Circuit Court for Charles County
Case No.: C-08-CR-20-000180

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1907

September Term, 2022

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MIKAYLE TAHED QAWWEE

v.

STATE OF MARYLAND

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Graeff,
Nazarian,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Woodward, J.

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Filed: August 2, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Mikayle Tahed Qawwee, appellant, was arrested on February 20, 2020, and charged with multiple offenses, including first-degree premeditated murder, first-degree felony murder, armed robbery, and possession of a firearm under the age of twenty-one. After a jury trial in the Circuit Court for Charles County on September 12-22, 2022, appellant was acquitted of first-degree premeditated murder, but convicted on all other counts presented to the jury. The court sentenced appellant to life in prison for felony murder, plus concurrent sentences of twenty years for use of a firearm in the commission of a crime of violence, five years for possession of a firearm under the age of twenty-one, three years for wearing or carrying a firearm, and twenty years for conspiracy to commit armed robbery. All other convictions were merged for sentencing purposes.

Appellant presents four questions for our review, which, as stated in his brief, are as follows:

1. Did the motions court err by denying [a]ppellant's motion to suppress his statement to police?

2. Did the trial court err by declining to redact comments made by a detective during [a]ppellant's interrogation?

3. Did the trial court err by admitting hearsay?

4. Were the errors, alone or in combination, harmless?

For the following reasons, we affirm the judgments of the circuit court.

## BACKGROUND

On February 18, 2020, at approximately 6:50 p.m., Bradley Brown was shot and killed in the driveway of his house on Warehouse Landing Road in Bryans Road, MD. At the time of his death, Brown was seventeen years old. Video footage from a security camera

owned by Brown's neighbor showed a car pulling out of Brown's driveway moments after the sound of two gunshots. Sergeant John Riffle, a homicide detective for the Charles County Sheriff's Office, was one of the police officers who arrived on the scene soon after the shooting. The police found a handgun, a hairbrush, and two shell casings near Brown's body. Brown's car was parked in the garage, and in the trunk of the car Sergeant Riffle found a THC vape cartridge.[1] Several hours earlier, Brown had posted a video on his Snapchat account advertising numerous THC cartridges for sale.

In the early morning hours of February 19, 2020, Sergeant Charles Garner and Detective Hakim Burgess of the Charles County Sheriff's Office were performing surveillance on a house on Stone Avenue in Waldorf, MD; they had been informed that an individual who may have been involved in Brown's shooting resided there. At approximately 7:14 a.m., Sergeant Garner observed an individual, later identified as Darryl Freeman, exit the house and get into a vehicle parked in the driveway. Sergeant Garner informed Detective Andrew Bringley, who was conducting surveillance on a nearby road, that a vehicle left the address on Stone Avenue, and Detective Bringley conducted a traffic stop of the vehicle. Sergeant Garner and Detective Burgess arrived on the scene, and

[1] A "vape cartridge" is a plastic or metal container made up of a mixture of substances that can include nicotine or cannabis. E-Cigarette, or Vaping, Products Visual Dictionary, U.S. Department of Health and Human Services, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/pdfs/ecigarette-or-vaping-products-visual-dictionary-508.pdf (last visited July 26, 2024). A vape cartridge is consumed by attaching it to a battery pen, a small device that heats up the substance in the cartridge and turns it into vapor. *See id.* THC, or Tetrahydrocannabinol, is the major psychoactive component of cannabis. *See* National Library of Medicine, https://www.ncbi.nlm.nih.gov/books/NBK563174/ (last visited July 26, 2024).

Detective Burgess arrested Freeman. The car was towed to the Sherriff's Office's forensic science lab, where officers processed the vehicle for fingerprints and DNA and found a black ski mask under one of the back seats. Freeman's car had a broken driver's side headlight, and the car recorded leaving Brown's house the night before also had a broken driver's side headlight.

On February 20, 2020, Mikayle Qawwee, appellant, was arrested by Detective Eric Weaver of the Charles County Sheriff's Office. Appellant was transported to the Sheriff's Office District 3 station. At the station, appellant was interrogated by Sergeant Riffle. Appellant stated that he, Freeman, and Keyshawn Belasco went to Brown's house on the evening of February 18, 2020, to purchase vape cartridges. Appellant told Sergeant Riffle that that the deal fell through and then Belasco shot Brown, but that appellant never intended for Brown to be shot. Although appellant initially stated that Freeman was not present and that he did not see or hear what happened between Belasco and Brown before shots were fired, appellant later admitted that Freeman was present during the incident, that he saw Belasco pull out his gun, and that he heard Brown say "no, no" before being shot by Belasco. Appellant initially stated that Freeman never would have made a plan to rob Brown without telling appellant, but later conceded that it was possible that Freeman and Belasco had planned to rob Brown but had not shared any plans to do so with appellant.

