to the first trial in this cause of action." Appellant's Appendix Volume III at 183. That same day, the court issued an order granting the State's motion. On July 26, 2019, Balfour filed a Motion to Set Aside Order Granting Amendment and to Allow Defense an Opportunity to be Heard, stating that the defense had filed a notice prior to the State filing its motion to amend stating that Balfour's counsel was on vacation and requesting a week in which to file a full objection. The State objected, claiming Balfour had received an opportunity to be heard and that a hearing was not required. Balfour's counsel filed Defendant's Objection to Proposed Amendment of Charging Information, and on August 6, 2019, the court issued an order granting the State's motion, stating "as to the argument (in paragraph 20) that the State has mischarged in Amended Count 1, we can address this at the close of the State's evidence," Balfour's objections regarding Count III would be addressed "at the close of the State's case-in-chief also," and Count IV should be dealt with in a motion to sever. *Id.* at 234.

Q What was Art[i]e Thomas wearing, to your knowledge?

A I don't know.

Q Okay. Was he wearing a hoodie, as well?

A I don't remember.

Q Do you know what any of the people in the car were wearing?

A No.

Q So your testimony, you did not see anyone burst in the door?

A No, I didn't.

Q You didn't see a gun go off?

A I didn't see one, I just heard one.

Q Where were you when that happened?

A Inside the bathroom.

Q Had you used the bathroom?

A Yes.

Id. at 168-169. During the cross-examination of Darius, the following exchange occurred:

Q You testified in June of 2019; did you not?

A Yeah.

Q Did you tell the truth at that time?

A Mostly.

Q Mostly?

A Yes.

Q You took the oath and you told mostly the truth?

A Yes.

* * * * *

Q Okay. When you say mostly told the truth, what did you lie about in June of 2019?

A About talking to that Darian girl on the phone.

* * * * *

Q Is it fair to say that you're aware that the prosecutors have been unhappy with your testimony in this case?

A Yeah, to a certain extent.

Q Okay. And in June of 2019 you're aware that [the prosecutor] promised to revoke your plea agreement, correct?

A No.

Q You're not aware of that?

A No.

Q Has he done that?

A No.

Q And he was unhappy with your June 2019 testimony? Right?

A Yes.

Q He was unhappy with your November 2019 testimony, correct?

A I don't recall. I was truthful in throughout the whole testimony, so --

Q But he was still unhappy with you, wasn't he?

A Yes, he was. It seemed that way but --

Q Did you at some point end up going back to jail?

A Yeah.

Q And was that in January of 2020?

A Yeah.

Q After you testified in June of 2019?

A Yeah.

Q After you testified in November, October of 2019?

A Yeah.

Id. at 171-173. Balfour's counsel asked to approach and indicated that he planned to ask Darius about his multiple violations of home detention detailed in Defendant's Exhibit H and stated that "there were about 20 applications." *Id.* at 173. The prosecutor claimed the information was irrelevant and "that's improper," and the court agreed, stating, "[r]ight. I mean, that's what it was." *Id.* at 174.

[8] On direct examination, Thomas stated that he had not participated in a conversation involving the robbery of C.O., he and Darius entered C.O.'s house to purchase marijuana, he purchased marijuana from S.J., C.O. and Darius went to C.O.'s bedroom so C.O. could show him a gun, he observed two people enter the house by kicking in the door, the two individuals wore hoodies and carried pistols, he "pretty quickly" jumped into C.O.'s bedroom on the ground, heard a gunshot, waited for twenty seconds, went out of the room, saw

