UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0683

September Term, 2013

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JUAN CARTER

v.

STATE OF MARYLAND

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Zarnoch,
Berger,
Nazarian,

JJ.

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Opinion by Berger, J.

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Filed: July 7, 2015

Following a trial in the Circuit Court for Prince George's County, Juan Carter ("Carter"), appellant, was convicted of misconduct in office by malfeasance, misconduct in office by nonfeasance, and three counts of theft. On appeal, Carter presents two questions for our review,[1] which we have rephrased as follows:

> 1. Whether the circuit court erred in allowing hearsay testimony pursuant to the coconspirator exception to the rule against hearsay.
>
> 2. Whether a witness's testimony regarding the absence of a record constitutes hearsay.

For the reasons stated herein, we shall affirm the judgments of the Circuit Court for Prince George's County.

## FACTS AND PROCEEDINGS

The following evidence was adduced at trial through the testimony of several witnesses. Carter, a corporal on the Prince George's County Police Department, was assigned to the Firearms Interdiction Task Force ("Task Force"). The Task Force's objective

[1] The questions, as posed by Carter, are:

> 1. Did the circuit court err in allowing a critical State witness to present hearsay testimony under the co-conspirator exception to the hearsay rule when there was insufficient evidence of a conspiracy?
>
> 2. Did the circuit court err in allowing a critical State witness to present hearsay evidence from police department databases, when that witness did not have personal knowledge of or training in how the databases were created and maintained?

was to seize firearms from persons who were prohibited from possessing firearms. The Task Force consisted of officers from the Maryland State Police, the Prince George's County Police, a deputy from the Prince George's County Sheriff's Office, and a Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") agent who oversaw the Task Force.

When the Task Force seized firearms, the firearms were to be transferred to the Prince George's County Firearms Examination Unit ("FEU") within 72 hours of the seizure. If, however, the Task Force was unable to convey firearms to the FEU, the Task Force could place firearms in temporary storage until they could be transferred to the FEU. Although evidence at trial indicated that many Task Force officers handled seized firearms during the course of their duties, Carter was primarily responsible for all property submissions from the Task Force to the FEU.

Upon the seizure of a firearm, the Task Force supervisor would normally, but not always, complete a Commander Information Report ("CIR"). A CIR is intended to "advise the commander of what specifically that unit has been doing." A CIR, however, "is not necessarily required." Other records, such as incident reports and property records, were also created when firearms were deposited into evidence. Between years 2008 and 2009, CIRs memorialized the seizure of twenty-one firearms by the Task Force that had no corresponding documentation indicating those firearms had been transferred to the FEU. Of the twenty-one missing firearms, twelve were subsequently recovered under circumstances indicating that the firearms had not been transferred to the FEU.

In early August of 2008, the Task Force executed a "knock and talk"[2] search of Johnny Rossettos's ("Rossettos") residence. The contraband seized by the Task Force consisted of "a Davis 380, a Cobra Mac-11, a Maverick shotgun, a Rossi .22 long nose revolver[,] a chrome pearl handle .32 Smith and Wesson[,]" and a bullet proof vest. Rossettos identified various exhibits entered into evidence by the State as all the items, except for the Davis 380, that the Task Force seized from his home. At trial, Rossettos identified Carter as one of seven law enforcement officers who participated in the seizure of his firearms. Rossettos further testified that after the seizure of his firearms, none of the firearms were subsequently returned to him.

Troy Hammond ("Hammond"), Carter, and Carter's cousin Delmar Thompson ("Thompson") had previously worked together at a cable company called Vital Communications, and the three socialized together on occasion. Hammond stated that he knew Carter by his alias "Cool." Hammond further testified that he purchased five firearms and a bullet proof vest from Thompson in December of 2008. At trial, Hammond identified Rossettos's Mac-11, the chrome pearl handle .32 Smith and Wesson, the .22 Rossi, the Maverick 12 gauge shotgun, and the bullet proof vest as items he had purchased from Thompson. Moreover, Hammond testified that he had sold the Mac-11 and the chrome pearl handle .32 to an ATF agent, for which he was serving a sentence at the time of trial. Additionally, Hammond testified, over defense counsel's objection, that during the

[2] A "knock and talk" is a procedure by which law enforcement initiates a consensual dialogue with a suspect and obtains consent to search for illegally possessed firearms.

transaction with Thompson, Thompson told Hammond that Thompson "had to go pick [the guns] up [from] . . . Cool."

