Circuit Court for Baltimore City
Case No. 114240023

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 555

September Term, 2016

JULIUN E. JONES-JOYNER

v.

STATE OF MARYLAND

Woodward, C.J.,
Nazarian,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: January 10, 2018

Appellant, Juliun E. Jones-Joyner, was tried and convicted by a jury in the Circuit Court for Baltimore City (Panos, J.) of murder in the first degree. Appellant was sentenced to a term of life imprisonment for first-degree murder and filed the instant appeal, wherein he posits the following questions for our review:

1. Did the trial court err in denying the motion to suppress Appellant's statement?

2. Did the trial court err, during Appellant's closing argument, by interjecting comments that improperly shifted the State's burden; that highlighted Appellant's failure to testify, thereby violating his right against self-incrimination; that were in reference to facts not in evidence; and/or that were suggestive of Appellant's guilt, thereby depriving Appellant of a fair trial?

3. Was the evidence legally insufficient to establish Appellant's guilt?

FACTS AND LEGAL PROCEEDINGS

The State's first witness, Linea Jannie, testified that, on January 6, 2014, she was in the bathroom on the second floor of her workplace in the 3600 block of Liberty Heights Avenue, Baltimore City, when she heard a voice call out "No, yo, don't do it" and she then heard three or four gunshots, prompting her to call out for a co-worker to call 911. When she pulled back the curtain, she saw a person lying in a nearby field and she also saw two people running down the alley; however, she was unable to see either of their faces.

Officer Demarra Gibson testified that, at approximately 4:30 p.m. on that day, she responded to the 3600 block of Liberty Heights Avenue where she encountered the victim, Jonathan Terry, in a field area where Fire Department personnel were working on him, and that her job was to preserve the crime scene.

Crime Lab Technician, David Moorehead, responded to the scene and processed it for evidence including a key card and possible blood from the field area where the body was located and a cartridge casing from the rear seat of a Dodge Caravan that had crashed into a nearby tree at 3611 Forest Park Avenue.

Crime Lab Technician, Amy Scott, dusted the minivan for fingerprints, locating two latent prints on the outside of the vehicle. She also collected the bullet fragment found in the van and twelve swabs for possible DNA testing.

Christy Silbaugh, Baltimore City Criminalist II, an expert in serology, testified that she conducted an administrative review of the serology work of Ashley Warren on swabs collected to determine the presence of blood from twelve items to include parts of the vehicle.

Christina Hurley, a DNA Analyst, testified that she conducted a forensic examination of multiple items of evidence in this case, which led her to conclude the following: a swab from a cell phone case from the middle front of the vehicle showed mixed contributors with the DNA profile of Terry as a major contributor; a stain from the front left corner of the passenger's side front airbag was a single source DNA profile of Terry; swabs from the front center area of the passenger side front airbag were inconclusive; swabs from the passenger side interior door of the vehicle was a mixture of indeterminate contributors; and a swab from a piece of a cell phone case from the passenger front seat showed Terry as the major contributor to the DNA profile.

Firearms examiner, Daniel Lamont, testified that he examined one cartridge case,

one lead fragment and one bullet specimen. No firearm was submitted with this case and Lamont was unable to make any conclusions with respect to ballistics. The shell casing was that of a 0.380 caliber.

Sean Dorr, a Latent Print Examiner, examined the fingerprints in this case and testified that there were not enough details to make any comparison of value in this case.

Dr. Pamela Southall, Assistant Medical Examiner, testified that she conducted the autopsy on Jonathan Terry and it was her expert testimony that the Terry had suffered four gunshot wounds and that cause of his death was multiple gunshot wounds and the manner of death was homicide.

Detective Jonathan Jones, the State's key witness, testified that he was the lead investigator in the death of Jonathan Terry. On the date and time in question, Detective Jones responded to the scene in the 3600 block of Liberty Heights Avenue with Detective Yost and Detective Sergeant Purtell where the open field area was cordoned off; however, Terry had already been removed to the hospital. Detective Jones testified that he then responded to the nearby Dodge Caravan that had crashed into a tree, but that, upon inspection of the vehicle, he saw a 0.380 caliber shell in the rear passenger area and a hole in the windshield. Detective Jones later located and spoke to Ms. Jannie. The officers obtained Terry's cell phone number from a member of his family and proceeded to obtain records for that cell number.

Detective Jones also characterized the investigation as a "limited evidence" case because there were no eyewitnesses, there was no weapon recovered and there was no other

physical evidence. Notwithstanding, he said that officers knew to look for two suspects because of information from the 911 calls.