no one, and fled out of the house and down the road because Barnes's car had vanished. *Id.* at 217. Thomas stated that he ran to a bar and borrowed someone's phone, which he used to call Barnes, Barnes picked him up with Balfour and Hendricks in the vehicle, and he eventually went to Darius's apartment to recover his cellphone. The prosecutor questioned Thomas about a statement he made to police on July 8, 2015, asking, "did you tell the police who you believed it was that came in and committed this robbery," to which Thomas replied affirmatively. *Id.* at 226. Balfour's counsel objected to hearsay, which the court overruled, and Thomas then testified that Balfour and Hendricks were the men whom he had previously identified to police as having entered C.O. and S.J.'s house. The prosecutor then asked about a deposition given by Thomas in 2017, stating "did you state that you believed it was the Defendant, William Balfour, and Daveon Hendricks," and Balfour's counsel objected, stating, "we can't even establish if this is a prior consistent or a prior inconsistent statement at this point because he has not testified as to these individuals, their descriptions, anything." *Id.* at 227. The court asked, "[s]o you're saying that he's not testifying today . . . he's only testifying [to] . . . what he said . . [p]reviously. Well, I mean, that's all it is so far, so you're correct." *Id.* at 227-228. The prosecutor responded, "I'm going there with my next question," and the court permitted the prosecution to continue. The prosecutor then asked Thomas, "as you sit here today, do you still believe it was the Defendant, William Balfour, [and] Daveon Hendricks, that came in and committed that robbery," to which Thomas responded affirmatively. *Id.* at 228. Balfour's counsel objected, stating "[b]elief or opinion, I think. Question of

identification," which the judge overruled. *Id.*

[9] During the cross-examination of the City of Muncie Police Department's Sergeant Jesse Ryan Winningham, the court excused the jury to ask Sergeant Winningham a question outside of their presence and, afterward, proceeded to resolve two issues about the admission of evidence. Balfour's counsel stated his intent to read Defendant's Exhibit G, a statement made by the prosecutor in Balfour's June 2019 trial, in which, during closing arguments, the prosecutor had stated about Darius, "I asked him multiple times, you understand that deal I have with you, that you have with the State, is based on your truthful testimony, and he lied, we know he lied, so he won't be getting that deal." Transcript Volume VIII at 111. Balfour's counsel argued the statement was admissible as a statement by a party opponent and that it impacted the testimony of Darius, who had denied being aware of the statement. The prosecutor responded that evidence to impeach Darius should have been offered at the time Darius had denied knowledge of the statement. The court sustained the prosecutor's objection, reasoning "the jury did hear the comment about the prior statement being made," "[t]hey also have the immunity agreement, the plea agreement, and I think it's totally ripe for argument about [Darius's] credibility and how he has testified," it would be better not to place the prosecutor or judge in a position where either of them would have to testify, admission might notify the jury "that something has happened in the past with the other trials," and the court believed the substance of the statement was "in the record, it's available for argument, but I don't believe that it -- I should

allow the reading of the exact argument." *Id.* at 112. Balfour's counsel then made an offer of proof and introduced Defendant's Exhibit G as well as Exhibit H, a petition for warrant on revocation of pretrial home detention dated January 9, 2020, and Exhibit I, an order regarding Darius's release to Delaware County Community Corrections for electronic home detention, dated February 3, 2020. The court admitted and permitted publication of Defendant's Exhibit I to the jury.

[10] During closing arguments, the prosecutor argued that Balfour and others had attempted to influence the testimony of Brionna and other witnesses, stating:

> and when that girl asked Brionna, what did we see from the defendant. . . . This tells us he doesn't want you to know what they've been doing with these witnesses. . . . What does it tell you about the fact that they don't want you to hear the truth? That should make you angry as a juror. They're trying their hardest to prevent you from hearing the truth, to prevent you from doing your job. What does it tell you that they are so worried about what these witnesses are going to say? Why are they so concerned with Brionna about what she knows, about what she might say? Why are they so concerned about whether or not she'll come in here and plead the 5th?

Id. at 173. Balfour's counsel objected and asked to approach,[3] and in the sidebar, the court told the prosecutor, "[s]o you're commenting on the evidence (inaudible) . . . [o]kay. So well, I'll overrule." *Id.* at 174. The prosecutor continued, "[b]ut just like with Brionna, we know that [Balfour] absolutely

[3] The transcript of the sidebar does not contain the basis for the objection.

didn't want you to hear what [other witnesses were] going to say." *Id.* Balfour's counsel again objected, and the court overruled the objection. Balfour's counsel requested an admonishment of the jury, but the court declined.