Additionally, the State called Prince George's County Police Sergeant Hugh Darden ("Darden") who was assigned to the Internal Affairs Division of the department. Darden testified that he was assigned to investigate Carter. Darden began his investigation by reviewing CIRs and comparing them with the firearms that were received by the FEU. Darden testified that he reviewed nine CIRs that memorialized the seizure of twenty-one firearms. Upon reviewing FEU's records, however, he was unable to locate any records, documentation, or property associated with the CIRs he reviewed. Accordingly, Darden concluded that it was unlikely Carter submitted the seized contraband pursuant to his responsibilities. Defense counsel lodged a hearsay objection to Darden's testimony about the absence of FEU's records. Carted claimed that the FEU records were hearsay and that Darden was not a custodian of those records so as to satisfy the business record exception to the general prohibition on hearsay. The circuit court, however, permitted Darden to testify about his inability to find records.

After a four-day trial, the jury returned a verdict of guilty on all counts. Subsequently, Carter was sentenced to ten years' incarceration with all but seven years suspended. Additionally, Carter was sentenced to five years' probation upon release. This timely appeal followed. Additional facts shall be included as necessitated by our discussion of the issues.

## STANDARD OF REVIEW

In *Bernadyn v. State*, 390 Md. 1 (2005), the Court of Appeals explained the standard of review for hearsay determinations as follows:

> We review rulings on the admissibility of evidence ordinarily on an abuse of discretion standard. Review of the admissibility of evidence which is hearsay is different. Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. Thus, a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo.*

*Id.* at 7-8 (emphasis in original) (internal citations omitted).

As to factual findings that are necessary to make a hearsay determination, however, we defer to the trial court so long as its findings are not clearly erroneous. *Gordon v. State*, 431 Md. 527, 538 (2013). Indeed:

> [N]ot all aspects of a hearsay ruling need be purely legal. A hearsay ruling may involve several layers of analysis. Proponents of the evidence challenged on hearsay grounds usually argue (1) that the evidence at issue is not hearsay, and even if it is, (2) that it is nevertheless admissible. The first inquiry is legal in nature. But the second issue may require the trial court to make both factual and legal findings.

*Id.* at 536 (internal citation omitted). Accordingly, hearsay challenges can be a mixed question of law and fact. With these principles in mind, we proceed to review the trial court's legal conclusions *de novo*, but we will defer to necessary factual findings made by the trial court so long as they are not clearly erroneous.

## DISCUSSION

### I. Hammond's Testimony Falls Within the Coconspirator Exception to Hearsay

On appeal, Carter first contends that "Hammond should not have been allowed to testify that Delmar Thompson told him (Hammond) that he (Thompson) got the firearms from 'Cool.'" Carter alleges the trial court improperly admitted hearsay testimony from Hammond regarding the source of weapons Hammond purchased from Thompson. Specifically, Carter claims that by admitting inadmissible hearsay, the trial court committed harmful error that may have influenced the verdict. The State argues that Hammond's testimony was admissible under the coconspirator exception to the rule against hearsay.[3]

At trial, the following colloquy took place as Hammond testified:

> [THE PROSECUTOR]: Tell us about the discussion you had with Tyrone Thompson about the purchase of firearms?

[3] The State further asserts that this hearsay issue is not preserved for this Court's review because defense counsel failed to object to the admission of evidence after the trial judge denied Carter's motion for a continuing objection. We are unpersuaded by the State's preservation argument. After the trial judge instructed the State to lay the appropriate foundation before soliciting a hearsay statement from Hammond, defense counsel again objected when Hammond began testifying about statement made by Thompson. After the second objection, the judge conclusively determined that the statement was admissible under the coconspirator exception and allowed the hearsay statement to be offered into evidence. The State correctly asserts that subsequent to the first two objections Carter was denied a continuing objection. Prior to the denying Carter's continuing objection, however, the trial court had conclusively decided upon the applicability of the coconspirator exception. We, therefore, hold that because this question was brought "to the attention of the trial court so that the court may pass upon any objection, and possibly correct any errors," this assignment of error was adequately preserved. *Jones v. State*, 213 Md. App. 483, 493 (2013) (holding that right to argue constitutional violation was waived when appellant failed to raise the issues at trial and noted at trial that he had *only* one unrelated issue to argue).

