Circuit Court for Baltimore County
Case No. C-03-CR-20-000055

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0899

September Term, 2023

JOSHUA EDWARDS

v.

STATE OF MARYLAND

Nazarian,
Kehoe, S.,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 12, 2024

David Collins and his friends went to a strip club to celebrate his friend's upcoming baby. At one point, Mr. Collins began arguing with another patron named Joshua Edwards. The argument escalated to a fight that ended in Mr. Edwards stabbing and killing Mr. Collins.

Mr. Edwards was arrested that night and interrogated the following morning. While awaiting interrogation, Mr. Edwards asked the transporting officer if there was any chance he could speak with his attorney. The transporting officer responded that Mr. Edwards should tell the detective about his request. The detective eventually arrived and read Mr. Edwards his *Miranda* rights. Mr. Edwards never asked for an attorney during the interrogation. He made incriminating statements and was then charged with multiple crimes. Mr. Edwards moved to suppress the statements, but the motion was denied.

At trial, a medical examiner testified about the autopsy he performed on Mr. Collins. Mr. Edwards objected, claiming that the doctor was unqualified to testify as an expert, but the court disagreed. Mr. Edwards was convicted of first-degree murder and carrying a dangerous weapon with intent to injure. On appeal, Mr. Edwards argues the court erred in denying his motion to suppress and admitting the doctor's testimony. We agree that the circuit court erred in denying the motion to suppress, reverse the convictions, remand for further proceedings, and address the expert testimony question for guidance on remand.

I. BACKGROUND

A. The Stabbing.

On the night of December 20, 2019, Scott Cunningham attended a "daddy diaper party" at Mr. Collins's house. The party celebrated their friend's upcoming baby. There were about eight to ten men in attendance, and after drinking and celebrating, the group went to a bar before settling at a strip club.

After an hour at the club, the group was ready to return to Mr. Collins's home. Mr. Collins exited the club and the door hit Mr. Edwards as he was going inside, which led to an argument between the two. The argument escalated into a physical fight, and Mr. Edwards was seen giving Mr. Collins multiple "body shots." Mr. Edwards continued hitting Mr. Collins even after he fell to the ground and struggled to get back up. Mr. Cunningham got closer to the men and could see Mr. Collins's intestines coming out of his body. Mr. Cunningham knew immediately that Mr. Collins had been stabbed. After some more fighting between Mr. Collins's and Mr. Edwards's friends, Mr. Edwards and his friends got away in their car.

B. Investigation and Arrest.

Philip Holthaus, the club's head of security, learned quickly about the stabbing. Mr. Holthaus ran out of the club to render first aid and then called the police. Detective Anthony DiPerna from the Baltimore County Police Department ("BCPD") arrived at the scene and saw Mr. Collins lying on the ground unconscious and suffering from multiple stab wounds. Detective DiPerna secured the scene and placed a traffic cone on top of the knife found near Mr. Collins. The Emergency Medical Technicians who arrived then took Mr. Collins

to the hospital. Despite life-saving efforts, Mr. Collins died at the hospital.

Because Mr. Edwards had fled, the BCPD issued a "lookout" to neighboring jurisdictions informing them of the vehicle and suspects. Soon after, Harford County officers were dispatched to a residence where there had been reports of an injured individual. When officers reached the home, they noticed Mr. Edwards's pinky finger was gone, and he was bleeding profusely. Officers realized both Mr. Edwards and the car parked in the driveway matched the descriptions provided by the "lookout." Mr. Edwards was transported to Union Memorial Hospital in Baltimore and detained there by officers.

Later that night, several other BCPD officers arrived at the club and collected various pieces of evidence. One BCPD officer, Detective Mark Fisher, had learned about Mr. Edwards from Harford County officers and instructed the Crime Lab Technicians to search for the missing pinky. Crime Lab Technician Amy Seman found the finger, ink-rolled it for identification, and sent it off with police to see if it could be reattached to Mr. Edwards. In the end, medical staff were unable to reattach the finger. The following morning, December 21, Mr. Edwards was released from the hospital under police custody and transported to the BCPD Headquarters ("HQ") for questioning.