[11] On June 18, 2021, the jury found Balfour guilty of felony murder and conspiracy to commit robbery resulting in serious bodily injury.[4] On July 16, 2021, in its Order on Sentencing Hearing, the court vacated the conviction for conspiracy to commit robbery resulting in serious bodily injury due to double jeopardy concerns. The court sentenced Balfour to sixty years for felony murder.

Discussion

I.

[12] The first issue is whether the trial court erred in allowing the State to amend Counts I and III and add Count IV. Balfour argues the phrasing of the information would permit a jury "to find [him] guilty of Count 1 if it believed Daveon Hendricks alone attempted or committed robbery and that [C.O.] was killed in the course of that robbery," and is therefore mischarged. Appellant's Brief at 21. He also claims that his objection at trial "was the functional equivalent of a motion to dismiss." *Id.* at 22. The State argues that Balfour has

[4] On June 7, 2021, prior to the start of Balfour's second trial, the State filed a motion to dismiss the charge of attempted robbery resulting in serious bodily injury as a level 2 felony, which the trial court granted.

waived any challenge to the charge because he "never sought dismissal of the charge or filed a motion to dismiss based on the amendment." Appellee's Brief at 17.

[13] "The proper method to challenge deficiencies in a charging information is to file a motion to dismiss the information, no later than twenty days before the omnibus date." *Leggs v. State*, 966 N.E.2d 204, 207 (Ind. Ct. App. 2012) (citing *Miller v. State*, 634 N.E.2d 57, 60 (Ind. Ct. App. 1994) (citing Ind. Code § 35-34-1-4(b)(1))). After the State filed a motion to amend the charging information, Balfour filed a Defendant's Objection to Proposed Amendment of Charging Information. The court granted the State's motion. Balfour did not file a motion to dismiss and does not cite authority for his contention that his objection to the amendment was the equivalent of a motion to dismiss.

[14] To avoid waiver, Balfour must demonstrate fundamental error. *See Miller*, 634 N.E.2d at 60 ("Failure to timely challenge the omission ordinarily would result in waiver of the issues, unless the omission was so prejudicial to [defendant's] rights that fundamental error resulted.") (citations omitted). For error in a charging information to be fundamental, "it must mislead the defendant or fail to give him notice of the charges against him so that he is unable to prepare a defense to the accusation." *Id.* at 61. Balfour does not argue fundamental error on appeal or claim that he did not understand the charges against him or was unable to formulate a defense. *See Wine v. State*, 637 N.E.2d 1369, 1374 (Ind. Ct. App. 1994) (no fundamental error where Wine did not demonstrate his defense was impeded by the inadequacy of the charging information), *trans.*

denied.

II.

[15] The next issue is whether the trial court erred in admitting evidence of Thomas's prior out-of-court identification of Balfour. Balfour argues that, during the direct examination of Thomas, the court improperly admitted Thomas's 2015 hearsay statement to police and an accompanying video, in violation of Ind. Evidence Rule 801(d), because the prior identification was admitted before Thomas testified about the identity of the shooters or their physical characteristics. Balfour further argues that Thomas's prior identification of Balfour resulted from "repeated prosecutorial and police questioning." Appellant's Brief at 26. The State argues that Thomas's testimony about his prior out-of-court statements was admissible under Ind. Evidence Rule 801(d)(1)(C), the prior identification video rehabilitated the credibility of Thomas's identification in light of Balfour's cross-examination, and any error was harmless. The State further claims that Balfour has waived a claim that Thomas's prior identification of Balfour "was a product of police coercion or that it lacked foundation" because he did not contemporaneously object on those grounds at trial. Appellee's Brief at 21.