[HAMMOND]: He said he had --

[DEFENSE COUNSEL]: Objection, Your Honor. Hearsay.

[THE PROSECUTOR]: This is a statement of a co-conspirator.

[DEFENSE COUNSEL]: Objection, Your Honor. Approach?

THE COURT: Yeah.

Thereafter, the court conducted a bench conference. Defense counsel argued that there was insufficient evidence for the judge to make the preliminary finding that a conspiracy existed. Defense counsel argued that Hammond's hearsay statement should not be admitted into evidence. The State proffered that Hammond would testify that he and Thompson had an agreement to buy and sell firearms, and that the firearms purchased from Thompson were the firearms seized from Rossettos. The court did not rule on defense counsel's objection, but rather told the prosecutor, "[a]ll right, I am going to allow it, but you'll have to connect it up[,]" leaving the defense the opportunity to object should the State fail to adequately establish the existence of a conspiracy. The State then solicited a number of statements from Hammond regarding the illicit trafficking of firearms between Hammond and Thompson, and the connection between those firearms and Carter. Shortly thereafter, the following exchange ensued:

[THE PROSECUTOR]: And where did [Thompson] tell you he was going to get [the firearms]?

[DEFENSE COUNSEL]: Objection, hearsay.

THE COURT: Overruled.

[DEFENSE COUNSEL]: Can we approach, Your Honor?

THE COURT: Sure.

After this exchange, the court held another bench conference where Carter argued, again, that the State had failed to establish a conspiracy. The circuit court, however, disagreed and found that the statement fell within the exception to the prohibition on hearsay outlined in Md. Rule 5-803(a)(5). The State then continued to question Hammond about Thompson's contact with Carter, and the following colloquy transpired:

[THE PROSECUTOR]: Did [Thompson] tell you anything about where he was getting the guns from?

[HAMMOND]: He said he had to go pick them up in Bowie.

[THE PROSECUTOR]: And who did he say he was getting them from?

[HAMMOND]: His people[].

[THE PROSECUTOR]: His people[] who?

[HAMMOND]: Cool.

[THE PROSECUTOR]: And who do you know Cool to be?

[DEFENSE COUNSEL]: Objection to all of this, Your Honor. Can I have a continuing objection?

THE COURT: No, you can object. Okay.

[DEFENSE COUNSEL]: I object.

[THE PROSECUTOR]: Mr. Hammond, who is Cool?

[HAMMOND]: Mr. Carter.

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 declarant "is a person who makes a statement." Md. Rule 5-801(b). Additionally, a statement is "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801(a). We generally prohibit the introduction of hearsay "at trial because of its inherent untrustworthiness." *Parker v. State*, 365 Md. 299, 312 (2001). We agree, as does the State, that Hammond's testimony about Thompson's statement falls within the definition of hearsay provided in Md. Rule 5-801(c). Carter contends, however, that the court erred in admitting this hearsay statement under the coconspirator exception to the rule against hearsay.

"A statement by a coconspirator of the party during the course and in furtherance of the conspiracy" is not excluded by the general prohibition on hearsay. Md. Rule 5-803(a)(5). In order for a statement to be admitted under this exception, the trial judge must first find "that the defendant[[4]] and the declarant were part of a conspiracy, that the statement was

[4] Although not expressly made clear by the rule, the defendant's participation in the conspiracy is required because the rationale of the five exceptions to the rule against hearsay contained in Md. Rule 5-803(a) is rooted, with varying degrees of reliability, in principles of agency. *See Terrell v. State*, 34 Md. App. 418, 425 (1977) ("[A] conspirator is, in effect, the agent of each of the other co-conspirators during the life of the conspiracy. As such, any statement made or act done by him in furtherance of the general plan and during the life of the conspiracy is admissible against his associates and such declarations may be testified to by third parties as an exception to the hearsay rule."); *but see* Joseph H. Levie, *Hearsay and Conspiracy: A reexamination of the Co-Conspirators' Exception to the Hearsay Rule*, 52 Mich. L. Rev. 1159, 1165-66 (1954) (arguing that the agency comparison has grown increasingly inappropriate due to the substantial expansion of the substantive law of (continued...)