C. The Interrogation and Suppression Hearing.

Mr. Edwards arrived at HQ at around 9:40 a.m. and was placed in an interrogation room shortly after. At 11:30 a.m., Officer Brent Zimmerman arrived in the interrogation room, which prompted Mr. Edwards to ask multiple questions. He asked first how much longer he had to wait, and Officer Zimmerman stated that "[the detectives] should be on

their way back now, okay." Then Mr. Edwards asked, "[i]s there any chance I can call my lawyer?" Officer Zimmerman replied, "[w]hen [the detectives] get here you can tell them that, okay. Like I said, you tell them what you want to tell them. If you don't want to tell them anything, you want to talk to your lawyer, you can do that, okay. That's not part of me, okay." Mr. Edwards seemed to have accepted the explanation.

Detective Fisher entered the interrogation room at 12:13 p.m. and began questioning Mr. Edwards. Detective Fisher recited the *Miranda* warnings to Mr. Edwards orally, after which he signed a document stating that "[m]y decision to waive these rights and be interviewed is free and voluntary on my part." Detective Fisher interrogated Mr. Edwards for several hours and, at one point, Mr. Edwards admitted that he "stabbed [Mr. Collins] with [a] knife." Toward the end of the questioning, Detective Fisher told Mr. Edwards that he "ha[d] no choice but to charge [Mr. Edwards] with [killing Mr. Collins]." At no point did Mr. Edwards ask for an attorney after signing the *Miranda* waiver. Ultimately, Mr. Edwards was charged with first-degree murder, first-degree assault, and carrying a dangerous weapon with the intent to injure.

On April 9, 2020, Mr. Edwards filed a motion to suppress the statements he made during the interrogation. He argued that his "statement[s] and answers were not knowingly provided as [he] was still under the influence of any trauma-related treatments he received while at Union Memorial Hospital." At the suppression hearing, held on October 28, 2020, the court ruled that despite the "10 milligrams of Oxycodone" in Mr. Edwards's system, Mr. Edwards was "coherent and competent" during the interrogation and that the State met

its burden. The court denied the motion.

D. Trial and Sentencing.

Mr. Edwards's trial began on December 5, 2022. On the fourth day of trial, the State called Dr. Francesco Pontoriero to testify about Mr. Collins's autopsy. Dr. Pontoriero testified about his relevant qualifications and experiences, including the fact that he is a medical examiner in New Jersey. After his testimony, the State moved "to admit [Dr. Pontoriero] as an expert in the field of forensic pathology qualified to give expert testimony as to the cause and manner of death in this case." Mr. Edwards objected, asserting that Dr. Pontoriero "was [not] Board Certified in any class of pathology at the time of the autopsy in December of 2019 when [the death] occurred." The court overruled Mr. Edwards's objection.

Mr. Edwards was found guilty of first-degree murder and carrying a dangerous weapon with the intent to injure.[1] On June 5, 2023, Mr. Edwards was sentenced to life with the possibility of parole for the first-degree murder charge and three years to run concurrently for the dangerous weapons charge. He timely appealed. Additional facts will be provided below as necessary.

[1] The first-degree assault charge was dismissed.

II. DISCUSSION

Mr. Edwards presents two issues,[2] which we rephrase: whether the circuit court erred in (1) admitting Mr. Edwards's interrogation statements and (2) allowing Dr. Pontoriero to testify as a forensic pathology expert.

A. The Circuit Court Erred In Denying The Motion To Suppress.

Mr. Edwards argues that the circuit court erred in denying his motion to suppress because he invoked his right to counsel validly and was never provided an attorney for the interrogation. The State disagrees and claims the invocation was invalid and, in any event, that Mr. Edwards waived his *Miranda* rights. We agree with Mr. Edwards.

