UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2339

September Term, 2015

JERAMEY KISHON BRADSHAW, SR.

v.

STATE OF MARYLAND

Wright,
Arthur,
Leahy,

JJ.

Opinion by Arthur, J.

Filed: January 27, 2017

On March 27, 2015, a Calvert County jury convicted appellant Jeramey Kishon Bradshaw, Sr., of armed robbery, conspiracy to commit robbery, attempted armed robbery, first- and second-degree assault, use of a handgun in the commission of a felony or crime of violence, reckless endangerment, theft, and false imprisonment. After Bradshaw unsuccessfully moved for a new trial, the court imposed a sentence of 39 years and one day of imprisonment, followed by five years of probation, and ordered him to pay $830 in restitution.

In Bradshaw's timely appeal, he complains of two evidentiary rulings and a jury instruction. Finding that the circuit court did not err, we affirm.

FACTUAL AND PROCEDURAL HISTORY

At about midnight on June 2, 2014, Bradshaw and his fiancée Deanna Gearheart arrived at the apartment of Kevin Coates in North Beach, Maryland. They went into a bedroom, where they joined Coates and his brother, Tyrone Claggett, among others. Coates's mother, Regina Claggett-Brown, was in the living room; Coates's one-year-old daughter was asleep in another room.

Bradshaw and Gearheart left the apartment at around 1:15 a.m. Less than a minute later, as Claggett-Brown got up to lock the door, two masked assailants barged into the apartment, armed with handguns.

One assailant, whom Claggett-Brown immediately recognized as Bradshaw, told her "to shut the F up or he was going to kill [her]." He demanded money. When she said

that she had none, he pushed her down on a couch and put a gun to her head. She heard gunshots and surrendered her purse.

From the bedroom, Coates heard yelling and screaming. His brother, Claggett, went out to see what was happening. Coates heard a gunshot and saw his brother "falling back" into the bedroom. Someone dressed in black, wearing goggles and a hood, and brandishing a black pistol, told everyone in the bedroom to get on the floor and to give him their cell phones and all their money. Coates gave up his phone, and the person in black took it.

After the assailants left, Coates found a bullet hole in the doorway of the bedroom where his daughter had been sleeping. A gunshot had grazed his brother's neck.

Claggett-Brown immediately called 911. She identified her assailants as "Jeramey" and "Tre." Apparently so upset that she could not answer questions about the address of the apartment, she handed the phone to Coates, who gave the address and told the operator that the assailants were Bradshaw's brother and the brother's friend.

Within three or four minutes, a police sergeant arrived. Claggett-Brown, who was "visibly upset," "crying," and angry, spoke to him in a "high-pitched" and "overbearing" tone. She identified Bradshaw and his brother Deontre Bradshaw as the assailants. About 15 or 20 minutes later, a detective arrived. Claggett-Brown, who was still "anxious," "upset," and "very excited," reiterated her identification of Bradshaw.

Two days after the home invasion, the police obtained arrest warrants for Bradshaw and his brother, but were unsuccessful in serving them at their addresses of

record in Maryland. After the issuance of a nationwide law-enforcement bulletin, Bradshaw was arrested in Wake County, North Carolina, on June 20, 2014. Bradshaw's brother Deontre was arrested in another county in North Carolina on that same day.

When Bradshaw was arrested in North Carolina, he initially gave the officers a false name and denied that he was Jeramey Bradshaw. The officers found a semi-automatic rifle in the Kia Sportage in which he was a passenger. His fiancée had been driving.

At trial, Claggett-Brown testified about her identification of Bradshaw. She said that she "immediately" recognized him because he had left only seconds earlier and was wearing the same clothes that he had been wearing when he left. She said that she is familiar with his build and that she recognized his voice from previous conversations with him. She testified that she addressed him by name, asking, "Why would you do this?"[1]

Two officers, a sergeant and a detective, testified that they spoke with Claggett-Brown within minutes of the home invasion. According to the sergeant, she was "visibly upset"; according to the detective, she was "very excited." Over a hearsay objection, both of the officers testified that Claggett-Brown identified Bradshaw as one of the

[1] Elizabeth Cooksey, who was in the bedroom at the time of the home invasion, identified Bradshaw as the assailant who entered the bedroom. She did so even though, only moments before, she had admitted to being unable to say whether Bradshaw had come to the bedroom. Bradshaw's brief attempts to make something of the conflict between her testimony and Claggett-Brown's, but the jury was evidently unpersuaded. We recount the facts in the light most favorable to the prevailing party, in this case, the State.

assailants. In addition, the State played a recording of the 911 call, in which Claggett-Brown said that "Jeramey" was one of the assailants.