[16] "In order to preserve a claim of trial court error in the admission or exclusion of evidence, it is necessary at trial to state the objection together with the specific ground or grounds therefor at the time the evidence is first offered." *Mullins v. State*, 646 N.E.2d 40, 44 (Ind. 1995) (citations omitted). "Failure to state the

specific basis for objection waives the issue on appeal." *Id.*; *see also Lewis v. State*, 755 N.E.2d 1116, 1122 (Ind. Ct. App. 2001) ("Failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error upon appeal."); *G.J. v. State*, 716 N.E.2d 475, 478 (Ind. Ct. App. 1999) ("Where a defendant fails to object to the introduction of evidence, makes only a general objection, or objects only on other grounds, the defendant waives the suppression claim.") (quoting *Moore v. State*, 669 N.E.2d 733, 742 (Ind. 1996), *reh'g denied*).

[17] The record reveals that, during the direct examination of Thomas, Balfour's counsel objected on the basis of hearsay when Thomas was asked to state the person he had previously identified to police. The court overruled the objection, and Thomas testified that he had previously identified Balfour and Hendricks in an interview with police as the two men who had entered C.O.'s house. The prosecutor asked Thomas about his identification of Balfour and Hendricks from a July 2017 deposition, and Balfour's counsel objected to admitting Thomas's prior testimony before his current testimony about the identity of the two men. Balfour's counsel did not object to the admission of Thomas's prior statement on the grounds that the statement was the result of impermissibly suggestive police questioning, and Balfour has therefore waived

this claim.[5]

[18] To the extent that Balfour claims that the court improperly admitted Thomas's previous 2015 statement to police and an accompanying video before Thomas provided identification testimony at trial in violation of Ind. Evidence Rule 801(d), we note the Indiana Supreme Court in *Modesitt v. State*, 578 N.E.2d 649 (Ind. 1991), sought to curb abuses resulting from the admission of a victim's prior statement by a drumbeat repetition of the same statement through other witnesses. The Court looked to the interpretation of Federal Rule of Evidence 801(d)(1) to assess the use of a victim's prior consistent and inconsistent statements at trial and reversed Modesitt's child molesting and criminal deviate conduct convictions because the "drumbeat repetition of the victim's original story" by three witnesses unfairly bolstered the victim's credibility and precluded meaningful cross-examination. *Modesitt*, 578 N.E.2d at 652-653. The Court's opinion overruled *Patterson v. State*, 263 Ind. 55, 324 N.E.2d 482 (1975), which allowed "prior out-of-court statements, not under oath" into evidence "as substantive evidence if the declarant was present and available for cross examination at the time of the admission of such statements." *Id.* at 651. The Court observed that the *Patterson* rule's rationale "that truthfulness is safeguarded by having the declarant available for cross examination as to the

[5] Although Balfour had filed a motion to suppress this identification evidence on this ground, Balfour's counsel did not object at trial on this ground, and "[a] contemporaneous objection at the time the evidence is introduced at trial is required to preserve the issue for appeal, whether or not the appellant has filed a pretrial motion to suppress." *Brittain v. State*, 68 N.E.3d 611, 618 (Ind. Ct. App. 2017).

out-of-court statements" had been undercut when the prosecutor put into evidence, over the objection of Modesitt, "the victim's out-of-court charges against Modesitt by three separate and repetitive witnesses prior to calling the victim herself" and therefore "effectively precluded Modesitt from effective cross examination of these charges." *Id.* at 651 (emphasis omitted). The Court explained:

> The jury first heard and was allowed to consider, as substantive evidence, the victim's statements made to her mother many months prior to trial. At this point, Modesitt had not yet had an opportunity to cross examine the victim herself concerning these charges and, obviously, he could not cross examine the mother concerning the truthfulness of the charges which had been leveled by her daughter. This lack of ability to cross examine the veracity of the statements continued through the repetitive testimony of the welfare caseworker and the psychologist. Prior to putting the victim on the stand, the victim's veracity had been, in essence, vouchsafed by permitting the three witnesses to repeat the accusations of the victim.

