Circuit Court for Charles County
Case No. C-08-CR-20-000341

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1616

September Term, 2022

RICHARD EUGENE MIDDLETON, JR.

v.

STATE OF MARYLAND

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

JJ.

Opinion by Nazarian, J.

Filed: December 18, 2023

No is no
No is always no
If they say no, it means a thousand times no[1]

On June 15, 2022, officers responded to a shooting in Waldorf that involved three victims, one of whom was pronounced dead at the scene. Officers arrested Richard Middleton within an hour, while he still possessed the firearm used in the shooting. Officers then attempted to question Mr. Middleton on three different occasions: at the hospital, at the police station, and at the detention center. After cutting off questioning at both the hospital and police station, Mr. Middleton was brought to the detention center and officers again asked him whether he wanted to speak to them to "tell [his] story." He replied with one word: "No." But instead of honoring Mr. Middleton's invocation of his right to remain silent, the interrogation continued and Mr. Middleton ultimately gave an incriminating statement.

At trial, Mr. Middleton conceded criminal agency and claimed that he acted in imperfect self-defense after a fight with the deceased victim. After his custodial statement was admitted, a jury in the Circuit Court for Charles County convicted him of first-degree murder and related crimes and the circuit court sentenced him to life without the possibility of parole plus a consecutive aggregate term of one-hundred twenty-five years' incarceration. On appeal, Mr. Middleton argues that his custodial statement should have been suppressed and that certain evidence relevant to his defense was excluded at trial

[1] They Might Be Giants, No! (Idlewild Recordings 2002).

improperly. We agree with Mr. Middleton that the inculpatory statement should have been suppressed, reverse his convictions, and remand for further proceedings consistent with this opinion. We also address evidentiary issues that are likely to recur on remand.

I. BACKGROUND[2]

The events leading to this case were set in motion by an altercation between Mr. Middleton and Kwasi Louard-Clarke at the barber shop where Mr. Middleton worked, and it all began about thirty minutes before the shooting. According to Mr. Middleton, Mr. Louard-Clarke—who was also a barber and whom Mr. Middleton considered a friend—got upset about a comment Mr. Middleton made and "blew up" on him. A short time later, the verbal altercation turned physical. Mr. Louard-Clarke returned to the shop with another man, ran inside, hit Mr. Middleton in the face, and "just kept swinging." Mr. Middleton fell to the ground and claimed that he didn't remember anything that happened afterward.

Eyewitness testimony and multiple residential Ring camera videos helped piece together the events that followed. Mr. Louard-Clarke and his friend, Tyrone Coleman, left the barber shop after the fight and went to Mr. Louard-Clarke's house. Another friend of Mr. Louard-Clarke's, Montreal Wade, arrived at the home a short time later for a haircut, and the three men hung out and drank beer in the carport. After about ten or fifteen minutes of hanging out in the driveway, Mr. Middleton arrived and began shooting.

[2] These general background facts were adduced at trial and we view them in the light most favorable to the State, the prevailing party. *See State v. Krikstan*, 483 Md. 43, 63–64 (2023).

All three men took off running. Mr. Coleman and Mr. Wade were able to escape in Mr. Wade's car, but Mr. Middleton followed Mr. Louard-Clarke, who ran in another direction. He ended up running into a nearby neighbor's house through their kitchen door but Mr. Middleton followed, "pointing the gun at everybody" inside the house. Mr. Louard-Clarke ran back outside and Mr. Middleton continued to follow him. Mr. Middleton then shot Mr. Louard-Clarke in the driveway, where he was pronounced dead at the scene from gunshot wounds. The other two men survived, but Mr. Coleman was shot twice in the stomach and once in the arm and Mr. Wade was shot in the side and in the back.

Mr. Middleton was seen heading toward a wooded area nearby and complied when approached by law enforcement. He was taken quickly into custody at 8:18 p.m., still in possession of the firearm used in the shooting. As the arresting officer approached, he noticed that Mr. Middleton had a visible head injury, and so Mr. Middleton was transported immediately to the hospital and turned over to the custody of another officer. From there, he went to the police station, then the detention center, where he ultimately gave a statement. More on that below.

Mr. Middleton was charged with the first-degree murder of Mr. Louard-Clarke, attempted first-degree murder of Mr. Coleman and Mr. Wade, first-degree assault of the neighbor, and related charges. Mr. Middleton never disputed that he shot and killed Mr. Louard-Clarke, or his two companions, but relied instead on a defense of imperfect self-defense, that he acted out of fear of imminent physical harm, triggered by the events at the barber shop which occurred only minutes before.

A. Motion To Suppress The Custodial Statement.

Mr. Middleton moved to suppress a statement that he made while in custody on the ground that it was coerced by the detectives, and the court held a hearing on May 13, 2022. At the suppression hearing, the exclusive source of the record we consider on this issue, *see Blake v. State*, 381 Md. 217, 230 (2018), Sergeant Jeffery Feldman and Detective Sergeant John Long of the Charles County Sheriff's Office testified. Mr. Middleton didn't, but he offered the testimony of Dr. Markisha Bennett, a licensed clinical psychologist who had evaluated and diagnosed him.

1. Sergeant Feldman's testimony.

Sergeant Feldman testified that he was the lead detective investigating the shooting. He first encountered Mr. Middleton at approximately 1:00 a.m. on June 16th—the morning after the shooting—in an interview room at the police station in Waldorf. Mr. Middleton had a bandage on his head and Sergeant Feldman was aware that he'd been transported from the hospital and had some sort of head injury. Without providing *Miranda* warnings,[3] Sergeant Feldman told Mr. Middleton that he "wanted to hear his side of the story in this incident." In response, Mr. Middleton shook his head and was silent. Sergeant Feldman asked him if a "group of guys came to the barber shop and started beating him up" and Mr. Middleton responded, "I don't want to talk." Sergeant Feldman followed up, asking if Mr.