Testifying in his own defense, Bradshaw denied any involvement in the robbery. He claimed that, as he and Gearhart were leaving the apartment, he observed two men wearing black clothing and masks enter the building. He said that he and Gearhart heard what sounded like a gunshot. He did not, however, call anyone at the apartment to see if they were okay. He claimed to have found out about the robbery when he called Claggett about an hour after he had left the apartment.

Bradshaw testified that he was in North Carolina at the time of his arrest because he was helping Gearheart move there in connection with a waitressing job. On cross-examination, however, Bradshaw could not recall the basic details of his fiancée's new living arrangements, and he insisted that he was not moving to North Carolina with her even though they had lived together in Maryland and had recently become engaged. He said that he had assisted in loading and unloading the Kia Sportage on multiple occasions, but claimed to have been unaware of the rifle's presence inside the vehicle and could not explain why it was there. Even though Gearhart would have been able to corroborate his account, he admitted that he did not ask her to confirm his alibi to the police. Gearheart did not testify at trial.[2]

[2] In a recorded conversation that occurred 18 days before trial, Bradshaw told Gearhart that it was "good" that she had spoken to no one other than his lawyer. He told her that he would not subpoena her, and she said that she would invoke her privilege against self-incrimination if she were subpoenaed. After the recorded call, the State did subpoena Gearhart, but it released her after Bradshaw's testimony. The defense initially

The court granted a motion for judgment of acquittal on a charge of malicious destruction of property and submitted the remaining counts to the jury. The jury returned a verdict of guilty on all remaining counts.

QUESTIONS PRESENTED

Bradshaw presents three issues on appeal, which we quote:

1. Did the Circuit Court err when it permitted the State to introduce evidence that there was a semi-automatic rifle in the vehicle Mr. Bradshaw was driving [*sic*] at the time he was arrested in North Carolina with no showing that the rifle was in any way connected to the underlying offense?

2. Did the Circuit Court err in giving the jury a flight instruction when the evidence did not show that Mr. Bradshaw's travel to North Carolina was due to the consciousness of guilt of the underlying offense?

3. Did the Circuit Court err in admitting testimonial hearsay statements from witnesses through the testimony of police officers?

For the reasons that follow, we answer all questions in the negative.

Consequently, we shall affirm the convictions.

DISCUSSION

I. The Admission of Evidence Concerning the Semi-Automatic Rifle

During Bradshaw's testimony, the trial court, over his objection, admitted evidence that the police found a semi-automatic rifle in the car in which he was a passenger when he was arrested. Bradshaw contends that the evidence of the rifle was

claimed to have subpoenaed her, but immediately shifted ground, said that it did not "want to fight that battle," and rested its case.

irrelevant. Alternatively, he contends that its probative value was substantially outweighed by the danger of unfair prejudice. We disagree on both counts.

A. Relevance

Evidence is relevant if it tends 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. A court may admit relevant evidence, but it has no discretion to admit evidence that is irrelevant. *Smith v. State*, 218 Md. App. 689, 704 (2014) (citing Md. Rule 5-402). A ruling that evidence is legally relevant is a conclusion of law, which we review de novo. *See id.*

In this case, the evidence concerning the rifle was relevant because it enhanced the probability of the State's theory that Bradshaw had fled to North Carolina to avoid apprehension, and not (as he said) to assist Gearhart in relocating there. The State's theory was supported by evidence that Bradshaw knew that he had been identified as one of the perpetrators of the home invasion, because Claggett-Brown had addressed him by name during the incident. It was also supported by the evidence that, within an hour of the home invasion, he had spoken to Tyrone Claggett and may have learned that the victims had reported the incident to the police. In addition, it was supported by Bradshaw's admission that when the police stopped him in North Carolina, he initially lied about his identity. The presence of a rifle in the car in which he was stopped was further, relevant evidence that he was in North Carolina because he had fled to escape capture, and not (as he said) because he was helping his fiancée to move to another state.

The relevance of the weapon was only enhanced by the absence of any other explanation for why it was in Bradshaw's possession (e.g., the absence of any evidence that he was a gun collector, that he was taking it to a gunsmith to be repaired, or that he and his fiancée were about to go hunting or target-shooting).