Appellant informed Sergeant Riffle that Belasco pointed his gun at Brown and forced him to back up, at which point appellant knew it was a robbery. Although appellant initially stated that he did not know that Belasco had a gun, appellant eventually admitted that Belasco showed him and Freeman that he had a gun before they got out of the car to

meet with Brown. At first, appellant told the police that neither he, Freeman, nor Belasco took anything from Brown's car after the shooting, but he later stated that Freeman took some vape cartridges out of Brown's trunk after Belasco shot Brown. Appellant repeatedly told Sergeant Riffle that he did not know what happened to the vape cartridges, but eventually admitted that he gave the vape cartridges to his friend, David Moore, and appellant directed the police to the location of Moore's house.

Shortly after 9:00 a.m. on February 21, 2020, Detective Bringley spotted Moore leaving his house and informed Moore that the police had a warrant to search Moore's house and person. In Moore's sweatshirt pocket Detective Bringley found a THC vape cartridge and accompanying box with the same branding as the cartridges taken from Brown's car. Moore told the police that appellant had reached out to him and asked him to hold on to the box of vape cartridges. Moore stated that appellant told him that Belasco had shot and killed someone, and that appellant grabbed a box of vape cartridges and ran after the shooting.

After appellant was arrested, the police collected DNA from appellant, Freeman, and Belasco and found that appellant's and Belasco's DNA were found on the rear door handle of Freeman's car. Appellant's DNA was found on the ski mask that was under the back seat of Freeman's car, and Freeman's DNA was found on the hairbrush that was near Brown's body.

A jury trial was held in the Circuit Court for Charles County from September 12, 2022 through September 22, 2022. At trial, Matthews Carter, an inmate at the Calvert County Detention Center in February and March of 2020, testified about his conversations

with appellant, who was being held in the same unit in the Detention Center. Carter testified that appellant told him that appellant and two friends, "Darryl and somebody else[,]" went to rob someone of vape cartridges and ended up killing him. Appellant told Carter that they shot the person they went to rob because he had a gun.

At the conclusion of the trial, appellant was convicted of (1) first-degree felony murder, (2) use of a firearm in the commission of a murder, (3) first-degree assault, (4) use of a firearm in the commission of a first-degree assault, (5) armed robbery, (6) use of a firearm in the commission of an armed robbery, (7) theft between $100 and $1,500, (8) possession of a regulated firearm under the age of twenty-one, (9) wearing or carrying a regulated firearm, (10) conspiracy to commit robbery, (11) conspiracy to commit armed robbery, (12) conspiracy to commit first-degree assault, and (13) conspiracy to commit theft between $100 and $1,500. As previously stated, appellant was sentenced to life in prison for felony murder, plus concurrent sentences of twenty years for use of a firearm in the commission of a crime of violence, five years for possession of a firearm under the age of twenty-one, three years for wearing or carrying a firearm, and twenty years for conspiracy to commit armed robbery. All other convictions were merged for sentencing purposes.

Appellant filed this timely appeal. We shall provide additional facts as necessary to the resolution of the questions presented.

## DISCUSSION

### I. Did the motions court err by denying appellant's motion to suppress his statement to police?

#### A. Facts

On February 20, 2020, appellant was interrogated by Sergeant Riffle. On May 17, 2021, appellant filed a motion to suppress his statements made during such interrogation. At a hearing on September 22, 2021, Sergeant Riffle gave the following testimony regarding his interrogation of appellant on May 17. The interrogation took place in the interrogation room of the Charles County Sheriff's Office District 3 station, and a video and audio of the interrogation of appellant were recorded. The interrogation lasted for several hours. The specific room in which the interrogation took place was climate controlled, and the temperature was not manipulated before the interrogation of appellant. Although appellant mentioned that the room was cold at the beginning of the interrogation, he never brought it up again to Sergeant Riffle and showed no signs that he was suffering from the cold. No one besides Sergeant Riffle and appellant were in the room during the interrogation, Sergeant Riffle never made any promises to appellant during the interrogation, and he never threatened appellant.