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966). Sergeant Feldman testified that during this first interaction, to his knowledge, Mr. Middleton had not invoked his right to remain silent at any time before. It was Sergeant Feldman's understanding that Mr. Middleton had been *Mirandized* on arrest, but not at the hospital or the police station.

Middleton would talk to someone else, but according to Sergeant Feldman, Mr. Middleton "stated that he wanted to sleep, so didn't want to talk to me at that point." Sergeant Feldman testified that he didn't ask Mr. Middleton anything further about the substantive investigation. But on cross, Sergeant Feldman admitted that he continued to talk and tell Mr. Middleton that he just wanted to hear his side of the story. Mr. Middleton replied that he didn't have anything to say.[4]

In the meantime, Mr. Middleton had seen the District Court commissioner before being taken to the detention center, where Sergeant Feldman met again with him in one of the "professional rooms" around 4:30 p.m. Sergeant Feldman, now accompanied by Detective Long, went to the detention center in part to collect Mr. Middleton's DNA pursuant to a search warrant. Because the room isn't monitored, Sergeant Feldman brought with him a digital voice recorder and set it up to record their interactions.

Mr. Middleton was brought into the room and the officers attempted to question him again. Sergeant Feldman testified that he asked Mr. Middleton "questions in regards to this particular investigation" because he "wanted to know what his side of the story was." He started by asking Mr. Middleton "about an alleged assault that occurred at a barber shop" because it was his understanding that "[i]t very well could have been a precursor to what occurred."

[4] A video recording of this interview was admitted, but Mr. Middleton's responses are inaudible. Because we view the evidence in the light most favorable to the State, *Blake*, 381 Md. at 230, we'll rely on Sergeant Feldman's testimony about what Mr. Middleton said.

Sergeant Feldman admitted that when he asked Mr. Middleton whether he wanted to speak about that incident, "[i]nitially" Mr. Middleton "just said the word no":

> [THE STATE:] When you asked the Defendant about whether he wanted to speak to you about that incident, did he say anything to you?
>
> [SERGEANT FELDMAN:] Initially he said, he just said the word no.
>
> Detective Long engages him and says, you know, are you sure, or—it's very important that we get your side of the story.
>
> And I actually ask a clarifying question, you don't want to talk—
>
> [THE STATE:] Okay.
>
> [SERGEANT FELDMAN:]—and then the conversation continues.
>
> [THE STATE:] Okay. When you say you don't want to talk, did he respond in any way?
>
> [SERGEANT FELDMAN:] He did not.

Sergeant Feldman explained that after asking the "clarifying question" of "you don't want to talk?" and "telling him that we want to hear his side of the story," Mr. Middleton began to talk about the altercation at the barber shop, at which point he was re-*Mirandized* for the first time since his arrest.

Sergeant Feldman was aware that another officer had attempted to question Mr. Middleton at the hospital. According to Sergeant Feldman, Mr. Middleton stated that he had been assaulted by two men at his place of employment and added that he'd recently been in a dirt bike accident where he sustained a major head injury, and so he was in a lot of pain and didn't want to talk.

2. Detective Long's testimony.

Detective Long testified that he first met Mr. Middleton in the detention center with Sergeant Feldman present. He said that his purpose for going to the detention center "was to interview [Mr. Middleton] about the events that occurred the day before." He was also aware of the DNA search warrant, but his purpose for being present was the interrogation. During Detective Long's very short testimony, the recording of the detention center interaction was played for the court:

> DETECTIVE FELDMAN: How are you doing, Mr. Middleton?
>
> MR. MIDDLETON: Hey
>
> DETECTIVE LONG: Hello, sir.
>
> DETECTIVE FELDMAN: How are you doing?
>
> MR. MIDDLETON: I'm all right.
>
> DETECTIVE FELDMAN: You all right? Do you remember me from last time—
>
> MR. MIDDLETON: Yeah, I'm hurt—
>
> DETECTIVE FELDMAN:—from earlier this morning.
>
> Listen, I know the last time you talked to, or you said you was tired and you wanted to go to sleep. I really want to try to get down on what happened yesterday as far as what happened at the barber shop, all right.
>
> It's important, okay, because like I said to you yesterday, don't let anybody else tell your story, okay, and there's a reason why all this went down and I'd like to know what it is. Is that fair? is that something you'd be interested in talking about?
>
> MR. MIDDLETON: *No*.
>
> DETECTIVE LONG: You don't want to talk? Okay, well I mean you can have your reasons, but you know, our job is to make sure we try and do a full and thorough investigation and in that is getting everybody's story, okay.
>
> DETECTIVE FELDMAN: I just want to make sure your voice

> is heard.
>
> DETECTIVE LONG: Yeah, that's, that's the only reason behind it, but you've got, you've got your reasons.
>
> DETECTIVE FELDMAN: Yeah, if you don't want to talk.
>
> DETECTIVE LONG: And that's, that's fine.
>
> DETECTIVE FELDMAN: That is, that is fine. All right.
>
> MR. MIDDLETON: (Inaudible).[5]
>
> DETECTIVE FELDMAN: Huh?
>
> MR. MIDDLETON: The reasons—
>
> DETECTIVE FELDMAN: Before we get into that we've got to cover some stuff, some other stuff okay.

(Emphasis added.) According to Detective Long, Mr. Middleton never asked for an attorney, refused to answer any questions, or complained about pain or discomfort once he agreed to speak to them.

3. Dr. Bennett's testimony.

Dr. Bennett, whom the court previously accepted as an expert witness in the field of psychology, testified about the voluntariness of Mr. Middleton's confession. She explained that she had diagnosed Mr. Middleton with "post traumatic stress disorder with dissociative features, other trauma and stress-related disorder, complex persistent bereavement, Phencyclidine use disorder and alcohol abuse disorder." She described how these diagnoses explained Mr. Middleton's decision to acquiesce to the detectives' questioning:

> So an individual who is in a state of trauma or experienced traumatic stress, when they are in a state, there are three different responses one can have, it can be fight, flee or freeze.