Our review of a denial of a motion to suppress evidence "is 'limited to the record developed at the suppression hearing.'" *Pacheco v. State*, 465 Md. 311, 319 (2019) (*quoting Moats v. State*, 455 Md. 682, 694 (2017)). We assess the record in the light most favorable to the prevailing party. *Id.* We accept the circuit court's "factual findings unless

[2] Mr. Edwards's brief listed the Questions Presented as:

1. Did the trial court err by failing to exclude a statement made by Mr. Edwards after he invoked his right to counsel before police interrogated him?
2. Did the trial court abuse its discretion by allowing the expert qualification of an unqualified medical witness?

The State's brief listed its Questions Presented as:

1. Did the suppression court correctly decline to suppress Edwards's statement when Edwards's invocation of the right to counsel was anticipatory and outside of custodial interrogation?
2. Did the trial court properly exercise its discretion in allowing Dr. Pontoriero to testify as a medical expert?

they are clearly erroneous, but we review *de novo* the 'court's application of the law to its findings of fact.'" *Id.* (*quoting Norman v. State*, 452 Md. 373, 386 (2017)).

The Fifth Amendment protects a defendant from being "compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. This grants, among other things, the right to an attorney present upon request. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). When appropriate, officers must inform individuals of their Fifth Amendment rights. *Id.*

When the suspect "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning." *Id.* at 444-45. Invocation of this right may be done in various ways, but the suspect "must do so with sufficient clarity." *Vargas-Salguero v. State*, 237 Md. App. 317, 336 (2018). Typically, this consists of an individual saying something along the lines of "I want an attorney." But the request for an attorney need not include specific magic words or be perfectly direct. *Ballard v. State*, 420 Md. 480, 494 (2011) (the petitioner told police, "'[y]ou mind if I not say no more and just talk to an attorney about this'" and the Court found that "a suspect stating he would rather have counsel unambiguously indicates his desire to have counsel present."). The timing of the invocation matters as well. Generally, suspects cannot invoke their rights "anticipatorily" because *Miranda* rights are intended to protect individuals who are subject to a custodial interrogation. *Gupta v. State*, 452 Md. 103, 131 (2017). Even so, a suspect can invoke their right to counsel where the custodial interrogation is "imminent." *Id.* at 135. Although our courts have not defined "imminence"

with mathematical precision, the Supreme Court of Maryland has recognized that "there may be some instances in which a suspect *could invoke Miranda rights post-custody but pre-interrogation*." *Id.* (Emphasis added). Finally, if a suspect chooses to waive their *Miranda* rights, the waiver is not valid unless it is done "voluntarily, knowingly[,] and intelligently." *Miranda*, 384 U.S. at 444. If the waiver came after a valid *Miranda* invocation, it counts only if the suspect was the one who initiated further communication or exchanges with the officers. *Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981).

The issue here is whether Mr. Edwards invoked his right to counsel when he asked an officer if there was "any chance that [he] can call [his] lawyer." Nobody disputes that this statement was sufficiently definite about Mr. Edwards's intentions or that Mr. Edwards was in custody. Mr. Edwards was transported by officers from the hospital directly to HQ and was placed into an interrogation room to await questioning. A little over an hour after waiting, Mr. Edwards asked Officer Zimmerman, "[i]s there any chance I can call my lawyer?" The officer told him to wait until detectives arrived and that he could ask them later. About forty-three minutes later, Detective Fisher read Mr. Edwards his *Miranda* rights and began the interrogation. Despite Mr. Edwards's earlier request to call his attorney, he never told Detective Fisher he wanted counsel. The State asserts that Mr. Edwards's question was nothing more than "an anticipatory invocation outside of custodial interrogation" and that even if the invocation was valid, Mr. Edwards waived his *Miranda* rights implicitly when he failed to tell Detective Fisher he wanted an attorney. We disagree for several reasons.