Throughout the interrogation, appellant was offered food and "was given chips and stuff periodically[.]" Appellant was never denied food or drink, nor denied an opportunity to use the bathroom. Appellant was also brought a soda and other snacks after he said that he had an upset stomach. Appellant ate some of the food given to him, but not all of it. Before questioning appellant, Sergeant Riffle read appellant his *Miranda* rights and right

to presentment. Sergeant Riffle read appellant his rights from a card issued to police officers, and he read the card in its entirety.

On cross-examination, Sergeant Riffle testified that appellant was brought into the interrogation room "an hour or so" before Sergeant Riffle questioned him, at approximately 3:40 p.m. Sergeant Riffle told appellant that he had the right to see a District Court Commissioner who would inform appellant of the charges against him and his right to counsel but did not tell appellant that he would be appointed an attorney free of charge. Although appellant stated that he would like something to eat at approximately 5:57 p.m., appellant was not brought any food until 8:39 p.m. Appellant had nothing to eat from the time he was brought in at 3:40 p.m. until he was brought snacks at 8:39 p.m. Appellant was wearing a jacket when he first entered the interrogation room, but his jacket was taken away from him. Appellant was not brought a blanket or something else to keep him warm after he indicated that he was cold. Appellant remained in the interrogation room until 11:01 p.m. Finally, Sergeant Riffle was aware that appellant was nineteen years old and had no criminal history.

The trial court ruled on appellant's motion to suppress, as follows:

> So this is, just briefly, this at the time I believe, I'm not sure where it came out just now in the testimony, I think it was in the video, but I was an 18-year-old at the time, not social, not a lot of informational education, but certainly it's apparent through the video that he's of at least average intelligence. There's no threats, force, weapons on display in the video.
>
> The Officer is generally speaking polite, professional. There's no information produced of any sort of mental illness or disability.
>
> [Defense counsel] says, and I'll take, I'll take his word, but this Officer says if he had been in trouble, nothing to this level and he probably had limited experience with Miranda, I think that's okay.

No evidence of physical pain, physical discomfort, any sort of physical distress. He does mention at the top of the video that he's cold. No evidence of any other communications about the temperature.

I will note that in many an office building if I were to walk into four different offices, I'd walk in some and say it's hot, I walk into the next and say it's cold and sometimes it's more of a general statement.

This was a climate controlled area, but this climate control, according to Sergeant Riffle, wasn't just for this interrogation room, it was for the whole floor; and there was nothing on the video that indicates to me that it was really cold or that people were having problems with temperature. Specifically [appellant] himself didn't appear to be having problems with temperature.

[The Prosecutor] has laid out I think in pretty good detail the issue with food and but for the question from the Officer, he wouldn't have asked for food. I don't even -- like he didn't even finish eating the food.

And, again, all of the circumstances, and there's a list of circumstances, there's no Officers who are just the case where the Officer's basically taking turns, you interrogate him for a few hours, then I come in for a few hours, there's no badgering, there's no really overly tense periods of continuous interrogation.

So as I look through many factors, and there's more factors than that, I mean this book I have here probably has 40 something factors, you're talking about the characteristics of the room, light, furniture, you know, the Officers weren't in a position to intimidate him nor did they try to intimidate him.

Based on those factors, the ones I have announced and the other ones I've considered, there's no evidence that this statement is involuntary, nor is there a requirement that the person, a suspect, a Defendant, a person subject to an interrogation be told that a free attorney will be provided at presentment.

I believe that the Miranda warnings, which were read, properly, covers the right to Counsel and if you think about it, not everyone in an interrogation room has a right to be presented to a District Court Commissioner.

I could give you examples. Let's say you're there on a Circuit Court warrant, you know, you're not going to the District Court Commissioner, you're going to the jail and then you're coming here.

So, Madam Clerk, let's deny the Defense Motion to suppress.

**B. Arguments of the Parties**

Appellant argues that the motions court erred by denying his motion to suppress his statement to Sergeant Riffle. Appellant contends that his statement was involuntary under the Due Process Clause of the Fourteenth Amendment. As evidence of involuntariness, appellant points to the fact that he was nineteen years old at the time of his statement to Sergeant Riffle and had no prior criminal record, that he was kept in the interrogation room for almost five hours and not given any food, and that the temperature of the room was never adjusted after appellant stated that he was cold. Appellant concludes that, when considering the totality of the circumstances, the State failed to meet its burden of proving that appellant's statement was voluntary.