[5] When played at trial, Mr. Middleton's response was transcribed as "All right. (Inaudible)." After reviewing the audio, we agree with Sergeant Feldman's testimony that at this point Mr. Middleton stated, "[A]ll right, man, what up?"

> And at the moment of being questioned, Mr. Middleton's initial response is, could have been that of fight, meaning resisting, or standing up and defending himself.
>
> There can also be a point where after time if the individual views themselves as either being in more distress, more harm or either feeling that the power dynamic has shifted where they are no longer in a position where they can fight or resist, then they may flee or resist or submit to the will of what they view as an authority figure.
>
> So in this instance Mr. Middleton, being in the custody of Police and the Officers questioning him repeatedly may have at some point reached a state where he wasn't going to be able to resist any further . . . .

She testified that Mr. Middleton may not have understood his *Miranda* rights and was exhibiting symptoms of dissociation, which can "create false memories" and cause confusion. She also admitted, however, that it's possible that Mr. Middleton understood the rights he was waiving by speaking with detectives.

4. Arguments.

The State characterized the exchange between Mr. Middleton and the detectives as Mr. Middleton saying "no" when asked if he wanted to talk and the detectives merely following up with a "general clarifying question":

> Detective Feldman asks him specifically, hey, do you want to talk about this particular issue, the barber shop thing; is that clear. There's no response.
>
> Detective Sergeant Long asks him is that something you want to talk about. He says no.
>
> Detective Feldman tries to ask him a more general clarifying question to determine if that's a no like for that issue or a no, no, and he gets no response.
>
> They start to take it as a response, obviously . . . [and] begin the process . . . [of executing] the search and seizure warrant. And it's at that particular point where [Mr. Middleton] makes

> that statement saying all right, man, what up, and then starts saying the reason it happened . . . .
>
> * * *
>
> They're asking him about [the barber shop] specifically, not technically about the shooting, but even then they're not asking him anything specific, they're saying are you willing to talk to us, is that something you're willing to talk about. And he says no, that is not something I'm willing to talk about.

The State argued that detectives were permitted to "clarify" whether Mr. Middleton said no to talking about "the barber shop situation" versus wanting to talk "at all." Finally, the State argued, "[a]sking someone if you want to talk is not eliciting an incriminating response," *i.e.*, "interrogation" under *Miranda*.

Mr. Middleton responded that "given the totality of the circumstances," it was "a coerced confession" because "Mr. Middleton expressed by either head nodding or outright expression verbally that he did not want to talk to these Officers a total of six times before he finally relented and answered questions." Relying on *Michigan v. Mosley*, 423 U.S. 96, 103 (1975), which he characterized as "dispositive," Mr. Middleton argued that his "right to cut off questioning" had to be "scrupulously honored" and the detectives failed to respect his exercise of that right. Mr. Middleton pointed to "the repeated questioning, the repeated attempts at interrogation," in addition to Mr. Middleton's known history of head injuries and Dr. Bennett's testimony that Mr. Middleton "could have been especially susceptible to succumbing to authority after his flight or fight instincts wore out."

The court denied the motion, stating that it did so after reviewing the video and audio evidence of both interviews, "in addition to reflect[ing] upon the testimony and the current law here in the State of Maryland . . . ."

B. Trial.

Mr. Middleton's jury trial commenced on June 6, 2022. The central issue at trial was whether the jury believed that Mr. Middleton acted out of fear, which would reduce his conviction from first-degree murder to voluntary manslaughter. The State introduced Mr. Middleton's custodial statement as part of its case-in-chief. In that statement, Mr. Middleton said that he shot Mr. Louard-Clarke for "[r]evenge for jumping on me and beating me . . . . I had to get back."

Mr. Middleton testified that he had no memory of what happened after the barber shop altercation, including the shooting and the interrogations. He also tried to introduce three pieces of testimony in his defense that the court excluded. *First*, he tried to introduce testimony by his then-girlfriend, Jessica Morina, that he had been injured in a motorcycle accident a few months prior and "start[ed] forgetting a lot of things around that time[.]"*Second*, Mr. Middleton wanted to testify about Mr. Louard-Clarke's "affiliation" and to tell the jury what it meant (*i.e.*, that Mr. Louard-Clarke was part of a gang). *Third*, Mr. Middleton wanted to testify about prison fights between inmates and guards to bolster Dr. Bennett's diagnoses. The court sustained the State's objections to each of these.

The jury convicted Mr. Middleton of first-degree murder, attempted first-degree murder, and other related offenses, and the court sentenced him to life in prison without the possibility of parole. He timely appealed his convictions. We discuss additional facts as necessary below.

II. DISCUSSION

Mr. Middleton raises two categories of issues on appeal:[6] *first*, whether the trial court erred in failing to suppress Mr. Middleton's custodial statements, and *second*, whether the trial court erred in excluding evidence relevant to Mr. Middleton's imperfect self-defense defense. We agree with Mr. Middleton as to the first issue and, since these issues will recur on remand, offer guidance on the evidentiary questions.

A. The Circuit Court Erred In Denying Mr. Middleton's Motion To Suppress His Custodial Statement.

The *first* issue raised by Mr. Middleton is whether the court erred in denying his motion to suppress. There is no dispute that Mr. Middleton's statement at the detention center was the product of a custodial interrogation: he was detained properly and officers were there for the purpose of interviewing him. Mr. Middleton was asked if he was "interested in talking" to officers and he said, "[n]o." In such a situation, police may

[6] Mr. Middleton briefed his Questions Presented as:

> 1. Did the lower court err in failing to suppress Mr. Middleton's custodial statement where he invoked his right to silence on at least six occasions and stated "no" when investigators last asked if he was interested in talking to them but police did not immediately cease the interview?
> 2. Did the lower court err in excluding evidence relevant to Mr. Middleton's defense?