Bradshaw relies on *Dobson v. State*, 24 Md. App. 644 (1975), to establish that the evidence of the rifle was irrelevant. *Dobson* is inapposite.

In *Dobson* the defendant was charged with armed robbery and kidnapping. He called his father to try to establish that the police had planted the inculpatory evidence, including a revolver, that they had purportedly found in a search. *Id.* at 655. On cross-examination, the State asked the father whether he had ever seen his son with a gun, and he said that he had not. *Id*. at 656. In rebuttal, the State called a witness who testified, over objection, that he had seen the defendant with a gun four months before the robbery. *Id.* at 658.

On appeal, this Court held that the witness's testimony was not proper rebuttal of the father's testimony, because the witness had not said that the defendant's father "was present and saw, or should have seen," the gun that the witness claimed to have seen. *Id.* at 659. The *Dobson* Court added that the State could not have used the witness's testimony in its case-in-chief, because it would have been "irrelevant for the State to demonstrate that four months before the events giving rise to this case, the [defendant] was seen with a gun in his possession." *Id.* at 660. "Possession by the appellant of a weapon four months prior to the happening of a particular event d[id] not give rise to a

rational inference that appellant, because of such possession, also possessed other weapons at a later time." *Id.*

Bradshaw argues that his possession of a rifle was similarly irrelevant to whether he had participated in an home invasion 18 days earlier, when the assailants brandished pistols. The State, however, did not attempt to show that because Bradshaw possessed a rifle in North Carolina, he probably had and used a (different) weapon during the home invasion in Calvert County. Instead, the State argued that the unexplained presence of a semi-automatic rifle, in the car in which Bradshaw was apprehended after giving officers a false name, strengthened the inference that he was in North Carolina because he was fleeing from the authorities in Maryland, and not (as he said) because he was helping his fiancée to move to another state. Because the evidence of the rifle had at least some tendency to "make the existence of [a] fact that is of consequence to the determination of the action more probable . . . than it would be without the evidence" (Md. Rule 5-401), the circuit court did not err in concluding that it was relevant.

B. Probative Value vs. Danger of Unfair Prejudice

Even if evidence is relevant, a court may exclude it "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. The circuit court declined to exclude the evidence of the rifle on this ground. We review that decision for abuse of discretion. *See, e.g.*, *Carter v. State*, 374 Md. 693, 705 (2003). When weighing the

probative value of proffered evidence against its potentially prejudicial nature, an abuse of discretion in the ruling may be found "where no reasonable person would share the view taken by the trial judge." *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009).

In arguing that the trial judge abused her discretion, Bradshaw cites *Dobson* for the proposition that the possession of a different gun on another occasion "served only to arouse the passions of the jury" and "obfuscated the real issues by injecting into the trial 'evidence of [the] defendant's evil character' in toting a gun in order 'to establish a probability of his guilt.'" *Dobson*, 24 Md. App. at 660 (quoting *Michelson v. United States*, 335 U.S. 469, 475 (1948)). Bradshaw also cites *Banks v. State*, 84 Md. App. 582 (1990), in which this Court reversed a drug-distribution conviction because the circuit court had admitted photographs, which the State admitted had little relevance, of the defendant holding, pointing, and admiring a handgun.

In the exercise of her discretion under Rule 5-403, it would not have been unreasonable for the circuit court judge to rely on *Dobson* or *Banks* to exclude evidence of the rifle. The judge, however, was not required to exercise her discretion in that manner. "Whether there has been an abuse of discretion depends on the particular circumstances of each individual case" (*Pantazes v. State*, 376 Md. 661, 681 (2003)), and it was at least equally reasonable for the court to conclude that the probative value of the rifle was not *substantially* outweighed by the danger of *unfair* prejudice.