According to Detective Jones, a review of Terry's cell phone records disclosed two phone numbers had connected with Terry's cell phone number on multiple occasions up until the time of the shooting and then ceased. Detective Jones testified that one of those numbers "belonged" to Andre Mixon and the other "belonged" to Appellant, whom he identified in court. Detective Jones testified that, thereafter, he located both Mixon and Appellant and spoke to each of them**,** on March 5, 2014 and March 10, 2014, respectively. Detective Jones testified that Appellant executed a Miranda waiver in connection with his videotaped statement taken on March 10, 2014 and recounted by Detective Jones in his testimony. With certain redactions, upon which the parties agreed, that recorded interview was then played for the jury in open court. Before speaking to Appellant, Detective Jones had no information connecting Appellant and Mixon, except for information that was in Terry's phone records.

Detective Jones acknowledged that he was trained in order to obtain information from subjects and that he repeatedly provided false information about the evidence to Appellant. In his recorded statement, Appellant said that he was trying to get some marijuana, and he made some statements that placed him in the van; however, he vehemently, steadfastly and repeatedly denied any involvement with any shooting. Detective Jones testified that no drugs or money were located on Terry's body, in the field where his body was recovered or in the minivan.

Hearing on the Motion to Suppress

Baltimore City Police Detective Sergeant Richard Purtell testified that, on January 6, 2014, he and Detectives Jones and Yost, responded to the 3600 block of Liberty Heights Avenue to investigate the death of Jonathan Terry. By the time they arrived, the victim's body had already been transported to the hospital; however, Sergeant Purtell observed that a minivan had collided with a tree. The witness also discovered a 0.380 caliber shell in the back of the van and a hole in the windshield. Sergeant Purtell testified that a witness who had been in the second story of a dentist's office nearby had told police that she heard the victim pleading for his life after she heard two shots and saw two people running away. She was, however, unable to describe them.

Sergeant Purtell further testified that there was no subscriber information as to one of the telephone numbers in order to enable the examination of phone call patterns. According to Sergeant Purtell, the records for the victim's cell phone indicated that he had received a "bunch of calls" during the day from two numbers and "that the numbers immediately stopped once Terry had been shot."[1] However, the police were able to connect the telephone number to Appellant through his girlfriend, Chanelle Clark, who confirmed the number as Appellant's. The other telephone number was the phone number of Andre Mixon. Clark had also advised police that Appellant and Mixon were friends and that

[1] Sergeant Purtell later testified that, although calls from Appellant's phone number ceased after Terry was shot, two more calls from Mixon's phone number were made to Terry's phone number after the shooting.

"some GPS[2] coordinates" revealed that the telephones of Appellant and Mixon "meet up together. They go up to the scene and then, after the murder they then . . . separate." According to Sergeant Purtell, the timing of the calls between Terry, Mixon and Appellant occurred up until the time of the murder and then ceased.

Sergeant Purtell also testified that the police had no leads or any other evidence than that recovered from the scene, the evidence from the female witness at the scene, the cell phone records and the cell site information. Sergeant Purtell, however, believed that the police had probable cause to conclude that Appellant was "involved in this murder," so they "brought him in … to give him a chance to tell his side of the story." Consequently, according to Sergeant Purtell, on March 10, 2014, Detective Jones picked Appellant up at his aunt's house and, because Appellant was a suspect, he was brought to the rear of the facility in a secured area. Appellant was placed in one of four rooms that had recording equipment which was conspicuous, but Appellant was not handcuffed nor were there guns present. Sergeant Purtell also testified that Appellant was read his *Miranda*[3] rights and that he did not ask to leave, to go home, to remain silent or for an attorney.

Appellant, in his statement, maintained that he was in the vehicle when it crashed and "that there was a shot that took place from inside the car." According to Sergeant Purtell, Appellant was the last person to call the victim on his cell phone before the shooting

[2] According to Appellant's brief, Sergeant Purtell clarified that "cell tower" information was used.

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

and that call was made shortly before the shooting and in close proximity in time to the 911 calls.

In Mixon's statement to the police on March 5, 2014, he maintained that he was in another vehicle nearby and he admitted knowing the victim. Sergeant Purtell testified that Mixon told police he went to meet the victim to conduct a marijuana transaction, but that Mixon "never said anything about [Appellant]." Sergeant Purtell further testified that it was only "[a]fter talking to [Appellant], we requested—we believed we had even more probable cause and we requested a warrant that evening." Because the request for a warrant was not approved by a member of the State's Attorney's Office, charges in this case against Appellant were not brought until August 7, 2014.

Appellant testified, at the motions hearing on March 10, 2014, that he was in the house sleeping or watching television when, at approximately 8:00 a.m., police forcibly entered his residence. According to Appellant, the police advised that they had a "warrant" for him, possibly a "VOP"[4] or "FTA"[5] warrant; they had a piece of paper "wrapped up . . . like a tube" but Appellant was not permitted to see or read the paper.