The State responds that the motions court correctly determined that appellant's statement to Sergeant Riffle was voluntary based on the totality of the circumstances. The State argues that voluntariness is shown through the following facts: appellant was not handcuffed or restrained; he was interrogated by only one unarmed police officer; he was read his *Miranda* rights and waived them; he did not display any mental illness or disability; and he was never physically intimidated or pressured. Further, the State asserts that appellant was old enough to understand Sergeant Riffle and knowingly confess, did not have problems with the temperature, and indicated that he was not feeling well and had not been able to eat anything without upsetting his stomach. All of the factors raised by appellant, the State concludes, "were trivial factors when compared against the many factors supporting the voluntariness of [appellant's] statement."

### C. Standard of Review

This Court's review of "a ruling on a motion to suppress evidence is limited to the record developed at the suppression hearing." *Moats v. State*, 455 Md. 682, 694 (2017). This Court views "the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion[.]" *Raynor v. State*, 440 Md. 71, 81 (2014) (internal quotation marks omitted). "We accept the suppression court's factual findings unless they are shown to be clearly erroneous." *Id.* However, we will "make our own independent constitutional appraisal of the suppression court's ruling, by applying the law to the facts found by that court." *Id*.

### D. Analysis

In Maryland, a confession may only be admitted against a defendant if it is "'(1) voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*[.]'" *Brown v. State*, 252 Md. App. 197, 234 (2021) (quoting *Winder v. State*, 362 Md. 275, 205-06 (2001)). The Due Process Clause of the Fourteenth Amendment states: "nor shall any State deprive any person of life, liberty, or property, without due process of law[.]" The Self-Incrimination Clause of the Fifth Amendment states: "No person . . . shall be compelled in any criminal case to be a witness against himself[.]" The Self-Incrimination Clause is incorporated into the Due Process Clause and is applicable to the states. *See Dickerson v. United States*, 530 U.S. 428, 434 (2000). Under both of these

clauses, "a confession made during a custodial interrogation must be voluntary to be admissible." *Madrid v. State*, 474 Md. 273, 320 (2021); *see Dickerson*, 530 U.S. at 433.

The Maryland Supreme Court "has generally interpreted Article 22 *in pari materia* with the Self-Incrimination Clause." *Madrid*, 474 Md. at 320. Under Article 22 and federal constitutional law, a confession is involuntary, and therefore inadmissible, if it is "the result of police conduct that overbears the will of the suspect and induces the suspect to confess." *Lee v. State*, 418 Md. 136, 159 (2011). At a pre-trial hearing on a motion to suppress, the State has the burden of showing the voluntariness of the statement by a preponderance of the evidence. *See Winder*, 362 Md. at 306. In determining whether a statement to police is voluntary, courts must "examine the totality of the circumstances affecting the interrogation and the confession." *Hill v. State*, 418 Md. 62, 75 (2011).

In *Hof v. State*, our Supreme Court set forth a non-exclusive list of factors to consider when determining whether a confession is voluntary under the totality of the circumstances:

> where the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given Miranda warnings; the mental and physical condition of the defendant; the age, background, experience, education, character, and intelligence of the defendant; when the defendant was taken before a court commissioner following arrest; and whether the defendant was physically mistreated, physically intimidated, or psychologically pressured.

337 Md. 581, 596-97 (1995) (cleaned up).

In the instant case, appellant does not argue that any of the trial court's factual findings were "clearly erroneous." *Raynor*, 440 Md. at 81. He claims instead that several

of the *Hof* factors weigh towards appellant's statement to Sergeant Riffle being involuntary:

> Appellant was only 19 years old and had no criminal record. As noted by defense counsel, police took [a]ppellant's jacket before he was placed in the interrogation room, and he expressed that he was cold at the outset of the interrogation. Nonetheless, he was kept in the room for five hours without being given any kind of garment or blanket, and the temperature in the room was not adjusted. Moreover, as defense counsel noted, almost three hours passed between when [a]ppellant asked for food and when it was given to him.

(Citations omitted.)

The trial court found that (1) appellant was over eighteen at the time of Sergeant Riffle's interrogation; (2) appellant was of at least average intelligence; (3) there were no threats or use of force; (4) Sergeant Riffle spoke politely and professionally, and there was no evidence of physical pain, discomfort, or distress; (5) although appellant mentioned that he was cold at the beginning of the video, there were no other communications about the temperature; (6) it was not possible to control the temperature of the interrogation room alone, and there were no indications that anyone else was having a problem with the temperature; (7) appellant did not finish the food that was given to him, and but for Sergeant Riffle asking him if he wanted anything, appellant would not have asked for food; and (8) there was no badgering or "overly tense periods of continuous negotiation[,]" nor did the officers intimidate or try to intimidate appellant. Applying these facts to the law, we hold that the trial court did not err when it found that appellant's statement to Sergeant Riffle was voluntary. We agree with the State that the factors raised by appellant are "trivial" compared to "the many factors supporting the voluntariness of [appellant's]

statement." The totality of the circumstances does not show that appellant's statement to the police was "the result of police conduct that overbears the will of the suspect and induces the suspect to confess." *Lee*, 418 Md. at 159.