Id. The Court held that it could not say "the drumbeat repetition of the victim's original story prior to calling the victim to testify did not unduly prejudice the jury . . . ." *Id.* at 651-652 (citing *Stone v. State*, 536 N.E.2d 534, 541 (Ind. Ct. App. 1989), *trans. denied*). Indiana's rules of evidence now "accomplish by Rule what *Modesitt* did by decision." *Humphrey v. State*, 680 N.E.2d 836, 838 (Ind. 1997). The purpose of Ind. Evidence Rule 801(d)(1)(B) is to generally prohibit, unless certain narrow criteria are met, the introduction of prior consistent out-of-court statements of a witness through other witnesses in order to "bolster" a weak witness's testimony. *See Modesitt*, 578 N.E.2d at 653; *see also* 13 ROBERT

LOWELL MILLER, INDIANA PRACTICE § 801.404 (1995 & Supp. 1998) ("A statement offered under [Ind. Evidence] Rule 801(d)(1)(A)[6] as a prior inconsistent statement or under [Ind. Evidence] Rule 801(d)(1)(B)[7] as a prior consistent statement offered to rebut a charge of recent fabrication cannot be offered before the declarant testifies, because it cannot be known whether the prior statement will be inconsistent or consistent with testimony yet to be given.") (footnotes omitted). Ind. Evidence Rule 801(d)(1)(C) provides that a statement is not hearsay if "[t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement . . . is an identification of a person shortly after perceiving the person." Admissibility of a prior identification under Ind. Evidence Rule 801(d)(1)(C) does not hinge on consistency with the declarant's trial testimony or a lack of direct evidence and such considerations go to the weight of an identification, not its admissibility. *Davis v. State*, 13 N.E.3d 939, 945 (Ind. Ct. App. 2014), *see also* ROBERT LOWELL MILLER, INDIANA PRACTICE § 801.415 (1995 & Supp. 1998) ("Unlike the other two prongs of Rule 801(d)(1), admissibility of such

---

[6] Ind. Evidence Rule 801(d)(1)(A) provides that a statement is not hearsay if "[t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement . . . is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition."

[7] Ind. Evidence Rule 801(d)(1)(B) provides that a statement is not hearsay if "[t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement . . . is consistent with the declarant's testimony, and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying."

statements does not hinge on consistency with the declarant's trial testimony or an adversary's attack on that testimony.")

[19] The record reveals that, after the court admitted evidence of Thomas's 2015 identification of Balfour, the State elicited testimony from Thomas that Balfour was one of the men who entered C.O.'s house, and he was subject to cross-examination. The statements challenged by Balfour were brief and consistent with Thomas's testimony at trial. We note that *Modesitt* sought to prohibit both the "bolstering" of a weak witness's testimony, *Modesitt*, 578 N.E.2d at 653, as well as the drumbeat repetition of prior testimony before eliciting a witness's current testimony at a trial. Based upon the record, we conclude the trial court did not err in admitting evidence of Thomas's prior identification of Balfour before the State presented Thomas's identification testimony at trial. *See, e.g.*, *McGrew v. State*, 673 N.E.2d 1289, 1292 (Ind. 1997) (unlike *Modesitt*, where the "drumbeat" repetition consisted of lengthy detailed testimony of the abuse allegation, the statements challenged by McGrew were "brief and consistent" with the victim's later statements, and thus the admission of the testimony was not cause for reversal), *reh'g denied*, *relevant portions summarily affirmed in McGrew v. State*, 682 N.E.2d 1289, 1292 (Ind. 1997).

III.

[20] The next issue is whether the trial court erred in admitting phone and video calls between Balfour, Hendricks, Darius, and others made during his incarceration. Balfour argues that the probative value of the jail phone calls

"was substantially outweighed by the risk of unfair prejudice" due to the presence of profanity in the recordings and that the unintelligibility of the recordings contributed to jury confusion and speculation. Appellant's Brief at 31. The State argues that the court properly admitted the calls because the calls provided evidence that Balfour sought to influence the testimony of witnesses, and even if the court abused its discretion, the error was harmless.

[21] Generally, we review the trial court's ruling on the admission or exclusion of evidence for an abuse of discretion. *Roche v. State*, 690 N.E.2d 1115, 1134 (Ind. 1997), *reh'g denied*. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Joyner v. State*, 678 N.E.2d 386, 390 (Ind. 1997), *reh'g denied*. A trial court's ruling on the admission of evidence is generally accorded a great deal of deference on appeal. *Hall v. State*, 36 N.E.3d 459, 466 (Ind. 2015), *reh'g denied*. We do not reweigh the evidence; rather, we consider only evidence that is either favorable to the ruling or unrefuted and favorable to the defendant. *Beasley v. State*, 46 N.E.3d 1232, 1235 (Ind. 2016).