Unlike the photographs of the alleged drug dealer looking fondly at his gun, which the State conceded had "minimal relevance" in *Banks*, 84 Md. App. at 590, Bradshaw's unexplained possession of a semi-automatic rifle was relevant as one part in the montage of facts that tended to establish that he was fleeing from prosecution in Maryland. Furthermore, while the State would have not have sought to admit the evidence of the rifle were it not prejudicial to Bradshaw, the evidence was not *unfairly* prejudicial, because the State did not use it to tarnish Bradshaw's character as in *Dobson*, but to strengthen the argument that Bradshaw had fled to North Carolina to evade prosecution in Maryland. For these reasons, the circuit court did not abuse its discretion in admitting the evidence of Bradshaw's unexplained possession of a semi-automatic rifle when he was apprehended in North Carolina.[3]

[3] Bradshaw argues that the admission of evidence of the rifle formed part of a "larger scheme by the State to portray [him] as a dangerous criminal and deny him a fair trial." According to Bradshaw, the other parts of the scheme included the prosecutor's reference to "jail calls" between Bradshaw and his fiancée; a detective's statement that he had received photographs of Bradshaw from an "allied department" and that Bradshaw "had contacts with another jurisdiction"; the State's alleged failure to produce photographs of the crime scene before a detective testified about them at trial; the State's alleged delay in producing a transcript of the recorded call between Bradshaw and Gearhart; and the State's error in sending some discovery to defense counsel's home address when he was on vacation, and not to his office. Bradshaw does not argue that the circuit court erred or abused its discretion in responding to any objections at trial about these other components of the alleged scheme. Consequently, he does not argue that this Court should reverse or vacate his conviction because of the court's rulings regarding those other components. He does argue that the alleged scheme should have led the court grant his motion for a new trial, but he does not request reversal on the ground that the court abused its discretion in denying that motion. *See Mack v. State*, 300 Md. 583, 600 (1984). In these circumstances, the alleged scheme and its components are not pertinent to our review.

II. Jury Instruction on Flight

At the State's request, the circuit court gave the pattern jury instruction on flight. Bradshaw contends that the circuit court erred in giving that instruction because, he says: (1) the State introduced no evidence that his travel to North Carolina was connected to any consciousness of guilt; and (2) there has been no showing that his movements were tied to his consciousness of guilt for the crime charged.

In response, the State contends that Bradshaw waived his right to challenge the instruction because he did not take exception to it at trial. Even if the issue is not waived, the State maintains that there is "some evidence" to support the flight instruction.

We agree with the State in both respects.

A. Bradshaw Waived His Objection to the Flight Instruction

Maryland Rule 4-325(e) requires that objections to jury instructions be made "on the record promptly *after the court instructs the jury*, stating distinctly the matter to which the party objects and the grounds of the objection." (Emphasis added.) The failure to object to the giving or the failure to give a jury instruction at trial ordinarily constitutes a waiver of claim that the instruction was erroneous. *See Morris v. State*, 153 Md. App. 480, 509 (2003). A party cannot fault a court for failing to correct an alleged error that he or she neglected to bring to the court's attention at the appropriate time.

During the trial, Bradshaw objected to questions relating to flight, but he took exception only to the instruction on second-degree assault. Accordingly, Bradshaw waived his objection to the flight instruction.

B. The Court Did Not Abuse its Discretion in Giving the Flight Instruction

Even if Bradshaw had properly preserved his objection (which he did not do), we would hold that the circuit court correctly exercised its discretion in giving the jury a flight instruction.

Md. Rule 4-325(c) requires the court to give a jury instruction when: (1) the requested instruction is a correct statement of the law; (2) the instruction is applicable under the facts of the case (*i.e.*, it is generated by some evidence); and (3) the content of the instruction was not fairly covered elsewhere in the jury instructions actually given. *See Atkins v. State*, 421 Md. 434, 444 (2011); *see also Thompson v. State*, 393 Md. 291, 302-03 (2006).

A flight instruction is warranted in a case when four inferences may be reasonably drawn from the evidence: (1) the defendant's behavior suggests flight; (2) the flight suggests a consciousness of guilt; (3) the consciousness of guilt is related to the crime charged or a closely related crime; and (4) the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime. *See Thompson*, 393 Md. at 312.

"We review a [circuit court's] decision whether to give a jury instruction under the abuse of discretion standard." *Thompson*, 393 Md. at 311. "[W]e must determine whether the requesting party produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Page v. State*, 222 Md.

App. 648, 668 (2015) (quotation marks and citations omitted).