Appellant testified that he did not want to go with the police to the police station, that he was handcuffed, placed under arrest and put in a police vehicle, where he was transported to the Homicide Division and then placed in the bullpen. Appellant further

[4] "Violation of Probation."

[5] "Failure to Appear."

testified that he had attempted multiple times to end the interview and told police that he just wanted to go home. He further testified that he did not feel that he was free to leave, that he was not allowed to make any telephone calls, but that ultimately he was allowed to leave the Homicide Division at approximately 9:30 p.m. or 10:00 p.m. Appellant submits that the prosecutor conceded that he was in custody and not free to leave.

Appellant's recorded statement[6] was played for the trial court and an unofficial transcription of it to the court. In that statement, Appellant made statements that placed him in the van.

Trial Court's Opinion

The following is the opinion, in part, rendered by the trial court:

> The court finds that the removal of Mr. Jones-Joyner from his home without a warrant, violated the Fourth Amendment protection for individuals to be safe in their homes and to not be removed from their home, absent a warrant for their arrest.
>
> The issue before the court is whether the warrantless arrest now, if you will, poisons anything by its roots that grow from that tree, that poisonous tree, so as to exclude those derivative things from the warrantless arrest, which as it relates to Mr. Jones-Joyner here today, are what this court finds to be admissions made by him, not a confession made by him.
>
> ***
>
> It is upon those findings, the findings upon the finding of the existence of probable cause for the arrest without a warrant, removing Mr. Jones-Joyner from his home, upon consideration of all the evidence already referenced by the Court, upcoming upon consideration of the factors examined by the Court attended to the admission by Mr. Jones-Joyner that, on the date of Mr. Terry's murder, that Mr. Jones-Joyner had called Mr. Terry, had met with Mr. Terry, was in the accompaniment of Mr.

[6] According to Appellant's brief, Appellant gave two statements and that only the second one was recorded.

> Terry, also in the accompaniment of Mr. Mixon, and was also in the vehicle driven by Mr. Terry, that those statements cannot, as a matter of law be suppressed, and the motion to suppress is denied for all those reasons just stated.

A jury trial was ultimately held, which resulted in Appellant's conviction of first-degree murder. The instant appeal followed.

DISCUSSION

I.

Probable Cause

Appellant first contends that the trial court erred in denying his motion to suppress his recorded statement. Appellant argues that his warrantless arrest was made without probable cause and, thereby, *New York v. Harris*, 495 U.S. 14 (1990) does not apply. According to Appellant, this error was not harmless and, therefore, reversal is required.

The State responds that the trial court correctly admitted Appellant's statement to the police. Although the State concedes that the police arrested Appellant in his home without a warrant in violation of *Payton v. New York*, 445 U.S. 573 (1980), the State argues that the "constitutional infraction was obviated . . . by the fact that the police elicited Jones-Joyner's statement back at the stationhouse." The State maintains that there was evidence of probable cause to support Appellant's arrest. Therefore, the State requests that we affirm the lower court's decision.

The Fourth Amendment[7] and the Maryland Declaration of Rights protect the right

[7] Made applicable to the States *via* the Fourteenth Amendment.

of persons "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures" and "no Warrant shall issues, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be searched." U.S. CONST. amend IV; MD. DECL. OF RIGHTS, arts. 24, 26.

"The Fourth Amendment's protections extend only to those items and places in which the individual claiming the protection has a legitimate expectation of privacy." *Wallace v. State*, 373 Md. 69, 79 (2003) (citations omitted). "Searches of the home conducted without a warrant are presumptively unreasonable for 'the Fourth Amendment has drawn a firm line at the entrance to the house[.]'" *Williams v. State*, 372 Md. 386, 402 (2002) (quoting *Payton*, 445 U.S. at 586). "The presumptive unreasonableness of a warrantless search of a home is subject to limited and narrow exceptions." *Id.* at 402 (citations omitted).

A Fourth Amendment violation is usually the grounds for a motion to suppress the evidence that was obtained *via* the violation. *Grant v. State*, 449 Md. 1, 30 (2016) (citing *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)); MD. RULE 4–252(a)(3).

Recently, in *Grant*, *supra*, we reiterated the "well-established standard of review for motions to suppress" as follows:

> Our review of a circuit court's denial of a motion to suppress evidence under the Fourth Amendment, ordinarily, is limited to the information contained in the record of the suppression hearing and not the record of the trial. When there is a denial of a motion to suppress, we are further limited to considering facts in the light most favorable to the State as the prevailing party on the motion. Even so, we review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional

> evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case. We will not disturb the [circuit] court's factual findings unless they are clearly erroneous.