## II. Did the trial court err by declining to redact comments made by a detective during appellant's interrogation?

### A. Facts

At trial on September 19, 2022, appellant objected to the admission of his interrogation, arguing that Sergeant Riffle was "just telling [appellant] what he thought the issue was." Appellant explained that Sergeant Riffle told appellant what his theory of the case was, and that it was improper for the jury to hear such statements. According to appellant, such comments should have been redacted when the interrogation was played for the jury. In ruling on appellant's objection, the trial court stated:

> All right, so let's just, let's just put the video thing, I worked through the video and I worked through it again this morning just to make sure.
>
> You know, the, some of the statements that gave me the most pause I went back through, listened to them. There was one about, quote, [Freeman] planning a lick and that whole conversation, not without telling me; and I think it's almost impossible to pull that apart or else it just wouldn't make sense.
>
> And there was another conversation about, these were the two that gave me the most concern about, hey, we went through [Freeman's] phone and we knew he was planning something.
>
> But when I look at it in the, sort of the context of that, and no one disagreed that there's going to be evidence coming in between the decedent's phone and Mr. Freeman's phone and it clearly points to that, I don't think that's any, any sort of -- it's not even specific enough, so **I don't even think that's inappropriate hearsay. In fact, I do think it's really about the reactions.**
>
> **I'm going to give**, unless [defense counsel] tells me not to, **the instruction to the jury** that I've recited yesterday, I might tweak it a little bit to say **that the statements, opinions, the questions, statements and opinions of the Officer are not evidence, nor are they offered for their**

> **truth. They're only to give context to [appellant's] responses and leave it at that.**

(Emphasis added.)

Before showing the video of Sergeant Riffle's interrogation of appellant to the jury, the trial court gave the following instruction:

> All right. So, ladies and gentlemen, before we get into the video, I want you to understand that as you watch the video, that the statements, the questions and the opinions of the Officer, of the Officer, are not evidence. They're not used for, those statements are not used for its truth, they are only to give you context to the responses of [appellant], okay.

**B. Arguments of the Parties**

Appellant argues that the trial court erred when it failed to redact from the video of appellant's interrogation Sergeant Riffle's comments (1) referring to alleged hearsay statements, and (2) attacking appellant's veracity. Specifically, appellant contends that Sergeant Riffle told appellant that other individuals had given him information that contradicted appellant's claims, advised appellant of information found on Freeman's phone, questioned appellant's honesty, and "frequently responded to [a]ppellant's claims by arguing that the State's contrary version of events [. . .] was the truth." Although the trial court instructed the jury that Sergeant Riffle's comments were not evidence, appellant claims that "no instruction could undo the prejudice caused by Riffle's many highly prejudicial comments." Therefore, according to appellant, the court erred by allowing Sergeant Riffle's prejudicial statements to be played to the jury.

In response, the State contends that as a general rule, an investigating officer's opinion on the truthfulness of an accused's statements is irrelevant, and thus inadmissible,

"because it is the role of the jury, and not the police officers, to weigh the credibility of a defendant's statement[.]" Nevertheless, the State argues, an exception to the general rule exists when an officer's comments induce the suspect to alter his account or to inculpate himself. In that situation, which the State claims occurred in the instant case, the officer's comments become "relevant and therefore generally admissible under Maryland Rules 5-401 and 5-402."

The State next argues that the trial court did not err when it admitted Sergeant Riffle's comments referring to other people's statements and to the specific information on Freeman's phone because such statements and information are not hearsay. According to the State, the other people's statements and information on Freeman's phone were only used to "provide context to the conversation and to explain why [appellant] responded as he did[]" and thus were not offered for their truth.