The State briefed its Questions Presented as:

> 1. Did the circuit court properly deny Middleton's motion to suppress his custodial statement because it was lawfully obtained?
> 2. Did the circuit court properly decline to admit certain testimony because it was not relevant?

continue to speak with a suspect who has invoked the right to remain silent only if the invocation is ambiguous or the suspect re-initiates the conversation. *See Lovelace v. State*, 214 Md. App. 512, 538–39 (2013); *Raras v. State*, 140 Md. App. 132, 154 (2001); *Braboy v. State*, 130 Md. App. 220, 231–32 (2000). This case turns on whether Mr. Middleton (1) invoked his right to silence unambiguously and, if so, (2) whether police violated his right to remain silent by continuing the interrogation (as opposed to Mr. Middleton re-initiating the conversation on his own).

Mr. Middleton argues that when asked if he was "interested in talking" to officers and he said, "[n]o," he unambiguously invoked his right to remain silent and the officers ran afoul of the Fifth Amendment when they failed to "immediately cease" the interrogation. The State responds that Mr. Middleton's "[n]o" was not "sufficiently clear." Mr. Middleton also argues that the investigators failed to "immediately cease" the interrogation when they told Mr. Middleton "our job is to make sure we try to do a full and thorough investigation and in that is getting everybody's story" in addition to Detective Feldman's insistence that he "just want[s] to make sure your voice is heard." The State counters that the investigators were permitted to ask a "clarifying question" ("You don't want to talk?") and that otherwise Mr. Middleton was the one who re-initiated the conversation.

Our review of the facts are limited to those developed at the suppression hearing. *Blake*, 381 Md. at 230. We review findings of fact for clear error, *Vargas-Salguero v. State*, 237 Md. App. 317, 335 (2018), and view the evidence and inferences in the light most

favorable to the party who prevailed on the motion, *Blake*, 381 Md. at 230, in this instance the State. Ultimately, though, "[w]e 'undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.'" *Id.* at 230–31 (*quoting White v. State*, 374 Md. 232, 249 (2003)).

Our independent review of the record, including the video and audio recordings of the police interviews, lead us to agree with Mr. Middleton. Because Mr. Middleton's statement communicated unambiguously to a reasonable officer that he chose not to speak with them, he effectively invoked his constitutional right to remain silent. And the conversation that followed was not re-initiated by Mr. Middleton; instead, as Mr. Middleton put it aptly, "it [was] capitulation to investigators' repeated entreaties to obtain a statement after Mr. Middleton invoked his right to remain silent." In our independent constitutional judgment, the officers should have respected his "[n]o" and ended the interview. They didn't, and we reverse his convictions.

1. Mr. Middleton's invocation of the right to remain silent was clear and unambiguous.

The U.S. Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend V. Under *Miranda*, 384 U.S. at 467–68, a person may be subjected to custodial interrogation, but only after being informed of certain rights, including the right to remain silent in the face of questioning. The U.S. Supreme Court emphasized that "if the individual is alone [(*i.e.*, without counsel)] and indicates in any manner that he does not wish to be interrogated, the police may not question him." *Id.* at 445; *see also id.* at 473 ("If the individual *indicates in any manner*, at

any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." (Emphasis added.)). Mr. Middleton also points to language from *Michigan v. Mosley*, where the U.S. Supreme Court highlighted that the right to "cut off questioning" must be "scrupulously honored." 423 U.S. 96, 104 (1975).

The State argues that Mr. Middleton's response was ambiguous and therefore officers were entitled to ask a "clarifying question" to ascertain whether the *Miranda* right has been invoked.[7] *See Vargas-Salguero*, 237 Md. App. at 336 ("A defendant in custody is entitled to invoke these rights, but must do so with sufficient clarity."). It's true that although "[n]o specific combination of words is required, . . . the invocation must be unambiguous." *Id.* at 344. "We judge the statement's ambiguity by what a reasonable officer in those circumstances would have thought the statement to mean." *Id.* We also consider the "'totality of the circumstances surrounding the interrogation.'" *Id.* (*quoting Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

[7] The State also briefed an argument that Mr. Middleton's "[n]o" was ambiguous because he was responding to "two questions," *i.e.*, "Is that fair?" and "Is that something you'd be interested in talking about?" Because Mr. Middleton responded only with "[n]o," the State argued "it was unclear as to which question [Mr.] Middleton was responding." The State's "compound question" theory was not argued at the suppression hearing, though, and we agree with Mr. Middleton that it is not preserved. Generally, we will only decide issues that "plainly appear[] by the record to have been raised in or decided by the trial court," Md. Rule 8-131, and here it wasn't. In any event, we find the State's compound question theory unpersuasive for the same reasons as we find its clarifying question theory unpersuasive—because the officers' responses to Mr. Middleton's "[n]o" reveal that they understood Mr. Middleton to be saying he didn't want to talk. And a negative answer to either question ("Is that fair?" and "Is that something you'd be interested in talking about?") asserts the intention to remain silent unambiguously.

Mr. Middleton argues that he "unambiguously asserted his right to remain silent" and that detectives "were required to take [his] 'no' for an answer." The State responds that Sergeant Feldman was permitted to ask a "clarifying question," in this case, "You don't want to talk?" When Mr. Middleton remained silent in response to the question "You don't want to talk?," the State argues, his silence only furthered the ambiguity. We disagree. An objective view of the record demonstrates that both officers understood Mr. Middleton as saying he didn't want to talk. We need only take their contemporaneous word for it: Detective Long responded "[y]ou don't want to talk? Okay . . . .," and Sergeant Feldman replied "if you don't want to talk . . . , that's fine."