made during the course of the conspiracy, and that the statement was made in furtherance of the conspiracy." *Shelton v. State*, 207 Md. App. 363, 376 (2012). The existence of, and the defendant's participation in, a conspiracy for the purpose Md. Rule 5-803(a)(5), are preliminary questions to be decided by the court, and the judge "may, in the interest of justice, decline to require strict application of the rules of evidence . . . ." Md. Rule 5-104(a). It is the trial judge's responsibility to make findings regarding these preliminary questions under the preponderance of the evidence standard. *Ezenwa v. State*, 82 Md. App. 489, 513 (1990). The question here is, then, whether the State satisfied its burden of production to establish by a preponderance of the evidence that Hammond and Carter were engaged in a conspiracy.

The trial judge's preliminary finding that there was a conspiracy must be supported by sufficient evidence, independent of the declaration in question. Indeed:

> "[W]hen the State seeks to use statements against a co-conspirator made by another co-conspirator to a third party, it must first demonstrate, through evidence *aliunde*, the existence of a conspiracy, but the testimony of one conspirator is admissible against a co-conspirator without the necessity of establish through an independent source the existence of the conspiracy."

[4] (...continued)
conspiracy which undermines the proposition that a coconspirator is an agent of the conspiracy). Regardless of the strength of the rationale for these rules, the exceptions contained in Md. Rule 5-803(a) are admissible because the statement can, theoretically, be attributed to the opposing party. Consequently, a conspiracy between Hammond and Thompson is insufficient to admit the statement in question. Rather, Carter and Thompson must be found to be coconspirators.

*Ezenwa*, *supra*, 82 Md. App. at 512 (alteration in original) (quoting *Mason v. State*, 18 Md. App. 130, 136-37 (1973)). The evidence is sufficient so long as "men of sound mind may reasoningly and reasonably deduce from the facts and circumstances presented to them that there was a conspiracy." *Daugherty v. Kessler*, 264 Md. 281, 292 (1976).

In chain conspiracies:[5]

> [T]he evidence need not show direct communication between all persons in the chain of importation, supply and retailing of the [contraband]. The parties' knowledge of the existence and importance of the other links in the distribution chain may be inferred from the circumstances, and it is sufficient to show the combination and community of interest.

*Manuel v. State*, 85 Md. App. 1, 16 (1990). Indeed:

> The State was not required to show a formal agreement in order to prove conspiracy. It is sufficient if the parties tacitly come to an understanding regarding the unlawful purpose. *Quaglione v. State*, 15 Md. App. 571, 292 A.2d 785 (1972). In fact, the State was only required to present facts that would allow the [fact-finder] to infer that the parties entered into an unlawful agreement. *Vandegrift v. State*, 82 Md. App. 617, 573 A.2d 56, *cert. denied*, 320 Md. 801, 580 A.2d 219 (1990). The concurrence of actions by the co-conspirators on a material point is sufficient to allow the [fact-finder] to presume a concurrence of sentiment and, therefore, the existence of a conspiracy. *Hill v. State*, 231 Md. 458, 190 A.2d 795, *cert. denied*, 375 U.S. 861, 84 S.Ct. 127, 11 L.Ed.2d 88 (1963).

*Acquah v. State*, 113 Md. App. 29, 50 (1996).

[5] "The 'chain' conspiracy is characterized by different activities carried on with the same subject of a conspiracy in such a manner that each conspirator in a chain-like manner performs a separate function which serves in the accomplishment of the overall conspiracy." *Bolden v. State*, 44 Md. App. 643, 650 (1980).

As this is, in essence, a challenge to the sufficiency of the evidence, we defer to any reasonable inferences drawn by the fact-finder used to decide this preliminary question. *State v. Mayers*, 417 Md. 449, 466 (2010) (deciding whether evidence was sufficient to support the entire conviction). "[A] trier of fact is not obliged to believe all that it hears . . . . [He] may believe or disbelieve, credit or disregard, any evidence introduced, and a reviewing court may not decide on appeal how much weight must be given to each item of evidence. *Sessoms v. State*, 357 Md. 274, 293 (2000). As such, we refuse to weigh the evidence that was presented before the trial judge and determine whether the State satisfied its burden of persuasion. Rather, we only ask whether, after drawing all reasonable inferences in the State's favor, there was sufficient evidence for a reasonable fact-finder to find the existence of a conspiracy.