**C. Standard of Review**

"The conduct of the trial must of necessity rest largely in the control and discretion of the presiding judge and an appellate court should in no case interfere with that judgment unless there has been an abuse of discretion by the trial judge of a character likely to have injured the complaining party." *Cooley v. State*, 385 Md. 165, 176 (2005) (internal quotation marks omitted). We review a trial court's ruling on the admissibility of non-hearsay evidence for abuse of discretion. *See Wilder v. State*, 191 Md. App. 319, 335 (2010). However, trial judges do not have discretion to admit irrelevant evidence, and thus we determine whether evidence is relevant as a matter of law. *See Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016). Regarding hearsay evidence, "the trial court's

legal conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error[.]" *Gordon v. State*, 431 Md. 527, 538 (2013) (citations omitted).

**D. Analysis**

i. *Expressions of disbelief*

Under Maryland Rule 5-401, evidence is relevant if it 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." Relevant evidence is generally admissible. Md. Rule 5-402. However, under Maryland Rule 5-403, relevant evidence may be inadmissible "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."

In *Crawford v. State*, the Supreme Court of Maryland reversed Crawford's conviction for first-degree murder because of statements made by the police during Crawford's interrogation. 285 Md. 431, 453 (1979). The tape played for the jury included the police saying that they "interviewed people who said that the victim was terrified of the accused, scared of her because she was 'so insanely jealous,'" that they had proof "of what actually happened," and that "no matter how many times you hit us with that story 'I was in a struggle,' we know that's not what happened, we know." *Id.* at 450. The Court stated that the tapes had "clearly brought out the obvious disbelief of the police in the

accused's version of what happened, a disbelief predicated on what the police had learned from other persons." *Id.* at 447.

Our Supreme Court concluded that "[t]o permit the jury to hear [the police officer's statements] failed to observe that fundamental fairness essential to the very concept of justice and was inconsistent with the rudimentary demands of fair procedure, as related to the overall fairness of the trial considered in its entirety[.]" *Id.* at 453 (internal quotation marks omitted) (citations omitted). Although the trial court instructed the jury to only consider the appellant's responses, the Court held that "[t]he nature of the objectionable matter, the constant repetition of it before the jury, and its direct adverse relation to the defense of the accused, lead inescapably to [the] conclusion[]" that the instruction was insufficient to cure the error. *Id.* at 455. The Court thus ordered a new trial. *Id.*

In *Casey v. State*, this Court overturned Casey's conviction after the trial court allowed the jury to hear a portion of the Casey's interrogation during which the officers expressed disbelief as to Casey's story and told Casey they had too much information to believe his story. 124 Md. App. 331, 337-38 (1999). We cited to *Crawford* and stated that it was "well settled that the investigating officers' opinions on the truthfulness of an accused's statement are inadmissible under Maryland Rule 5-401." *Id.* at 339. We held that it was improper for the jury to hear the police officer's comments, because the assertions of disbelief "'tended to seriously prejudice the defense.'" *Id.* (quoting *Crawford*, 285 Md. at 451).

Finally, in *Walter v. State*, Walter was arrested for sexual abuse of a minor. 239 Md. App. 168, 175 (2018). At trial, the trial court admitted the unredacted interrogation of

Walter by the police in which the police expressed disbelief of the Walter's story and accused Walter of dishonesty. *Id.* at 182-83. This Court noted that "in a criminal trial a court may not permit a witness to express an opinion about another person's credibility." *Id*. at 184. Turning towards the facts of the case, we stated that

> [t]he expressions of disbelief were a perfectly legitimate investigative tactic to induce Walter either to confess or to change his account and to introduce inconsistencies that the detective could exploit in further questioning. Unlike the expressions of disbelief in *Crawford*, the objectionable comments in this case were not so pervasive as to deprive Walter of his due process right to a fair trial. Under our decision in *Casey*, however, the detective's expressions of disbelief were irrelevant and inadmissible. For that reason alone, we are required to reverse the conviction.

*Id.* at 189.

This Court, however, set forth an exception to the general rule of inadmissibility:

> We hold only that if the State intends to play portions of a recorded interview in which the investigators directly or indirectly express their disbelief in the suspect's statements or their opinion about the suspect's guilt, the court must balance the probative value (if any) of the investigator's comments against their prejudicial effect. **In general, where the investigators' comments do not induce the suspect to alter his account or to inculpate himself, a court should prohibit the State from playing those portions of the interview.**

*Id.* at 193 (emphasis added). With that exception in mind, we determined that "the court erred in allowing the State to play the recording of the interview without redacting the expressions of disbelief[]" because "the detective's comments had essentially no impact on Walter's steadfast denial of culpability[.]" *Id.* at 191. Specifically, "[t]he questions did not impel Walter to inculpate himself or to alter his account[]" and "Walter's account remained largely the same throughout the interview." *Id.* at 190.