First, the timing of Mr. Edwards's invocation did not invalidate his request. At the time of the request, Mr. Edwards indisputably was in custody and, importantly, had been placed in the interrogation room where the interrogation at issue in fact took place. Unlike holding cells or other places where interrogation isn't possible or likely, Mr. Edwards had been placed in exactly the environment where *Miranda* is meant to operate. *See Miranda*, 384 U.S. at 468 (warning individuals that their right to remain silent "is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere."). He was in custody for the purpose of being interrogated, and it wasn't too long after that detectives in fact read him his *Miranda* rights in that same space. *See In re Darryl P.*, 211 Md. App. 112, 158 (2013).

Even if Mr. Edwards invoked his rights too early, or anticipatorily, this interrogation was imminent. Our courts have not defined "imminence" in concrete terms, but instead have considered the totality of the circumstances. On the one hand, we know that an interrogation held three hours after the supposed invocation of *Miranda* rights was not imminent. *Gupta*, 452 Md. at 135. On the other, in *Williams v. State*, we found an interrogation was imminent where the suspect was in the interrogation room with detectives who only made small talk at first. 219 Md. App. 295, 322 (2014). Although the amount of time may be fluid, our Supreme Court has recognized that if the interrogation is near, a suspect could invoke their rights post-custody but pre-interrogation. *Gupta*, 452 Md. at 135.

This is one of those cases. Mr. Edwards was in custody and officers placed him

immediately in an interrogation room. The questioning could have begun at any minute—and did begin in that very room—less than an hour later. Mr. Edwards requested an attorney at 11:30 a.m., and the interrogation commenced at 12:13 p.m. That's only forty-three minutes in between invocation and interrogation, far more closely in time than *Gupta*. 452 Md. at 135. Additionally, right before asking for an attorney, Mr. Edwards had asked how much longer he had to wait, to which Officer Zimmerman responded, "[t]hey should be on their way back now." This statement indicated that the interrogation was going to happen relatively soon, again resembling *Williams*, since Mr. Edwards already sat in the interrogation room and was just waiting for the questioning to begin. *See* 219 Md. App. at 322. In light of the combination of the physical environment in which officers had placed Mr. Edwards and the proximity between his invocation and the interrogation, we hold that he had invoked his right to counsel when he asked Officer Zimmerman if there was any chance he could call his lawyer.

Second, Mr. Edwards's invocation was sufficiently clear and constituted an unequivocal request for an attorney. Although posed as a question and not an affirmative demand for an attorney, Mr. Edwards's request—"[i]s there any chance I can call my lawyer?"—left no uncertainty about what Mr. Edwards wanted. Mr. Edwards was not asking whether he should get an attorney, but rather whether officers would give him the opportunity to access *his* attorney. By his own reckoning, Officer Zimmerman understood the question exactly that way—he responded, "[w]hen [the detectives] get here you can tell them that, okay. Like I said, you tell them what you want to tell them. If you don't want to

tell them anything, you want to talk to your lawyer, you can do that, okay. That's not part of me, okay." Mr. Edwards's question was a sufficiently unambiguous request for his attorney, as in *Ballard*. 420 Md. at 494 (questions can constitute a valid invocation as long as there is an unambiguous expression of the desire to have an attorney present). And it shouldn't matter that Officer Zimmerman was not one of the interrogating officers. Where, as here, the request was sufficiently specific and made in close enough proximity to the interrogation, officers shouldn't be able to erect undisclosed and artificial barriers for defendants seeking to invoke their *Miranda* rights. Had Mr. Edwards made an incriminating statement to Officer Zimmerman, we doubt that the State would have declined to offer it because Officer Zimmerman wasn't a designated Interrogating Officer in this case. Under these circumstances, Mr. Edwards's request to Officer Zimmerman should have been honored by him or the other officers involved in the interrogation that followed, and we decline to split bureaucratic hairs among the officers when all of them indisputably were holding Mr. Edwards in custody.

Third, and finally, Mr. Edwards did not waive his *Miranda* rights. Ideally, Mr. Edwards would have told Detective Fisher that he wanted to speak to his attorney. He didn't, but that doesn't mean that he waived his right to an attorney. "[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Edwards*, 451 U.S. at 484. So even though Mr. Edwards had been read his rights and never re-invoked

his right to an attorney, he had invoked his right previously and didn't initiate this interview himself (and the State doesn't contend that he did).