Citing *Williams v. State*, 445 Md. 452 (2015), the State contends that Mr. Middleton's invocation was ambiguous. There, the defendant, Mr. Williams, was in custody for questioning regarding a shooting. *Id.* at 456. Officers asked whether he wanted to talk about the incident and began explaining to Mr. Williams his right to remain silent. *Id.* at 458–59. In response, Mr. Williams stated "I don't want to say nothing. I don't know . . . ." *Id.* at 459. The officer replied, "But you don't have to say nothing" and continued the interrogation, and then Mr. Williams incriminated himself. *Id.*

In a 4–3 opinion, the Maryland Supreme Court held that the addition of "I don't know" rendered the response ambiguous and was insufficient to invoke Mr. Williams's right to remain silent. *Id.* at 477. The Court held that "[a] reasonable police officer could have understood the statement 'I don't want to say nothing. I don't know' to be an

ambiguous request to remain silent." *Id.*[8] The State conceded (and all the justices seemed to agree), however, that if Mr. Williams's response had been "I don't want to say nothing" and nothing more, he would have invoked his *Miranda* rights unambiguously. *See id.* at 485 (McDonald, J., dissenting).

Mr. Middleton's unambiguous response—"No."—after being asked whether he'd be "interested in talking" is the legal equivalent of saying "I don't want to say nothing" in *Williams*, and nothing more. We agree with Mr. Middleton that even the State interprets Mr. Middleton's "[n]o" in its own brief as unambiguous. Indeed, everyone—both officers, the State's trial counsel, and the State's appellate counsel—understood that Mr. Middleton didn't want to talk:

- **Detective Long During Interrogation:** "You don't want to talk? Okay . . . ."
- **Sergeant Feldman During Interrogation:** "Yeah, if you don't want to talk. . . . That is, that is fine."
- **Prosecutor During Suppression Hearing:** "[T]hey're saying are you willing to talk to us, is that something you're willing to talk about. And he says no, that is not something I'm willing to talk about."
- **State's Counsel in Appellee Brief:** "[Mr.] Middleton stated that [he] did not want to talk . . . ."

[8] In contrast, the Court viewed the statements "'she had nothing to say to him,'" "'I don't wanna talk no more,'" and "'Well I don't want to answer any more. I mean, I'm in, fuck it. I'm going to have a fucked up life'" as "clearly invocative of the right to remain silent." *Id.* at 471, 478 (*quoting first Buster v. Commonwealth*, 364 S.W.3d 157, 160 (Ky. 2012); *then quoting People v. Arroya*, 988 P. 2d 1124, 1127 (Colo. 1999); *and then quoting State v. Strayhand*, 911 P.2d 577, 583 (Ariz. Ct. App. 1995)).

No means no. Any reasonable police officer would have had to understand Mr. Middleton's invocation of his right to silence, and no clarification was needed. Considering, as we must, the totality of the circumstances surrounding this interrogation, *see Vargas-Salguero*, 237 Md. App. at 344, including Mr. Middleton's previous interactions with officers at the hospital and police station where he repeatedly refused to respond to questions, the officers should have taken his no for an answer.

2. The detectives' responses to Mr. Middleton's "[n]o" were continued "interrogation" for purposes of Miranda.

The *second* aspect of the State's argument is that Mr. Middleton "changed his mind and elected to give a statement" on his own accord. We disagree and hold that the detectives continued the interrogation impermissibly. Nor did the follow-up administration of Mr. Middleton's *Miranda* rights before the incriminating statement cure the violation. *See id.* at 345 (*citing Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981) ("[W]hen an accused has invoked his right [] 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 . . . .")).

"'[I]nterrogation' is not limited to express questioning; it also includes its 'functional equivalent.'" *Drury v. State*, 368 Md. 331, 336 (2002) (*quoting Rhode Island v. Innis*, 446 U.S. 291, 300 (1980)). The test is whether the police should know their practice "'is reasonably likely to evoke an incriminating response from a suspect.'" *Id.* (*quoting Innis*, 446 U.S. at 300). "Whether a conversation between a suspect and the police

constitutes an interrogation for *Miranda*/*Edwards*[9] purposes, though regarded as a mixed question of fact and law, is usually fact-dependent. Often, particularly in the *Edwards* context, what transpires is not a continued 'grilling' or even a direct question-and-answer exchange, but something more subtle, requiring a reviewing court to look beyond merely parsing the conversation." *Phillips v. State*, 425 Md. 210, 218 (2012).

Our recent decision in *Soares v. State*, 248 Md. App. 395, 418 (2020), is particularly instructive. The suspect, Mr. Soares, indicated through a translator during his custodial interrogation that "he want[ed] to go straight to the commissioner." *Id.* at 404. The detective responded "Okay. No problem," *id.*, but "the request was ignored without any clarification being sought and the interrogation proceeded." *Id.* at 405. The detective told him eventually that "I'm asking you these questions because we're trying to move past you in our investigation," and asked Mr. Soares if his wife had any involvement in the crime. *Id.* at 407 (emphasis removed). At that point, Mr. Soares confessed "to his own exclusive involvement." *Id.* at 408. The State also argued that *Williams*, 445 Md. at 452, controlled, and the trial court agreed. *Soares*, 248 Md. App. at 408.

The Court questioned whether Mr. Soares understood his *Miranda* rights at all, but distinguished *Williams* and held that Mr. Soares "unequivocally invoked" his right to silence by indicating that he wanted to "go straight to the commissioner":

> In this case, the suppression hearing ruling was that the

[9] This refers to the Supreme Court of the United States case holding that once the right to counsel is invoked, a suspect may not be further interrogated (even after being re-*Mirandized*) "unless the accused himself initiates further communication, exchanges, or conversations with the police." 451 U.S. at 484–85.