In the case *sub judice*, prior to finding the existence of a conspiracy, the evidence had shown that Carter and Thompson were cousins, and that Carter, Thompson, and Hammond had previously worked and socialized together. Additionally, the evidence indicated that Carter was the designated "property guy" who was responsible for transferring seized firearms to the FEU. Moreover, Rosettos identified Carter as a member of the task force who seized a number of firearms and a bullet proof vest from his home. Carter's status as the "property guy" made it his responsibility submit Rosettos's contraband into evidence. The same firearms that Carter had a role in seizing from Rosettos were subsequently recovered,

or had been trafficked, from Hammond. Additionally, Hammond had purchased the firearms from Thompson.

From this evidence, the trial judge might reasonably infer that Carter and Thompson, and perhaps Hammond, had agreed to engage in the illegal trafficking of firearms. As the trial judge weighed Carter's hearsay objection, the trial judge interpreted the evidence to indicate that Carter was the common denominator connecting the Task Force with the illicit firearm trafficking scheme. We recognize that none of these pieces of evidence are likely sufficient to establish a conspiracy alone. To be sure, the State relied on the trial judge to draw the inference that Hammond did not acquire the firearms from another source. The reliance on this circumstantial evidence, however, is not fatal to the trial judge's factual findings. Indeed, the evidence available to the fact-finder was "sufficient to show the combination and community of interest." *Manuel*, *supra*, 85 Md. App. at 16. After viewing the evidence in the aggregate and drawing all reasonable inferences in favor of the State, we hold that the trial court was not clearly erroneous by finding that Carter, Thompson, and Hammond were engaged in a conspiracy.

Furthermore, Carter argues that the circuit court improperly considered the State's proffer that Hammond would later testify that Carter contacted him instructing him to dispose of firearms, when deciding whether their was a conspiracy. Carter correctly observes that whether Carter contacted Hammond had yet to be admitted into evidence at the time the judge considered Carter's hearsay objection. The trial court's cognizance of a proffer of

evidence to be admitted later cannot, however, impair its ability to decide upon preliminary questions. Indeed, as the Supreme Court has observed, we regularly rely upon the experience of trial judges to assess the reliability of evidence, some of which is inadmissible or has yet to be admitted, when deciding upon preliminary questions. *See Bourjaily v. United States*, 483 U.S. 171, 180 (1987).

> A piece of evidence, unreliable in isolation, may become quite probative when corroborated by other evidence. A *per se* rule barring consideration of these hearsay statements during preliminary factfinding is not therefore required. Even if out-of-court declarations by co-conspirators are presumptively unreliable, trial courts must be permitted to evaluate these statements for their evidentiary worth as revealed by the particular circumstances of the case. Courts often act as factfinders, and there is no reason to believe that courts are any less able to properly recognize the probative value of evidence in this particular area.

*Id.*; Md. Rule 5-104 ("[T]he court may . . . decline to require strict application of the rules of evidence" when deciding preliminary questions).

We recognize that here the trial judge was aware that the State intended to introduce evidence that Carter and Hammond discussed the disposal of the firearms. The record is ambiguous as to whether the trial judge considered, and if so to what extent he relied upon the State's proffer regarding evidence yet to be admitted. We need not decide as a matter of law, however, whether it is *per se* improper for the judge to consider this proffer, because there was sufficient evidence independent of the States proffer for the judge to conclude that there was a conspiracy between Thompson and Carter.

Carter cites *Shelton*, *supra*, 207 Md. App. 363,[6] and *Walker v. State*, 144 Md. App. 505 (2002), as examples of circumstances in which "substantial evidence" existed to support the finding of a conspiracy. On appeal, however, our role is not to decide whether the evidence is sufficiently substantial so that we are persuaded that there was a conspiracy. Rather, we simply aim to determine whether the State presented sufficient evidence so that a reasonable fact-finder could find that it is more likely than not that a conspiracy existed.

We, are persuaded that the State has satisfied its burden of production in establishing the facts necessary for the circuit court to decide this preliminary question. We hold that the trial court was not clearly erroneous by finding that Carter, Thompson, and Hammond were engaged in a conspiracy. We, therefore, affirm the circuit court's ruling on Carter's hearsay objection.