449 Md. at 14–15 (quoting *State v. Wallace*, 372 Md. 137, 144 (2002)).

In the instant case, it is undisputed that police did not have a warrant when they forcibly entered Appellant's home and arrested him. What is disputed is whether probable cause existed for the underlying arrest.

When reviewing an arrest without a warrant, "we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." *Williams v. State*, 188 Md. App. 78, 95 (2009) (quoting *Stone v. State*, 178 Md. App. 428, 440 (2008)). "[T]he ultimate questions of reasonable suspicion and probable cause to make a warrantless search should be reviewed *de novo*." *Johnson v. State*, 142 Md. App. 172, 183 (2002) (*Ferris v. State*, 355 Md. 356, 385 (1999)).

> [P]robable cause is a fluid concept . . . . The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. We have stated, however, that "[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt[.]"

Maryland v. Pringle, 540 U.S. 366, 370–71 (2003) (citations omitted).

> Probable cause exists when the police possess reasonably trustworthy information, drawn from the totality of the facts and circumstances of each case, which supports the fair probability that contraband or evidence of a crime will be found in a particular place or that the suspect has committed a crime.

Massey v. State, 173 Md. App. 94, 104 (2007).

Probable cause "does not demand any showing that such belief be correct or more likely true than false. A 'practical, non-technical' probability that incriminating evidence is involved is all that is required." *Wilson v. State*, 174 Md. App. 434, 440 (2007) (quoting *Daniels v. State*, 172 Md. App. 75, 89 (2006)). *See also Doering v. State*, 313 Md. 384, 403 (1988) (citations omitted) (describing probable cause as "requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion").

In the instant case, the lower court determined that the totality of the circumstances provided information that rose "unequivocally to the level of probable cause to arrest Mr. Jones-Joyner." The court explained:

> A witness first disclosed hearing an unidentified individual in the area of the crime and the murder of Mr. Terry, exclaiming ["]please, yo, [sic] don't do this.["] The witness next sequentially, according to the evidence for purposes of this hearing argued by the State, and within the statement of probable cause, heard gunshots. The witness then visually observed two individuals fleeing the scene of the crime. *** Pen registers for the relevant phone numbers already referenced, were obtained for Mr. Terry's phone records, Mr. Mixon's phone records and Mr. Jones-Joyner's phone records. The [c]ourt also considers the use of those three cell phones during a period of time of 70 minutes, leading up to the call of the dispatch with regard to the shooting of Mr. Terry. The period of time spans 3:07:21 p.m. and 4:17:46 p.m. At 3:07 p.m., the record indicates that the phone number attributable to Mr. Terry makes a call to Mr. Mixon's attributable phone number. After a span of almost 40 minutes, at 3:46 p.m., a phone call is made from the number attributable to Mr. Jones-Joyner to Mr. Terry. *** 11 minutes later, a phone call is made from the phone attributable to Mr. Mixon to Mr. Terry at 3:57 p.m. and then again later, eight minutes later, at 4:05 p.m. Two minutes later, after Mr. Terry has received a phone call from Mr. Mixon, Mr. Terry calls Mr. Mixon at 4:07 p.m.
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> In between, one minute before that phone call from Mr. Terry to Mr. Mixon, Mr. Terry called Mr. Jones-Joyner. Then called Mr. Mixon one minute after speaking with Mr. Jones-Joyner. Mr. Terry then called Mr. Jones-Joyner again at 4:17 p.m.

> Within minutes, minutes, Mr. Terry was shot and murdered.
>
> Just prior to 3:00 p.m. on that very same day, there were 10 other distinct calls upon the Court's review of the phone records between Mr. Mixon and Mr. Jones-Joyner. And there's evidence before the [c]ourt, for purposes of this hearing, of witness testimony anticipated of establishing a friendship between Mr. Jones-Joyner and Mr. Mixon. The [c]ourt also looks to, on that particular day, the cell site data which places the calls and the locations from where the calls were made and received, and finds that that location from the initiation of the calls toward the end of the very last call did nothing but geographical shrink based upon pings off the cell tower to place those final calls in an extraordinarily close physical proximity.
>
> The [c]ourt notes that prior to the March 10, 2014 interview by police of Mr. Jones-Joyner, that all of that information that I just recited, those facts were known to the police. It's based upon those events as I just recited them transpiring what the police knew. They had . . . more than just suspicion that Mr. Jones-Joyner was involved in the murder of Mr. Terry . . . .