[22] "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Ind. Evidence Rule 403. "All evidence that is relevant to a criminal prosecution is inherently prejudicial, and thus the Evidence Rule 403 inquiry boils down to a balance of the probative value of the proffered evidence against the likely unfair prejudicial value of that evidence." *Hendricks*

v. State, 162 N.E.3d 1123, 1134 (Ind. Ct. App. 2021) (citing *Duvall v. State*, 978 N.E.2d 417, 428 (Ind. Ct. App. 2012), *trans. denied*). The balancing of the probative value against the danger of unfair prejudice must be determined with reference to the issue to be proved by the evidence. *Id.* (citing *Ward v. State*, 138 N.E.3d 268, 273 (Ind. Ct. App. 2019)).

[23] The record reveals that the jail phone call recordings contain profanity-laden conversations in which Balfour and others repeatedly reference the testimony of potential witnesses and attempt to disguise their discussion. In one conversation with Hendricks, Balfour twice states the importance of keeping someone "on the team." Exhibits Volume I at 244. In another, an unknown person asks, "Brionna," before Balfour corrects her and says she is "doing too much," and they continue talking without using names. *Id.* at 248. The conversations do not appear to include discussions of other crimes or misconduct, and Hendricks and Balfour express love for one another at one point. Under these circumstances, any prejudice to Balfour from the recordings did not outweigh the probative value relevant to the question of whether Balfour was attempting to conceal his wrongdoing or influence witness testimony. We cannot say the trial court abused its discretion.

IV.

[24] The next issue is whether the trial court erred in refusing to admit Defendant's Exhibits G and H. Defendant's Exhibits G and H are, respectively, the prosecutor's prior statement made during the closing argument of the first trial

in which he stated that Darius had lied on the stand and would have his plea agreement revoked and a petition alleging that Darius committed multiple violations of home detention. Balfour argues that the trial court erred by refusing to admit Defendant's Exhibits G and H and violated his right to confront Darius in violation of the Sixth Amendment, and that this is not harmless error in light of the importance of Darius's testimony. The State argues that Balfour has waived appellate review for failing to object to the admission of both exhibits on the specific grounds argued on appeal. The State also asserts that Balfour's right to cross-examine Darius was not unreasonably restricted, and he was permitted to make arguments before the jury about the excluded information in his closing argument.

[25] "In order to preserve a claim of trial court error in the admission or exclusion of evidence, it is necessary at trial to state the objection together with the specific ground or grounds therefor at the time the evidence is first offered." *Mullins*, 646 N.E.2d at 44 (citations omitted). "Failure to state the specific basis for objection waives the issue on appeal." *Id.*

[26] Even assuming that Balfour did not waive this issue, we cannot say that reversal is warranted. As stated previously, we generally review the trial court's ruling on the admission or exclusion of evidence for an abuse of discretion. *Roche*, 690 N.E.2d at 1134. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Joyner*, 678 N.E.2d at 390. A trial court's ruling on the admission of evidence is generally accorded a great deal of deference on appeal. *Hall*, 36 N.E.3d at 466. We do not reweigh the evidence;

rather, we consider only evidence that is either favorable to the ruling or unrefuted and favorable to the defendant. *Beasley*, 46 N.E.3d at 1235.

[27] The Sixth Amendment to the United States Constitution guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The Sixth Amendment right to confrontation is made applicable to the states by the Due Process Clause of the Fourteenth Amendment. *McCain v. State*, 948 N.E.2d 1202, 1206 (Ind. Ct. App. 2011) (citing *Pointer v. Texas*, 380 U.S. 400, 406, 85 S. Ct. 1065, 1069 (1965)). Article 1, Section 13 of the Indiana Constitution similarly provides that "[i]n all criminal prosecutions, the accused shall have the right to . . . meet the witnesses face to face." Both the Sixth Amendment and Article 1, Section 13 guarantee the right to cross-examine witnesses. *Id.* (citing *Davis v. Alaska*, 415 U.S. 308, 315, 94 S. Ct. 1105, 1110 (1974); *McCarthy v. State*, 749 N.E.2d 528, 533 (Ind. 2001)).