"This threshold is low, in that the requesting party must only produce some evidence to support the requested instruction." *Id*. (citation and quotation marks omitted). The evidence is viewed "in the light most favorable to the requesting party" (*id*. at 669 (quoting *Hoerauf v. State*, 178 Md. App. 292, 326 (2008))), which in this case is the State. It need not rise to the level of proof beyond reasonable doubt, or clear and convincing evidence, or even a preponderance of the evidence. *Dykes v. State*, 319 Md. 206, 217 (1990). Nor does it matter that the evidence "is overwhelmed by evidence to the contrary." *Id.*

Bradshaw challenges the sufficiency of evidence relating to the second and third inferences – whether the flight suggests a consciousness of guilt and whether the consciousness of guilt is related to the crime charged or a closely related crime.

1. Travel to North Carolina Suggesting Consciousness of Guilt

Bradshaw contends that his travel to North Carolina did not suggest a consciousness of guilt because he says that he was merely assisting Gearheart with her move. He claims to have traveled to North Carolina three times between June 2, 2014, the date of the home invasion, and June 20, 2014, when he was apprehended. If he intended to flee, he says, he would not have returned to Maryland after the first two trips to North Carolina.

In our view, however, the State adduced at least "some evidence" to suggest that Bradshaw's travel was connected to a consciousness of guilt. For example, Claggett-

Brown testified that she addressed Bradshaw by name during the robbery. Her identification, whether alone or when coupled with what Bradshaw may have learned in his communication with Tyrone Claggett about one hour after the robbery, suggests a belief or awareness that he could be identified as a suspect and that he would be questioned by police.

Furthermore, the jury had reason to reject Bradshaw's stated explanation for his travel: he was unfamiliar with any basic details of Gearheart's living arrangements; he claimed not to be moving with her to North Carolina even though they were engaged and had been living together; it was not entirely plausible that Gearhart would move several hundred miles away from her fiancé to take a waitressing job, as Bradshaw claimed; Bradshaw's brother and alleged accomplice, Deontre, was also in North Carolina at the time of the arrest, but there is no indication that he was there to assist Gearhart in her move as well; Bradshaw gave the police a false name when they stopped him; and a semi-automatic rifle was found inside the vehicle that he claimed to have loaded and unloaded on multiple occasions, but he disclaimed any unawareness of its presence and could not explain why it was there.[4]

[4] Bradshaw testified that he gave a false name out of fear because multiple police officers approached the vehicle with their guns drawn. (In fact, there were eight officers, some of whom were from the U.S. Marshals Service.) His testimony does not change our conclusion. *See Sorrell v. State*, 315 Md. 224, 228 (1989) (explaining that the flight doctrine has been applied to a broad spectrum of behavior occurring after the commission a crime, including: "flight from the scene or from one's usual haunts after the crime" and "assuming a false name") (citations omitted).

If a court could give a jury instruction only if the evidence pertaining to it were undisputed, juries would receive little instruction. Because the jury had heard "some evidence" that might lead it to disbelieve Bradshaw's testimony that he was in North Carolina only because he was helping his fiancée move, we reject his challenge to the third precondition for the instruction, regarding flight as evidence of consciousness of guilt. *Thompson*, 393 Md. at 303 (stating that "a defendant's flight may be motivated by reasons unconnected to the offense at issue in the case and that the determination as to the motivation for flight is properly entrusted to the jury").

2. Connecting Consciousness of Guilt to the Crime Charged

Bradshaw contends that the court should not have given the flight instruction because "the State made no showing" that his consciousness of guilt "was connected to the charges at issue in this case," as opposed to the charges in another criminal case in which he was charged with a different robbery. He likens his case to *Thompson*, which held that a court abused its discretion in giving a flight instruction when the defendant admitted that he had fled, but claimed to have done so because he had cocaine in his possession, and not because he had committed the assault for which he was on trial. *Id.* at 313-15.

In reaching its decision, the *Thompson* Court found that the alternative explanation, "which was known to all parties involved although not revealed to the jury, undermine[d] the confidence by which the inference could be drawn that Mr. Thompson's flight was motivated by a consciousness of guilt with respect to the crimes

for which he was on trial." *Id.* at 314. Thompson's explanation "provide[d] a foundation for the alternate, and equally reasonable, inference that [he] fled due to the cocaine in his possession, an action a person in his position may have taken irrespective of whether he also shot and attempted to rob [the alleged victim]." *Id.*

This case differs from *Thompson*, however, because Bradshaw never informed the court of the alternative explanation for his flight. We cannot fault the court for disregarding an "equally reasonable" inference for Bradshaw's flight if he failed to bring it to the court's attention in the first instance.