As correctly pointed out by the State, "*Walter*, *Casey*, and *Crawford* all concerned defendants who steadfastly maintained their innocence throughout their interviews. In all three cases, the detectives' comments 'had little effect' on the defendant's stories." In the instant case, unlike the police officers' statements in *Walter, Casey*, and *Crawford*, Sergeant Riffle's repeated expressions of disbelief resulted in appellant changing his story on multiple occasions. Appellant initially stated that he knew "for a fact" that Freeman was not present when the shooting occurred, but after Sergeant Riffle told appellant that he had talked to a number of people and that he knew Freeman was present, appellant admitted that Freeman went to Brown's house, along with appellant and Belasco. In addition, Appellant initially stated that Freeman never would have made a plan to rob Brown without telling him. Later in the interrogation, after Sergeant Riffle stated that he had his own opinion on how the shooting occurred, that appellant "look[ed] like a liar," and that he wanted to make sure appellant's story was correct, appellant conceded that it was possible that Freeman and Belasco had planned to rob Brown but had not shared any plans to do so with him.

Next, Appellant initially told the police that neither he, Freeman, nor Belasco took anything from Brown's car after the shooting; however, after several expressions of disbelief by Sergeant Riffle, appellant admitted that Freeman took some vape cartridges out of Brown's trunk after Belasco shot Brown. Finally, although he initially stated that Freeman was not present and that he did not see or hear what happened between Belasco and Brown before shots were fired, appellant later stated that Freeman was present during the incident and that he heard Brown say "no, no" before being shot by Belasco.

In sum, Sergeant Riffle's expressions of disbelief caused appellant to change his story on multiple occasions, and thus, under *Walter*, were not subject to the general rule of inadmissibility for expressions of disbelief made by police officers. Accordingly, we hold that the trial court did not err in admitting Sergeant Riffle's expressions of disbelief about appellant's version of Brown's murder.

ii. *Comments referring to other people's statements*

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "The threshold questions when a hearsay objection is raised are (1) whether the declaration at issue is a 'statement,' and (2) whether it is offered for the truth of the matter asserted. *Stoddard v. State*, 389 Md. 681, 688-89 (2005). A "statement" is either "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." *Id.* at 689; Md. Rule 5-801(a). Whether a statement is offered for its truth "depends upon the purpose for which the statement is offered at trial." *Hardison v. State*, 118 Md. App. 225, 234 (1997). "[E]vidence offered to show its effect on the hearer's mind, rather than the truth of the matter asserted, [is] not hearsay." *Burgess v. State*, 89 Md. App. 522, 538 (1991). Rather, "'a relevant extrajudicial statement is admissible as nonhearsay when it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true.'" *Parker v. State*, 408 Md. 428, 438 (2009) (quoting *Graves v. State*, 334 Md. 30, 38 (1994)).

In the instant case, appellant argues that Sergeant Riffle's comments that "everybody's telling us how [appellant] was involved, how you're involved in this thing," and that Sergeant Riffle knew from looking at Freeman's phone that Freeman had recently purchased or tried to purchase a handgun, involved inadmissible hearsay. Sergeant Riffle's statements about what other people said were not admitted to prove that appellant was involved, but instead were admitted to show their effect on appellant. *See Burgess*, 89 Md. App. at 538. Similarly, Sergeant Riffle's comment that "[w]e looked at [Freeman's] phone and we know that he had recently tried to purchase or purchased a handgun recently[]" was not admitted to show that Freeman had actually recently tried to purchase a gun, but rather to show the effect that such a statement had on appellant. Sergeant Riffle's statements were thus properly admitted by the trial court as nonhearsay.

iii. *The trial court's limiting instruction*

If admitting Sergeant Riffle's numerous statements was error, appellant argues that the trial court's limiting instruction "could not possibly undo the prejudice caused by the jury hearing Riffle's numerous, highly prejudicial comments." The comments by Sergeant Riffle were not as extreme as the police officer's statements in *Crawford*, and thus this case is not "one of the exceptional instances in which a caution to disregard is not sufficient to cure the error in placing improper matters before the jury." *Crawford*, 285 Md. at 455. "In the absence of evidence to the contrary, . . . jurors are generally presumed to follow the court's instructions." *Donaldson v. State*, 200 Md. App. 581, 595 (2011). Furthermore, "[l]imiting instructions are tailored to explain to the jury how to consider evidence that is admitted." *Lamalfa v. Hearn*, 457 Md. 350, 387 (2018). Here, there is no evidence that the

jury failed to understand that Sergeant Riffle's statements were "not evidence" and should be used "only to give you context to the responses of [appellant.]" Therefore, even if the trial court erred in admitting Sergeant Riffle's statements, the court's limiting instruction to the jury rendered those statements harmless beyond a reasonable doubt.