[28] The exposure of a witness's motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. *Id.* (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 678-679, 106 S. Ct. 1431, 1435 (1986)); *see also* Ind. Evidence Rule 607 ("Any party, including the party that called the witness, may attack the witness's credibility."); Ind. Evidence Rule 616 ("Evidence that a witness has a bias, prejudice, or interest for or against any party may be used to attack the credibility of the witness.").

[29] Accordingly, "[a] defendant in a criminal case is entitled to apprise the jury of

the existence of any agreement between the prosecution and its witness." *McCain*, 948 N.E.2d at 1206 (quoting 13 ROBERT LOWELL MILLER, JR., INDIANA PRACTICE § 616.102 (3d ed. 2007)). As the Indiana Supreme Court has explained:

> An accomplice who turns "state's evidence" and agrees to "cooperate" with the State in consideration of leniency or the dismissal of charges by the State, to be realistic, is being bribed, regardless of the fact that public policy has approved such action in the interest of effective law enforcement. It does not necessarily follow that because of inducements offered to the accomplice his testimony is false. It is, however, highly suspect. Because of the pressure of such undue influence upon the witness in such cases the jury should have the evidence relating thereto. Such type of influence naturally impairs the credibility of such a witness.

Newman v. State, 334 N.E.2d 684, 686-687 (Ind. 1975). The Court has further explained:

> [S]ignificant harm results when the jury is prevented from learning the extent of benefit received by a witness in exchange for his testimony. It would be obviously relevant and proper for a jury to consider the amount of compensation a witness expects to receive for his testimony. It is equally proper for this jury to know the quantity of benefit to accusing witnesses. It is quite relevant whether they are thereby avoiding imprisonment of ten days, ten weeks, or ten years.

Jarrett v. State, 498 N.E.2d 967, 968-969 (Ind. 1986) (citations omitted).

[30] The record reveals that Balfour's counsel questioned Darius about his testimony from Balfour's previous trial even though he could not read part of Defendant's Exhibit G, the prosecutor's closing argument from the first trial, into the record.

During Darius's cross-examination, Darius admitted that he had only "told mostly the truth" during the previous trial and that the prosecutor had been "unhappy" with his prior testimony. Transcript Volume VII at 171-173. While discussing the admission of Defendant's Exhibits G and H, the court informed Balfour's counsel, "you're free to argue about him being arrested or, you know, the -- him being picked up, put back in jail, and then released again." Transcript Volume VIII at 114. During closing arguments, Balfour's counsel mentioned that Darius knew "the State [was] unhappy with his testimony in June and October of 2019," and stated that "you heard testimony Darius Covington is re-arrested on his home detention violations," but that Darius "walked out of jail again on home detention. Again. And why do you think that happened? Because they need him." *Id.* at 192-193. We cannot conclude Darius's testimony was critical in light of the record and Thomas's testimony, and we conclude the trial court did not err or violate Balfour's right to cross-examine Darius by not admitting Defendant's Exhibits G and H into evidence.

[31] For the foregoing reasons, we affirm Balfour's convictions.[8]

[32] Affirmed.

---

[8] To the extent Balfour claims that the prosecutor committed misconduct in his closing argument, we note that the prosecutor is required to confine his or her closing argument to comments based upon the evidence presented in the record. *Lambert v. State*, 743 N.E.2d 719, 734 (Ind. 2001). To the extent the prosecutor mentioned Brionna, the prosecutor commented on the available evidence, and to the extent the prosecutor made a statement regarding what Brionna may have stated had she testified, we note the comment was isolated and conclude, in light of all the evidence and the trial as a whole, the jury did not rely on the isolated comment.

Mathias, J., and Molter, J., concur.