Furthermore, although the other robbery predated the home invasion in this case by about a week, Bradshaw can point to nothing, aside from the assertions in his appellate brief, suggesting that he fled to North Carolina because (or only because) he was a suspect in the earlier case. In fact, according to the district court's docket entries, the State did not charge him in the earlier case until July 12, 2014, several weeks after he had been apprehended in North Carolina. *See State v. Jeramey Kishan [sic] Bradshaw*, Case No. 6O00055047 in the District Court of Maryland for Calvert County.[5] Because we have no indication about whether Bradshaw knew, thought, or feared that he was a suspect in the earlier case at any time before he was charged in it, we have no basis to conclude that the earlier case supplies an equally reasonable explanation for his flight.

[5] The docket is available on the Maryland Judiciary Website at http://casesearch.courts.state.md.us/casesearch/.

Accordingly, the circuit court did not abuse its discretion in giving the jury a flight instruction.

III. Testimonial Hearsay

At trial, two officers testified that within minutes of the home invasion Claggett-Brown identified Bradshaw as one of the assailants. Her statements were unquestionably hearsay, because they were statements, other than one made by a declarant testifying at trial, that the State offered in evidence to prove the truth of the matters asserted (Md. Rule 5-801(c)) – i.e., to prove that Bradshaw was one of the assailants. The court, however, admitted the statements under the hearsay exception for "statement[s] relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" – i.e., "excited utterances." Md. Rule 5-803(b)(2).

Bradshaw contends that this testimony violated his rights under the Confrontation Clause of the Sixth Amendment and that the circuit court erroneously admitted the statements as excited utterances. We reject Bradshaw's contentions.

A. Bradshaw Has Not Preserved His Confrontation Clause Challenge

At trial, Bradshaw objected to the detectives' testimony regarding Claggett-Brown's statements only on hearsay grounds, arguing that the statements were not excited utterances. Although Bradshaw invoked the concept of "testimonial hearsay," which bears on whether the Confrontation Clause precludes the admission of hearsay,[6] he

[6] *See, e.g., Crawford v. Washington*, 541 U.S. 36 (2004).

did so in arguing that because Claggett-Brown made the statements in response to police questioning, they could not have been a spontaneous response to a startling event. He did not clearly ask the circuit court to decide the constitutional question that he now poses, nor did the circuit court ever rule on that question. Consequently, Bradshaw did not adequately preserve the question of whether the circuit court violated his rights under the Confrontation Clause by permitting the detectives to testify about Claggett-Brown's identification of him. Md. Rule 8-131(a); *Williams v. State*, 131 Md. App. 1, 22-24 (2000) (holding that no objection "on the basis of the Confrontation Clause has in any way been preserved for appellate review in this case" when the only objection arguably raised in the circuit court involved the hearsay exception for past recollection recorded).[7]

B. Even if Bradshaw Had Preserved a Confrontation Clause Challenge, It Would Be Unmeritorious

Even if Bradshaw had preserved his objection under the Confrontation Clause, we would hold it to be unmeritorious, because he had the opportunity to confront Claggett-Brown by cross-examining her when the State called her to testify at trial.

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" The Supreme Court has interpreted this language to prohibit a state from introducing an out-of-court declarant's "testimonial" hearsay statements against a

[7] To the extent that Bradshaw was attempting to persuade the circuit court that a response to police questioning can never be an excited utterance and is necessarily testimonial in nature, he is incorrect. *See Michigan v. Bryant*, 562 U.S. 344 (2011).

criminal defendant. *See generally Crawford v. Washington*, 541 U.S. 36 (2004); *State v. Norton*, 443 Md. 517 (2015); *Taylor v. State*, 226 Md. App. 317 (2016).

In this case, however, the Confrontation Clause is not implicated, because Claggett-Brown testified at trial. *See Crawford*, 541 U.S. 36, 59 n.9 (2004) ("when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements") (citation omitted); *see also California v. Green*, 399 U.S. 149, 164 (1970) (holding that "the Confrontation Clause does not require excluding from evidence the prior statements of a witness who concedes making the statements, and who may be asked to defend or otherwise explain the inconsistency between his prior and his present version of the events in question, thus opening himself to full cross-examination at trial as to both stories").