> appellant's right to silence had not been violated because it had never been, per *Williams*, unambiguously and unequivocally invoked. A fair reading—our reading—of the entire suppression hearing, on the other hand, is that to the extent to which the appellant thought that he enjoyed a right to remain silent, he unequivocally invoked it. To the extent to which appellant did not understand that the right to remain silent *ipso facto* comprehended the right not to answer questions and to have the questioning cease, that was because of the State's failure to have properly advised the appellant in the first instance of *Miranda*'s right to silence and of what that right to silence consisted. Any hesitancy was based upon a lack of information about the right, not upon a lack of strategic resolution to invoke it. The State may not disclaim a violation of *Miranda* at point B by relying upon its own earlier violation of *Miranda* at point A. *Williams v. State* does not dictate otherwise.

Id. at 404, 414. We emphasized that the detective had "effectively recognized that the appellant had invoked his right to silence but deliberately attempted to outflank it . . . . Once the right to silence has been invoked, the interrogation should stop. The police do not get to ask one question more . . . ." *Id.* at 418.

So too here. Mr. Middleton had not been advised of his *Miranda* rights since his arrest the day before (at a time when he was in need of medical treatment for a head injury), but invoked it unambiguously when he said "[n]o" when asked if he was interested in talking. The record shows that officers gave lip service to honoring Mr. Middleton's right to remain silent while trying actively to elicit an incriminating statement:

> DETECTIVE FELDMAN: . . . I really want to try to get down on what happened yesterday as far as what happened at the barber shop, all right.
>
> It's important, okay, because like I said to you yesterday, don't let anybody else tell your story, okay, and there's a reason why all this went down and I'd like to know what it is. Is that fair?

> is that something you'd be interested in talking about?
>
> MR. MIDDLETON: No.
>
> DETECTIVE LONG: You don't want to talk? Okay, well I mean you can have your reasons, but *you know, our job is to make sure we try and do a full and thorough investigation and in that is getting everybody's story, okay.*
>
> DETECTIVE FELDMAN: *I just want to make sure your voice is heard.*
>
> DETECTIVE LONG: Yeah, that's, that's the only reason behind it, but you've got, you've got your reasons.

(Emphasis added.)

Just as Mr. Soares was informed that officers sought to "move past you in our investigation," *id.* at 407, the detectives here used "interrogation tactic[s] to keep the interrogation going." *Id.* And what else would have been the point? Sergeant Feldman admitted that after Mr. Middleton "said the word no" "*Detective Long engage[d] him* . . . ." (Emphasis added.) It's clear that both officers understood that he didn't want to talk. But instead of cutting off questioning, Detective Long responded, telling Mr. Middleton that "our job is to make sure we try and do a full and thorough investigation and that is getting everybody's story." There was no "clarifying question" from Sergeant Feldman, only a petition: "I just want to make sure your voice is heard." These statements served no purpose other than to encourage Mr. Middleton to change his mind and give a statement—and they had their intended effect.

In our independent constitutional judgment, the continued engagement was an impermissible "tactic to keep the interrogation going." *Id.* "Once the right to silence has been invoked, the interrogation should stop. The police do not get to ask one question

more," *id*. at 418, nor may they—as they did in this case—continue insisting the suspect give a statement. *See Innis*, 446 U.S. at 301 (interrogation is "any words or actions . . . that the police should know are reasonably likely to elicit an incriminating response from the subject"); *see also Latimer v. State*, 49 Md. App. 586, 591 (1986) (discussing *Mosley*, "the action that is condemned in *Miranda* is police refusal to take a defendant's 'no' for an answer, that is, situations wherein the police continue to question and thereby harass and coerce the defendant so as to overcome his asseveration of his constitutional right to remain silent"). In light of the questioning at the hospital and the police station before this third interview attempt at the detention center, in our view these were "repeated efforts to wear down [Mr. Middleton's] resistance and make him change his mind" as condemned by *Mosley*, 423 U.S. at 105–06. The interrogation continued impermissibly and Mr. Middleton's statement should have been suppressed.

3. Admitting the statement was not harmless error.

Having concluded that Mr. Middleton's Fifth Amendment right was violated, we look to whether the admission of his confession contributed to his conviction. *Chapman v. California*, 386 U.S. 18, 25–26 (1967). And it undeniably did. Mr. Middleton's statement that he sought "[r]evenge" and "had to get back" at Mr. Louard-Clarke for assaulting him at the barber shop conflicted directly with his self-defense theory. In any event, the State has the affirmative burden to show that an error is harmless, *see Denicolis v. State*, 378 Md. 646, 658–59 (2003), and the State didn't brief the issue—to its credit, it conceded at

oral argument that if the statement was admitted in error, it loses. We reverse the judgments of the circuit court and remand for further proceedings.

B. The Circuit Court Erred When It Excluded Testimony About Mr. Middleton's Knowledge Of Mr. Louard-Clarke's Gang Affiliation On Relevance Grounds.

Although we could stop here, we address Mr. Middleton's challenges to three evidentiary rulings related to his imperfect self-defense defense that are likely to recur on remand. *First*, Mr. Middleton tried to introduce testimony that he had been "in a motorcycle accident a few months before" the shooting, that "he was really injured from that accident," and "start[ed] forgetting a lot of things around that time[.]"*Second*, Mr. Middleton wanted to testify about Mr. Louard-Clarke's "affiliation" and to tell the jury what it meant. *Third*, Mr. Middleton wanted to testify about prison fights between guards and inmates to bolster Dr. Bennett's diagnoses. The court sustained the State's objections. We find no error with respect to Ms. Morina's testimony and the testimony regarding prison fights, but we agree with Mr. Middleton that Mr. Louard-Clarke's gang affiliation was relevant as to his state of mind during the shooting (that self-defense was warranted).