We agree with the lower court that police had probable cause to arrest Appellant. Examining the events that led up to the arrest, we agree with the lower court that an "objectively reasonable police officer" would have viewed these facts as amounting to the "fair probability" that Appellant was involved in the murder of Terry.

Appellant disagrees with this analysis, noting the lack of direct evidence present. "Maryland has long held that there is no difference between direct and circumstantial evidence." *Hebron v. State*, 331 Md. 219, 226 (1993) (citations omitted). If circumstantial evidence, alone, can be sufficient to support a conviction, logically, it can be sufficient to support the less onerous probable cause standard for a warrantless arrest.

Furthermore, Appellant characterizes the information available to the police, *i.e.*, cell phone and cell tower information, as "scant," "speculative" and "unsubstantiated." Appellant argues that the information is unsubstantiated because Sergeant Purtell testified

that he was not an "expert" in the "exact way [cell] towers are set up," but the Sergeant was able to affirm his knowledge and understanding of reviewing the cell tower information to determine a cell phone's geography. Moreover, although Appellant argues that determining a cell phone location is not indicative of determining the cell phone owner's location, we agree with the State that "the police were entitled to rely on the commonsense proposition that most people carry their own cell phone most of the time." *See State v. Andrews*, 227 Md. App. 350, 354 (2016) (quoting *Riley v. California*, 134 S. Ct. 2473, 2484 (2014)) ("[M]odern cell phones . . . are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.").

We further note that, although the information may have been less than what would be necessary to support a conviction, the concern at this stage is whether the information would have been sufficient to support probable cause for a warrantless arrest. We agree with the lower court that the cell phone and cell tower information supported a reasonable conclusion, beyond mere suspicion, that Appellant was involved in the murder of Terry.

Voluntariness

Appellant further contends that his statement to the police at the stationhouse was not voluntary. Although Appellant concedes that he properly waived his *Miranda* rights, Appellant alleges that he "repeatedly told the detective that he did not want to be there" and that, therefore, "he was hardly acting of 'free will.'" Appellant asserts, with significance, that he was rousted "from his bed in the early morning hours by officers

forcing their way into his home by falsely claiming to have a warrant[.]" Appellant further asserts that the police acted without approval from the State's Attorney's Office, which had refused to approve an arrest warrant for Appellant. Therefore, "[t]he flagrancy of the police misconduct in this case was evident." Appellant finally asserts that, without any direct evidence, the police "repeatedly lied" to Appellant about what evidence they possessed "in order to compel Appellant to acknowledge his presence" at the murder scene.

The State responds that the facts to which Appellant draws this Court's attention, "establish little more than that Jones-Joyner was arrested and not free to leave. They do not show that his will not to speak was overborne by the police."

"Only voluntary confessions are admissible in evidence." *Harper v. State*, 162 Md. App. 55, 71 (2005) (citing *Knight v. State*, 381 Md. 517, 531 (2004)). A voluntary confession "must satisfy the mandates of the Constitution of the United States, the Maryland Constitution and Declaration of Rights, the Supreme Court's decision in *Miranda v. Arizona*, and Maryland non-constitutional law." *Id.* (citing *Knight*, 381 Md. at 532).

"Under Maryland non-constitutional law, a confession must be 'freely and voluntarily made at a time when [the defendant] knew and understood what he was saying,' . . . [*i.e.*,] voluntary, knowing, and intelligent." *Id.* (citations omitted).

> Ordinarily, the voluntariness of the defendant's inculpatory statement is determined based on a totality of the circumstances test:
>
> > In cases where we are called upon to determine whether a confession has been made voluntarily, we generally look at the totality of the circumstances affecting

> the interrogation and confession. We look to all of the elements of the interrogation to determine whether a suspect's confession was given freely to the police through the exercise of free will or was coerced through the use of improper means. On the non-exhaustive list of factors we consider are the length of the interrogation, the manner in which it was conducted, the number of police officers present throughout the interrogation, and the age, education and experience of the suspect.

Id. at 72–73 (quoting *Winder v. State*, 362 Md. 275, 307 (2001)).

In the instant case, the court made the following findings in evaluating the voluntariness of Appellant's statement to police:

> • The interview lasted for approximately three hours
>
> • Appellant was not handcuffed during the interview
>
> • There was at least one police officer present, but no more than two police officers present, during the interview
>
> • The police officers who conducted the interview possessed "years and years" of experience and training in conducting interviews and there were "numerous pleas by the police that day to [Appellant] to unburden himself by telling the truth, by telling what he knew, by telling what if anything he did, by suggesting to him what he did in home that he would agree."
>
> • Although Appellant was not handcuffed or shackled and stated that he wanted to go home, he "never once said may I go home, may I leave," he "never stood up to suggest by physical non-verbal communication an intention to leave, to then beg a response by the police whether the police would have let him go." "The [c]ourt does notice the fact that [Appellant] never did anything consistent with wanting to leave, other than saying he wanted to leave."
>
> • Appellant signed an "Advice of Rights" document, acknowledging that his *Miranda* rights were explained to him, he read it and that he understood his rights.
>
> • There was nothing about Appellant's mental and/ or physical condition to suggest that he was "vulnerable"; Appellant indicated he was not under the influence of alcohol, or any illegal or illicit drugs while interviewed.