**II. Darden's Testimony Was Not Hearsay**

Secondly, Carter avers that Darden's statements regarding the absence of particular records fails to satisfy the conditions necessary to fall within the business records exception to the rule against hearsay. Carter, however, has failed to establish that Darden's testimony

[6] Carter argues that *Shelton* is distinguishable from this case because in *Shelton*, substantial evidence supported the existence of a conspiracy. The State, however, analogizes our case with *Shelton*. We are persuaded that this case is sufficiently similar to *Shelton*. In *Shelton*, we found that a coconspirator's statement was admissible and held that "[o]ur review of the record . . . leads us to conclude that the State presented sufficient evidence that the court could reasonably find that Shelton, Hogley, and Duffin were sufficiently engaged in a conspiracy. *Id*. at 377.

constitutes hearsay in the first instance. For the reasons that follow, we hold that Darden's testimony about the absence of records was not hearsay.

As we articulated in Part I, *supra*, hearsay is "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). Furthermore, a statement is "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801(a). Regardless of the means by which a statement is uttered, in all circumstances a statement must be an assertion. The Rule, however, fails to define assertion for the purposes of Rule 5-801(a). The Committee note to Rule 5-801 explains:

> This rule does not attempt to define 'assertion,' a concept best left to development in the case law. The fact that proffered evidence is in the form of a question or something other than a narrative statement, however, does not necessarily preclude its being an assertion. The Rule also does not attempt to define when an assertion, such as a verbal act, is offered for something other than its truth.

*Soddard v. State*, 389 Md. 681, 689 (2005).

If evidence is not an assertion, it cannot be hearsay. *Bernadyn v. State*, 390 Md. 1, 10 (2005) ("If the declaration is not a statement . . . it is not hearsay and it will not be excluded under the rule against hearsay."). Rather, the absence of evidence that is not hearsay is more appropriately analyzed as mere circumstantial evidence. *See e.g.*, *Webster v. Moore*, 108 Md. 572 (1908) (analyzing evidence presented about the absence of complaints as inconclusive circumstantial evidence rather than hearsay). To be sure,

circumstantial evidence may be subject to challenge as irrelevant or unduly prejudicial, but if it is not an assertion it is not hearsay.

In the case *sub judice*, the absence of records is not an assertion. At trial, Darden made multiple statements regarding his failure to uncover records or other documents that indicate the firearms seized by the Task Force had been properly admitted into evidence. Darden was merely testifying as to the personal observations he made while investigating a matter for the Internal Affairs Division.

Carter cites *Gross v. Estate of Jennings*, 207 Md. App. 151 (2012), and *Davis v. Goodman*, 117 Md. App. 378 (1997), as examples of instances when evidence was properly determined to satisfy the business record exception to the rule against hearsay. These cases, however, are critically distinguishable from this case because in *Gross* and *Davis,* the records were affirmatively offered for their contents. *See Gross*, *supra*, 207 Md. App. 151; *Davis*, *supra*, 117 Md. App. 378. In those cases, the original statements were uttered by a declarant who was not subject to cross-examination. The authorities cited by Carter might be applicable if Darden uncovered a record and proceeded to testify as to its contents. If that were the case, the declarant who created the records would not be subject to cross-examination. When no assertion is made, however, the concerns that drive the rule against hearsay are inapplicable.

Carter argues that Darden was not qualified to testify as to the absence of records because he did not maintain or control the databases that he searched.[7] Our hearsay rules, however, do not aim to ensure that a party may only call the most qualified witnesses to testify. Here, Darden testified that he failed to find certain records. There were no statements made by witnesses who could not be cross-examined. Carter was free to use Darden's alleged unfamiliarity with the databases to impeach Darden's credibility. Nevertheless, Darden's failure to locate particular records does not constitute hearsay. We, therefore, hold that the circuit court did not err in overruling Carter's objection to Darden's testimony on the grounds of hearsay.

**JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[7] Carter contends that if a record qualifies as a business record, i.e., meaning a foundation for a business record has been established, the absence of an entry in that business record is admissible evidence. *See* Md. Rule 5-803 (b)(7). Carter further argues that testimony about the databases did not fall within the ambit of the business record exception because Sergeant Dorden did not have any personal knowledge of how the databases were created or maintained.