C. Claggett-Brown's Statements Were Properly Admitted as Excited Utterances

In addition to his unpreserved and unmeritorious Confrontation Clause argument, Bradshaw contends that the court erred in admitting Claggett-Brown's hearsay statements under the exception for excited utterances, because, he says, they were "responses to police questions" that "were not made without deliberation." The State counters that the circuit court did not err, because it found that Claggett-Brown made the statements while she was still under the stress of the violent home invasion that had ended only minutes earlier.

To determine whether evidence is admissible under the excited utterance exception to the hearsay rule, "the trial court looks into 'the declarant's subjective state of

mind' to determine whether 'under all the circumstances, [he is] still excited or upset to that degree." *Gordon v. State*, 431 Md. 527, 536 (2013) (quoting 6A Lynn McLain, *Maryland Practice: Maryland Evidence State & Federal* § 803(2):1(c) (2d ed. 2001)); Md. Rule 5-803(b)(2). The court considers the following factors: "how much time has passed since the event, whether the statement was spontaneous or prompted, and the nature of the statement, such as whether it was self-serving." *Gordon*, 431 Md. at 536.

"[T]he 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." *Id*. at 538. "Accordingly, the circuit 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).

We see no clear error in court's findings. The court heard that, during the home invasion, one of the assailants (whom Claggett-Brown has repeatedly identified as Bradshaw) had put a gun to her head while the other had shot one of her sons. The court also heard the 911 recording, in which Claggett-Brown was so distraught that she was unable to answer the dispatcher's basic questions about her address and had to hand the phone to one of her sons. The first officer testified that he arrived at the apartment within three or four minutes after he was dispatched and that Claggett-Brown was "visibly upset," "crying," and angry and was speaking in a "high-pitched" and "overbearing" tone of voice. The second officer arrived some time later, about 15 or 20 minutes after

receiving a call about an armed robbery, but that Claggett-Brown was still "anxious," "upset," and "very excited" and was talking, in a "loud" tone of voice, "to anybody who was listening."

Although Claggett-Brown may have made the hearsay statements in response to the officers' questions,[8] that fact alone is not dispositive. *See, e.g.*, *Marquardt v. State*, 164 Md. App. 95, 125-26 & n.15 (2005) (holding that trial court did not abuse discretion in finding that statements by victim, made to officer in officer's patrol car, minutes after assault and abduction ended, while victim was still crying and emotionally upset, were excited utterances); *see also Dennis v. State*, 105 Md. App. 687, 699-700 (1995) (holding that the circuit court did not err in determining that witness, who was reportedly "very upset, crying, [and] screaming, almost to the point of where she was hysterical," was still under the stress of excitement when she spoke to investigating officer 20 minutes after she had called to report homicide). Here, the circuit court had a sufficient factual basis to find that, when the officers questioned her, Claggett-Brown was still under the sway of the startling event that she had experienced and that her statements were "'the product of the exciting event" and not "the result of thoughtful consideration." *Parker v. State*, 365

[8] In fact, from the officers' testimony, it appears that Claggett-Brown identified Bradshaw without even waiting for them to ask her what happened. The first officer, Sgt. Naughton, said that when he arrived in the apartment, "There was determination to point out who did this, and Ms. Claggett-Brown, she knew exactly who did it and pointed out the names of the individuals that did it." The second officer, Detective Rich, was asked whether Claggett-Brown said anything to him when he arrived. He responded: "She said she was going to tell the police what happened, and she said Jeramey did this."

Md. 299, 313 (2001) (quoting *Mouzone v. State*, 294 Md. 692, 697 (1982), *overruled on other grounds*, *Nance v. State*, 331 Md. 549 (1993)).

In any event, even if the court had committed clear error in admitting the statements under the exception for excited utterances, any error would have been harmless. *Dorsey v. State*, 276 Md. 638 (1976). As the State points out, the court could also have admitted Claggett-Brown's hearsay statements under the exception for "[a] statement that is one of identification of a person made after perceiving the person." Md. Rule 5-802.1(c); *Thomas v. State*, 113 Md. App. 1, 6 (1996). Moreover, Claggett-Brown's hearsay statements were cumulative of her statements in the 911 call and at trial, in which she also identified Bradshaw as one of the assailants. *See, e.g.*, *Yates v. State*, 429 Md. 112, 124 (2012) (holding that admission of hearsay evidence was harmless error "given the cumulative nature of the similar statements offered at trial"). In short, upon our independent review of the record, we are able to declare a belief, beyond a reasonable doubt, that the alleged error in no way influenced the verdict. *Dorsey*, 276 Md. at 648.

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