• Although Appellant had been recently stabbed and was recovering from those wounds, the court did not find him in observable pain or physical distress from observing the recorded interview; nor did Appellant complain of pain or physical distress.

• Appellant was 21 years old at the time of the interview and had a tenth-grade education; the court found Appellant to have a "minimum, average intelligence"

• Appellant had previous experience with the criminal justice system

• Appellant took at least one bathroom break during the interview, he was given the opportunity for a rest break, he was offered and he accepted two cups of water, he was provided food in the form of a bag of potato chips

• Repeated inducements to tell the truth were made to Appellant; the court did not find them to be improper as a matter of law

Citing the record, the State adds that the interview room possessed signage and a "bright red light" indicating that there was an ongoing video recordation in progress. The police officers did not carry a firearm into the interview room.

In the instant case, there was nothing in the totality of circumstances that would indicate Appellant's statement to the police was involuntary. The length of the interview was not excessive, particularly with the corresponding breaks for rest, food and water. There was no evidence that Appellant was in physical distress or otherwise vulnerable. There were no complaints of police misconduct, except for the warrantless arrest and repeated requests during the interview that Appellant "unburden" himself. The warrantless arrest, which was ultimately supported by probable cause, as discussed, *supra*, is not a factor in whether Appellant's statement was voluntary. Moreover, repeatedly pressuring an interviewee, during a three hour interview with breaks, food and water, to tell the truth

is not oppressive police misconduct that would render an accused's statements involuntary. Therefore, we hold that the circuit court properly denied Appellant's Motion to Suppress.

II.

Appellant's next contention is that the trial court erred by interjecting comments during Appellant's closing argument. Appellant alleges that these remarks "improperly shifted the State's burden," "highlighted Appellant's failure to testify, thereby violating his right against self-incrimination," referenced facts not in evidence and were "suggestive of Appellant's guilt, thereby depriving Appellant of a fair trial." Appellant concedes that he did not object to the court's remarks, but urges this Court to review his claim under the plain error doctrine.

The State responds that Appellant's claim has not been preserved for our review because Appellant did not object to the court's remarks. The State also asserts that Appellant's claim does not meet the requirement for plain error review.

The remarks at issue are contained in the following excerpt:

> [APPELLANT'S TRIAL COUNSEL]: . . . [Jones-Joyner] sees himself as a Black man, being pulled into Homicide and somebody's trying to frame him. This is why he's so agitated. This is why he's so upset. This is why he [] keeps saying, he is agitated even in trial. Because every time they said he did this, he was, I didn't do this. I didn't do this. How many times has Mr. Jones-Joyner tried to just yell out, I didn't do this?
>
> [PROSECUTOR]: Objection.
>
> [COURT]: Sustained. The answer is zero *as to in this courtroom during the trial. Since you asked the question.*

(Emphasis supplied).

As a preliminary matter, we will first address the State's contention that Appellant has failed to preserve this claim for our review. "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" MD. RULE 8-131(a). "Rule 8–131(a) requires a defendant to make 'timely objections in the lower court,' or 'he will be considered to have waived them and he cannot now raise such objections on appeal.'" *Brice v. State*, 225 Md. App. 666, 678 (2015), *cert. denied*, 447 Md. 298 (2016).

In the instant case, Appellant concedes that he did not make an objection to the court's remarks during his closing argument. Appellant argues that

> [I]nasmuch as the trial court, here, sustained the State's objection and offered the inappropriate interjection *sua sponte*, it is unclear what further action defense counsel could have undertaken, and it is unclear what remedy short of mistrial would have sufficed to cure the damage.

Essentially, Appellant's argument is that an objection would not have done any good, so it is "hyper-technical" to refuse review of his claim. However, that is not what the law contemplates. The law requires a contemporaneous objection. Appellant does not argue, pursuant to Rule 4–323(c), that he did not have an opportunity to object, which could have potentially preserved his claim; rather, he argues that an objection was futile. Regardless, the Maryland Rules are clear, *i.e.*, there must be an objection to preserve a claim for review. Accordingly, Appellant has failed to preserve this claim for our review.