## III. Did the trial court err by admitting hearsay?

### A. Facts

During his cross-examination of Sergeant Riffle, defense counsel asked: "So again, you're just, you're basing [your theory of what happened at the scene of the shooting] off what was at the scene after the hour, minutes or hours after the event; is that correct?" In response, Sergeant Riffle stated: "Yes, and then the investigation following that with statements that were obtained." Defense counsel objected to Sergeant Riffle's answer as hearsay, but the trial court overruled the objection.

### B. Arguments of the Parties

Appellant argues that Sergeant Riffle's answer to defense counsel's question was hearsay because it "conveyed that someone (*i.e.*, one or more members of [a]ppellant's social circle) or something (*i.e.*, Freeman's phone) had informed him that the incident was a planned robbery." Appellant also contends that in the context of Sergeant Riffle's answer, he was "clearly indicating that those out-of-court statements were true." Therefore, appellant argues, Sergeant Riffle's answer was inadmissible hearsay, and the trial court erred in admitting it.

In response, the State asserts that Sergeant Riffle's answer was properly admitted because it is not hearsay. The State explains that a "mere reference to 'statements that were

obtained,' without providing any of the content of those statements, is not hearsay because it does not convey any 'matter asserted' in the statements." According to the State, by cross-examining Sergeant Riffle about his theory of the case, defense counsel "invited and made relevant the detective's answer identifying the evidence on which he had relied to formulate the robbery theory – including statements he had received during the investigation."

**C. Standard of Review**

Unlike other evidentiary rulings, decisions by a trial court to admit or exclude hearsay are not reviewed for abuse of discretion. *See State v. Galicia*, 479 Md. 341, 360 (2022). Instead, "the trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review." *Gordon*, 431 Md. at 538. Therefore, "the trial court's legal conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error[.]" *Id*. (citations omitted).

**D. Analysis**

Sergeant Riffle's answer to defense counsel's question does not refer to the content of any statements obtained during the investigation, but instead only refers to the existence of such statements. Simply referring to the existence of the statements of other individuals does not qualify under the rule against hearsay as a "statement," nor does it convey any "matter asserted." *See Stoddard*, 389 Md. at 688-89. In addition, the answer was not made to show that the truth of any statements made by other individuals, but to simply show that

those statements were the basis of Sergeant Riffle's theory of the case. *See Parker*, 408 Md. at 438. For these reasons, Sergeant Riffle's answer was not hearsay, and thus was properly admitted by the trial court.

## IV. Were the errors, alone or in combination, harmless?

### A. Arguments of the Parties

Appellant argues that the three errors previously discussed were not harmless, both alone and in combination. The State counters that the trial court did not err, and that "multiple non-errors cannot accumulate into error."

### B. Standard of Review

"When an appellate court considers the State's argument that an error is harmless, the court conducts 'its own independent review of the record.'" *Gross v. State*, 481 Md. 233, 252 (2022) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). Therefore, the standard of review is *de novo*. *Id.* at 251.

### C. Analysis

In a criminal case, an error is harmless only if an appellate court concludes that the error was "harmless beyond a reasonable doubt." *Id.* at 252. For a court to make such determination, "the State must show beyond a reasonable doubt that the 'evidence admitted in error in no way influenced the verdict.'" *Id.* at 259 (quoting *Dorsey*, 276 Md. at 659). When a "'reviewing court, upon its own independent review of the record, is [un]able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict,

such error cannot be deemed 'harmless' and a reversal is mandated.'" *Moore v. State*, 412 Md. 635, 666 (2010) (alteration in original) (quoting *Dorsey*, 276 Md. at 659).

In the instant case, as discussed above, the trial court did not err when it denied appellant's motion to suppress, when it did not redact certain comments by Sergeant Riffle in the video of appellant's interrogation, and when it admitted Sergeant Riffle's answer to defense counsel's question during cross-examination. Because there were no errors, appellant's argument is moot.[2]

**JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[2] As stated above, even if the trial court erred by failing to redact certain comments by Sergeant Riffle in the video of appellant's interrogation, we concluded that such error was harmless. Thus, with no other errors of the trial court, a combination of errors cannot exist to produce reversible error.