Whether evidence is legally relevant is a conclusion of law we review *de novo*. *State v. Simms*, 420 Md. 705, 725 (2011). Relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401; *see also* Md. Rule 5-402 ("Evidence that is not relevant is not admissible."). Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger

of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

Mr. Middleton relied at trial on a theory of imperfect self-defense, which requires "'a subjective honest belief on the part of the killer that his actions were necessary for his safety, even though, on an objective appraisal by a reasonable man, they would not be found to be so.'" *State v. Martin*, 329 Md. 351, 357 (1993) (*quoting State v. Faulkner*, 301 Md. 482, 500 (1984)). If believed, the defense "mitigates murder to voluntary manslaughter rather than completely exonerating the defendant." *Id.*

At the threshold, the State argues all three evidentiary challenges are resolved by *State v. Martin* because Mr. Middleton "claimed that he had no knowledge of his mental state at the time of the incident" and thus could only speculate on what he "*could* have believed," which is not relevant. In *Martin*, the Maryland Supreme Court stated that when "the issue is whether self-defense or imperfect self-defense has been generated, determining whether there is evidence in the record pertaining to the defendant's mental state *at the time of the incident* is critical." *Id.* at 362–63 (emphasis added). "Evidence that a defendant may have been afraid of a victim at an earlier time, assuming that is the relevant subjective belief, does not mean that, at the moment of the fatal encounter, that state of mind persisted, especially when, as here, the defendant returned to the site of the encounter after apparently arming himself." *Id.* at 365 (footnote omitted).

Mr. Middleton points to the Court's more recent decision in *Belton v. State*, where

it noted that "fear of death or bodily harm" depends on "subjective factual understandings of the defendant" that are "often shaded by knowledge or perceptions of ancillary or antecedent events." 483 Md. 523, 544–45 (2023). In that case, the Court reversed Mr. Belton's conviction after the trial court excluded the statement of the victim that "[t]his is my block" to prove that the victim "was already having attitude" and because it had an "effect on [Mr. Belton]" such that it "uniquely shed[] light on the objective reasonableness of his fear of death or bodily harm when he came face-to-face with [the victim]." *Id.* at 544.

We think the State stretches *Martin*'s reach too far. Importantly, in *Martin*, the defendant "was so intoxicated that he did not remember any of the events, *either immediately prior to* or after the homicide." 329 Md. at 353 (emphasis added). In addition, "there were no witnesses to the 'start of the [encounter], or any part of it, save the result." *Id.* at 366. And importantly, the issue in that appeal was whether the evidence was sufficient to generate the issue of imperfect self-defense for submission to the jury in the first place. *Id.*

This case sits in a different posture and the facts bear more directly on Mr. Middleton's state of mind. *First*, of course, the trial court found expressly that imperfect self-defense was generated by the evidence and gave the jury instruction, rulings the State did not appeal. *Second*, there was ample eyewitness testimony and video surveillance revealing the circumstances leading up to the shooting and the shooting itself, and a reasonable jury could have inferred from this evidence that Mr. Middleton was in actual

fear of death or severe bodily harm.[10] *Third*, Mr. Middleton expressed fear during the preceding barber shop fight, which was undeniably an "antecedent event[]" twenty minutes before the shooting, sufficient for the jury to draw an inference that Mr. Middleton acted out of fear. *Belton*, 483 Md. at 545.

To be sure, there was plenty of evidence to the contrary, but that's for the jury to resolve as the ultimate finder of fact. The relevant question is only whether the evidence in question had "any tendency to make the existence of" Mr. Middleton's honest but unreasonable fear of death or imminent bodily harm "more probable or less probable than it would be without the evidence," Md. Rule 5-401, and, if so, whether "the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

1. Ms. Morina's testimony about Mr. Middleton's head injury.

During trial, Mr. Middleton's girlfriend, Jessica Morina, testified briefly on behalf of the State. Mr. Middleton called her at 7:28 p.m. on the night of the shooting and

[10] For example, the jury reasonably could have inferred that Mr. Louard-Clarke was still agitated and, therefore, dangerous at the time of the shooting. Mr. Coleman testified that Mr. Louard-Clarke contacted him at 6:59 p.m., texting "911, I need you now[.]" Ten minutes later, Mr. Louard-Clarke went inside and fought with Mr. Middleton. Mr. Coleman also testified that Mr. Louard-Clarke was still agitated while they stood in the driveway afterwards, when Mr. Middleton arrived shooting. At that point, Mr. Coleman testified that he and Mr. Wade were still "trying to calm [him] down . . . ." This evidence "sp[oke] to [Mr. Louard-Clarke's] animus and aggression" and could have shed light on Mr. Middleton's belief that Mr. Louard-Clarke was violent and dangerous. *Belton*, 483 Md. at 544.

requested a ride from the area of the barber shop to a stop sign near Mr. Louard-Clarke's house. She stated that she thought she was dropping him off to go to his cousin's house, that he didn't mention any fight, that she didn't "notice anything about him physically," and that he seemed normal. During cross-examination, counsel for Mr. Middleton tried to ask Ms. Morina about Mr. Middleton's memory issues to reconcile his normal behavior with the defense theory that Mr. Middleton feared for his life:

> [COUNSEL FOR MR. MIDDLETON:] [I]t's your testimony that you didn't see any type of injury on his head?
>
> [MS. MORINA:] Correct.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. He didn't tell you anything about a fight?
>
> [MS. MORINA:] Correct.
>
> [COUNSEL FOR MR. MIDDLETON:] And you guys didn't have any conversations about a fight?
>
> [MS. MORINA:] Correct.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. Now at this time, I'm sorry to ask you personal information, but were you pregnant?
>
> [MS. MORINA:] Yes.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay, and was Rick the father of that child?
>
> [MS. MORINA:] Yes.
>
> [COUNSEL FOR MR. MIDDLETON:] So fair to say you know him pretty well around that point in time?
>
> [MS. MORINA:] Right.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. And he was in a motorcycle accident a few months before this?
>
> [MS. MORINA:] Yes.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. And he was really injured from that accident—

[MS. MORINA:] Yes.
[COUNSEL FOR MR. MIDDLETON:] —correct? Okay.
Did he start forgetting a lot of things around that time?
[THE STATE]: Objection, Your Honor. Objection.