Absent an objection, a claim can be reviewed for the first time on appeal only under the plain error doctrine. "We have said that we should exercise this discretion in favor of

review when the unobjected to error is 'compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'" *Hammersla v. State*, 184 Md. App. 295, 306 (2009) (quoting *Smith v. State*, 64 Md. App. 625, 632 (1985)).

> "[P]lain-error review"—involves four steps, or prongs. First, there must be an error or defect—some sort of "[d]eviation from a legal rule"—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it "affected the outcome of the district court proceedings." Fourth and finally, if the above three prongs are satisfied, the Court of Appeals has the discretion to remedy the error—discretion which ought to be exercised only if the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." Meeting all four prongs is difficult, "as it should be."

Kelly v. State, 195 Md. App. 403, 432 (2010) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)).

"Consequently, appellate review under the plain error doctrine '1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.'" *Hammersla*, 184 Md. App. at 306 (quoting *Morris v. State*, 153 Md. App. 480, 507 (2003)).

In the instant case, we are unpersuaded that Appellant's claim warrants review under the plain error doctrine. Reviewing the disputed remarks, during Appellant's closing argument, it was unclear what Appellant's trial counsel was referencing when he questioned, "How many times has Mr. Jones-Joyner tried to just yell out, I didn't do this?" and, when counsel stated that Appellant "keeps saying, he is agitated even in trial." Although it is preferable for a trial judge to allow the parties and counsel to be the participants in the adversarial trial, it is absolutely appropriate for a judge, when presiding

over a trial with a jury, to interject questions or remarks to clarify issues. *Johnson v. State*, 156 Md. App. 694, 705–06 (2004). However, excessive questions or remarks by a trial judge or when the trial judge interjects him or herself beyond the point of seeking to clarify will deny an accused of a fair trial. *Id.* That was not the circumstance in the instant appeal. Here, the judge clarified one point, during closing argument, after sustaining the objection of the Assistant State's Attorney. There was no material or plain error and, accordingly, we will not exercise our discretion to review Appellant's claim.

III.

Appellant's final contention is that the evidence presented was legally insufficient to support his convictions. Specifically, Appellant alleges that his conviction of guilt was based solely on circumstantial evidence, which was "woefully insufficient" because "there were no eyewitnesses, no identifications made, no video surveillance camera footage and no weapon recovered, let alone any connection from any weapon made to Appellant." Appellant also notes that there was no physical evidence as well, "no DNA, fingerprints, ballistics, . . . connecting [him] to the crime." Although Appellant acknowledges that a conviction may rest solely upon circumstantial evidence, he argues that, "while [he] made some statements that *possibly* placed him in the van, he vehemently, steadfastly and repeatedly denied any involvement with any shooting." Appellant further argues that, "in any event, mere presence at a crime scene is insufficient to establish that one was either a principal or an accessory." Appellant offers an alternative analysis, stating that "[i]t was a perfectly reasonable hypothesis of innocence that some other person, perhaps a disgruntled

customer, shot Terry, who was an acknowledged drug dealer, in a very public area." Appellant implores this Court to reverse the lower court's ruling.

The State responds that the evidence was legally sufficient to establish that it was Appellant who committed the murder, either as a first or second-degree principal. The State asserts that Appellant "does not genuinely challenge the legal sufficiency of the prosecution's evidence. Rather, he points to unavailable evidence not admitted at trial and to the supposedly reasonable hypothesis of innocence that depends on some other person—a "disgruntled customer"—having committed the crime." The State further asserts that "[a] properly founded challenge to the legal sufficiency of the evidence does not advert to missing evidence of a supposedly superlative quality, like eyewitness identification or surveillance footage. *** Rather, a properly founded challenge to the legal sufficiency of the evidence assails the State's *prima facie* case as a failure of the burden of production." The State maintains that Appellant has not demonstrated an entitlement to relief and, therefore, this Court should affirm his convictions.

"[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "The test is 'not whether the evidence should have or probably would have persuaded the majority of fact finders but only whether it possibly could have persuaded any rational fact finder.'" *Benton v. State*, 224

Md. App. 612, 629 (2015) (quoting *Painter v. State*, 157 Md. App. 1, 11 (2004)).

> "We give 'due regard to the [fact finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *** We do not re-weigh the evidence, but "we do determine whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." The same standard applies to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.

State v. Smith, 374 Md. 527, 534 (2003) (citations omitted).

As due process, guaranteed by the Fourteenth Amendment, requires that, for a criminal conviction to stand, there must be sufficient evidence "necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense[,]" we turn to examine the elements of the crime of which Appellant was convicted. *Jackson*, 443 U.S. at 316.