Viewing the record in the light most favorable to the State, we conclude nevertheless that Mr. Edwards invoked his right to an attorney properly and never waived that right, and the circuit court erred in denying the motion to suppress the interrogation. For that reason, we reverse his convictions and remand the case for further proceedings consistent with this opinion.

B. The Circuit Court Properly Admitted The Medical Examiner's Testimony.

Although we have reversed Mr. Edwards's convictions on other grounds, he contends as well that the circuit court abused its discretion in "qualifying a medical examiner who was not board certified in forensic pathology at the time of the autopsy as an expert witness." Because this question seems certain to resurface on remand, we will address it here, and we find that Dr. Pontoriero's education and experiences supported the circuit court's decision to allow him to testify as an expert.

"We review a circuit court's decision to admit expert testimony for an abuse of discretion." *Abruquah v. State*, 483 Md. 637, 652 (2023). "Under that standard, we will not reverse simply because . . . we would not have made the same ruling." *Id.* (cleaned up). "[A] circuit court abuses its discretion by, for example, admitting expert evidence where there is an analytical gap between the type of evidence the methodology can reliably support and the evidence offered." *Id.*

Under Maryland Rule 5-702, expert testimony is admissible when the court

determines that the testimony will "assist the trier of fact to understand the evidence or to determine a fact in issue." Md. Rule 5-702. When making this determination, the court "shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony." *Id.*

The State moved to admit Dr. Pontoriero as an expert in the field of forensic pathology to testify on the cause and manner of Mr. Collins's death. Mr. Edwards argues that Dr. Pontoriero's lack of board certification in forensic pathology at the time of Mr. Collins's autopsy rendered him unqualified to testify as an expert. This one fact does not, by itself, disqualify him, nor should the court have ignored the rest of Dr. Pontoriero's experiences and education based on this lack of board certification.

To be clear, Rule 5-702 does not require any certifications. Courts determine whether to admit expert testimony based on the totality of the circumstances, which includes a consideration of skills, experiences, and education. Md. Rule 5-702. Notably, Dr. Pontoriero testified that he (1) received his medical degree at the New York College of Osteopathic Medicine, (2) completed a four-year pathology residency training program at Rutgers, (3) finished a one-year fellowship at the State of Maryland Office of the Chief Medical Examiner, subspecializing in forensic pathology, (4) passed the forensic board certification exam (after Mr. Collins's autopsy), (5) performed over 1,000 autopsies, and (6) is an Assistant Medical Examiner in New Jersey, also working part-time for the

Maryland Office of the Chief Medical Examiner. This abundance of relevant experience and education demonstrated that Dr. Pontoriero was not only qualified to testify but also that his testimony on Mr. Collins's autopsy would have been appropriate and helpful to the jury in understanding the cause and manner of death. This is true even though Dr. Pontoriero was not board certified in forensic pathology at the time of the autopsy. And because Dr. Pontoriero was the one who performed the autopsy, the testimony was grounded in a sufficient factual basis, as Rule 5-702 requires. The circuit court recognized all of this and properly explained its reasoning for denying Mr. Edwards's objection:

> THE COURT: Well, first of all, a Board Certification is certainly a credential that a doctor in this case . . . could have in various fields. It's a piece of that person's background qualifications. It's not a requirement that someone come into this court with a medical opinion and that that person be Board Certified at the time.
>
> He's explained what Board Certification is. He—and as he was Board Certified in other areas, I believe . . . anatomic as well as clinical pathology.
>
> And he's also been supervised with respect to the autopsy that would have been performed on Mr. Collins. His report would have been verified for accuracy by the Chief Medical Examiner at that time. It all goes to the totality with respect to testimony that may aid the jury. . . . I'm going to deny your objection.

The circuit court did not abuse its discretion in admitting Dr. Pontoriero's expert testimony.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS ASSESSED 50% TO APPELLANT AND 50% TO BALTIMORE COUNTY.