During a bench conference that followed, counsel for Mr. Middleton argued that Mr. Middleton's "mental state that day and the injuries he had suffered . . . are relevant information for Ms. Morina to be able to testify about." The State countered that it wasn't relevant and went beyond the scope of the direct examination and the trial court agreed.

It's a low bar and the evidence was relevant. We agree with Mr. Middleton that this testimony that he "*started* forgetting a lot of things" a few months before "would make Mr. Middleton's claim that he lacked a memory of the incident more likely, *viz.,* consistent with his contemporaneous forgetfulness." Although the exclusion of this testimony on relevance grounds would be in error, we agree with the circuit court's ruling that the question went beyond the scope of Ms. Morina's direct testimony, which was limited to her involvement in transporting Mr. Middleton to the area near Mr. Louard-Clarke's house. *See Thomas v. State*, 301 Md. 294, 313 (1984) (questioning going beyond the scope of subject matter raised on direct examination was properly excluded).

2. Mr. Louard-Clarke's "affiliation."

The second piece of evidence Mr. Middleton claims was excluded erroneously came during his own testimony. Mr. Middleton testified that he had known Mr. Louard-Clarke for eight months prior to the shooting. Mr. Middleton was permitted to testify, over objection, that he knew Mr. Louard-Clarke had been in prison because it went "to his state

of mind at the time of this altercation." The next question brought an objection by the State:

> [COUNSEL FOR MR. MIDDLETON:] Okay, Mr. Middleton, you can continue, what did you know about [Mr. Louard-Clarke]?
>
> [MR. MIDDLETON:] That he had just came home from prison and, you know, he was, he was a barber in the area for a while before that and he only dealt with people, you know, outside of the shop if they were affiliated.
>
> [COUNSEL FOR MR. MIDDLETON:] What does affiliated mean?
>
> [THE STATE:] Objection.

During the bench conference, defense counsel argued that if Mr. Middleton knows Mr. Louard-Clarke "was part of a gang and that then goes to what his state of mind was when this fight was going on." The State countered that the testimony concerned Mr. Middleton's knowledge of Mr. Louard-Clarke's affiliation was linked to only taking "affiliated" clients "many, many months" before the fight, and thus not "relevant to anything more than just dirtying up the victim." No argument was made about any exclusion under Rule 5-403. The court sustained the relevance objection.

This evidence was relevant because it shed light on Mr. Middleton's subjective fear of death or bodily harm at the time in question. The State contends that "[Mr.] Middleton was only aware that [Mr.] Louard-Clarke was a gang member sometime in 2019. There was no indication that [Mr.] Middleton knew, at the time of the shootings [in June 2020], his gang status," and that "there was no similar connection made between someone's former gang status and their present dangerousness." But the relative *timing* of Mr. Louard-Clarke's affiliation points more to the objective reasonableness of Mr. Middleton's fear,

not the fear itself (which the defense conceded was unreasonable). *See Belton*, 483 Md. at 544. With no Rule 5-403 issue raised, Mr. Middleton should have been permitted to testify about Mr. Louard-Clarke's affiliation and its impact on his state of mind. The trial court erred in sustaining the State's relevance objection.[11]

3. Mr. Middleton's prison fights.

The third piece of evidence involved fights between Mr. Middleton and guards during his imprisonment. Mr. Middleton was permitted to testify that he had seen Mr. Louard-Clarke "be aggressive before this day," *i.e.*, the day of the shooting. He also remembered the events at the barber shop, and stated that when he was "being choked out, I'm feeling like he's trying to really hurt me or kill me, choke me out unconscious":

> [COUNSEL FOR MR. MIDDLETON:] In your lived experience, does a fight like that just end with people walking away?
>
> [MR. MIDDLETON:] No.
>
> [COUNSEL FOR MR. MIDDLETON:] Would a fight like that end even if somebody went away for a minute?
>
> [MR. MIDDLETON:] No, because he went away for a minute and came back with another man.

Later, during direct, counsel for Mr. Middleton asked him about his experience in prison:

> [COUNSEL FOR MR. MIDDLETON:] When you were in prison, did you see fights?
>
> [MR. MIDDLETON:] Yeah.
>
> [COUNSEL FOR MR. MIDDLETON:] Were you in fights?

[11] We note that it's the State's burden to prove that an error was harmless beyond a reasonable doubt, *Belton*, 483 Md. at 541, but because we reverse and remand on the suppression issue, we need not address that question.

> [MR. MIDDLETON:] Yeah.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. Were you in fights with other inmates?
>
> [MR. MIDDLETON:] Yeah.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. How many do you think?
>
> [MR. MIDDLETON:] 30, 40.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. What were those fights like?
>
> [MR. MIDDLETON:] You had to fight for your life, it was, if you didn't, you could be killed.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. Did you get in fights with guards?
>
> [MR. MIDDLETON:] Yeah, I got attacked by guards, yeah.
>
> [COUNSEL FOR MR. MIDDLETON:] Fair to say they weren't really fights?
>
> [MR. MIDDLETON:] I mean yeah, I fought back, I had to I mean.
>
> [COUNSEL FOR MR. MIDDLETON:] Okay. Tell me about those events.

The State objected, and during the bench conference that followed, defense counsel argued that the fighting incidents at issue led to his mental health diagnoses, that they would all come out during Dr. Bennett's testimony, and that Mr. Middleton should be permitted to testify about them, too. The State argued that although Dr. Bennett relied on these incidents to diagnose Mr. Middleton, the prison guard fights were not "independently admissible" because they were not relevant. The court sustained the objection.

We agree with the State that the fights with *prison guards* strayed too far for the relevance of what Mr. Middleton describes as "the rules of engagement in their fights," *i.e.*, fights between two previously incarcerated individuals. Testimony about fights with

guards didn't provide any additional weight to Mr. Middleton's belief that he needed to act in self-defense with respect to Mr. Louard-Clarke.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. CHARLES COUNTY TO PAY COSTS.