Md. Code Ann., Crim. Law (C.L.) § 2–201 governs Murder in the First Degree and subpart (a)(1) defines first-degree murder as "a deliberate, premeditated, and willful killing[.]"

> For a killing to be "willful" there must be a specific purpose and intent to kill; to be "deliberate" there must be a full and conscious knowledge of the purpose to kill; and to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate. It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time.

Wagner v. State, 160 Md. App. 531, 564 (2005) (quoting *State v. Raines*, 326 Md. 582, 589 (1992)). "If the killing results from a choice made as a consequence of thought, *no matter*

how short the period between the intention and the act, the crime is characterized as deliberate and premeditated." *Id.* at 565 (citing *Raines*, 326 Md. at 589).

In Maryland, it is well-settled that the appellate review of a claim for sufficiency of the evidence is bound by the particular grounds stated at trial during a motion for judgment of acquittal. *Starr v. State*, 405 Md. 293, 302 (2008) (citations omitted). In the instant case, at trial, Appellant's counsel argued that the State had "not proven that [Appellant] is, in fact, the person who caused the death of Jonathan Terry nor that the killing committed—a killing committed by Mr. Jones-Joyner was committed or premeditated."

The evidence presented was that the victim, Jonathan Terry, sustained four wounds from gunshots. It was likely that he sustained a wound to his right elbow area and then further gunshot wounds at closer range in an "execution-style" manner. There was witness testimony describing what she heard from a nearby building; she heard voices, a plea, "No, yo, don't do it" and gunshots. When the witness looked out the window, she saw two people running away. There was a 911 call that described two individuals running down an alley, corroborating the witness's testimony. There were the numerous calls from Appellant's cell phone to the victim's cell phone preceding the murder and none from Appellant's cell phone after the murder. Cell phone tower information identified Appellant's cell phone in the geographic area of the murder and Appellant's own admission that he was at the scene of the crime during the time the murder took place.

The lower court, in denying Appellant's motion for judgment of acquittal reasoned:

Looking at the totality of the circumstantial evidence, looking at the flight of the

> victim to avoid his death, which was fruitless, certainly premeditation can be formed and the law does not require any significant time for one to form premeditation as the element in the willful shooting and killing of another, that could certainly have been formed and is a question for the jury with regard to the time it took to traverse from the van, assuming the jury were to find at all that Mr. Jones-Joyner was even ever in the van, but during that time from traversing from the van to the field, certainly the premeditation element has been shown in the light most favorable to the State.

Although Appellant's alternative analysis that the victim was shot by a disgruntled customer is possible, any rational trier of fact could have found the essential elements of first degree murder beyond a reasonable doubt in order to convict Appellant.

Furthermore, Appellant asserts that mere presence at a crime scene is insufficient to support his status as a principal or accessory. "Mere presence at the scene of a crime is insufficient to sustain a guilty finding[.]" *Todd v. State*, 26 Md. App. 583, 585 (1975) (citing *Williams v. State*, 3 Md. App. 58 (1968)). "When, however, . . . the accused's presence at the scene of a crime is coupled with his, in some degree, aiding and abetting by direct assistance or encouragement the commission of the crime, the accused is accountable as a principal in the second degree. As such he is equally as guilty as the principal in the first degree." *Id.*

> Under Maryland law, one may commit an offense as either a principal in the first degree, or a principal in the second degree[.] A first degree principal is the actual perpetrator of the crime. A second degree principal must be either actually or constructively present at the commission of a criminal offense and aid, counsel, command, or encourage the principal in the first degree in the commission of that offense.

Owens v. State, 161 Md. App. 91, 99 (2005) (citations omitted).

In the case *sub judice*, Appellant's multiple phone calls, in conjunction with

Mixon's and the victim's preceding the shooting, coupled with the eye witness account that *two* individuals ran from the scene and the geographic data from the cell tower information placed Appellant and Mixon with the victim at the murder scene, these circumstances support a rational fact-finder's verdict that Appellant was one of two individuals at the scene when Terry was shot. We do not know if Appellant himself shot Terry. Appellant alleges that his presence at the scene, alone, does not categorize him as a principal in either the first or second degree. Moreover, Appellant ignores other facts beyond his presence at the scene. It was established that he and Mixon were friends. The pattern of phone calls to and from the victim preceding his death support a rational inference that Appellant assisted in luring Terry to the location. Accordingly, under the theory of second-degree principal liability, Appellant was actually present at the scene of the crime and aided the first-degree principal in luring the victim to the location.

We hold, therefore, that the evidence presented supports Appellant's conviction for murder in the first-degree.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED;

COSTS TO BE PAID BY APPELLANT.