Circuit Court for Washington County
Case No. C-21-CR-20-42

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 185

September Term, 2022

JUWAN HOWARD CAMPBELL

v.

STATE OF MARYLAND

Berger,
Beachley,
Ripken,

JJ.

Opinion by Berger, J.

Filed: May 17, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Following a jury trial, Juwan Howard Campbell ("Campbell"), appellant, was convicted of first- and second-degree murder, first-degree assault, use of a firearm in a crime of violence, and wearing, carrying, or transporting a handgun. On appeal, Campbell presents four issues for our review, which we have rephrased slightly as follows:

1. Whether the circuit court erred by not conducting a Maryland Rule 4-215(e) colloquy at a hearing on May 25, 2021.

2. If preserved, whether the circuit court erred by concluding that a State's witness's recorded interview was not admissible as substantive evidence under Md. Rule 5-802.1.

3. If preserved, whether the circuit court erred by admitting electronic messages recovered from a mobile phone.

4. Whether the circuit court erred by permitting an officer to testify how he had come to attribute a particular telephone number to Mr. Campbell.

For the reasons explained herein, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 27, 2019, Alonso Robinson, Jr. was fatally shot at the intersection of Madison Avenue and West Washington Street in Hagerstown, Maryland. On January 15, 2020, a criminal information was filed in the Circuit Court for Washington County charging Campbell in connection with Robinson's murder.

On January 17, 2020, Office of the Public Defender panel attorney Samuel S. Nalli entered his appearance on behalf of Mr. Robinson. On May 20, 2021, shortly before a motions hearing scheduled for May 25, 2021, Mr. Nalli filed a line requesting that the

motions hearing be converted to a settlement conference because "[t]he Defendant wrote attorney Nalli asking him whether it may be possible to postpone the Motions date for the reason that Defendant may seek other Counsel." At the hearing, the circuit court granted the request to postpone the motions hearing. We shall provide a more detailed description of the May 25, 2021 hearing in Part I of this opinion, in which we shall address the Maryland Rule 4-215(e) issue.

Trial was held on November 15-19, 2021. The jury heard testimony that on the evening of the shooting, Robinson attended a cookout that was being held to celebrate his father's birthday. At the cookout, an altercation occurred between Campbell, Ayaga McKell, and Robinson. The jury heard testimony that after the altercation at the cookout, a large group of people, including Robinson, followed Ayaga and Campbell up Madison Avenue. One witness described the group as "chas[ing]" the men who tried to leave. At the corner of Madison Avenue and West Washington Street, the heated verbal altercation escalated and ultimately Robinson was shot several times. Robinson's brother, Keion Abraham, identified both Ayaga and Campbell, both of whom he knew personally. Keion Abraham identified Campbell as the shooter, explaining that he was "[a] hundred percent" certain that Campbell was the shooter.

A neighbor, Katherine Shields, was also in attendance at the cookout. Shields had previously arranged to sell a Percocet pill to Ayaga McKell and had asked Mr. McKell to meet her at the cookout to complete the transaction. Shields testified that Mr. McKell brought Campbell with him to the cookout. Shields identified Campbell at trial and

testified that Mr. McKell referred to Campbell as "his brother." Shields was familiar with Campbell, having met him "two or three times" previously. She observed the altercation between Robinson and Campbell and testified that she saw Campbell "pull[] out his gun and sho[o]t [Robinson]." Other witnesses' testimony regarding the shooting was largely consistent with that of Shields and Keion Abraham.

There was no surveillance footage of the shooting itself, but the State introduced surveillance footage of two men walking down an alley connecting Dale Street and West Washington Street at 8:03 p.m. Other surveillance footage showed two similarly appearing men walking past 614-616 Washington Street at 8:05 p.m. At 8:09 p.m., the surveillance system recorded audio of eight gunshots fired in rapid succession. Within twenty seconds of the gunshots, the surveillance footage showed two individuals jumping through the alley next to 614 West Washington Street as five additional shots were heard. Police recovered a firearm from a trash can at 619 West Washington Street. The firearm matched cartridge cases recovered from the scene of the shooting. We shall set forth additional details regarding the trial record as necessitated by our discussion of the issues on appeal.

At the conclusion of the trial, the jury returned a verdict of guilty on all counts. The circuit court sentenced Campbell to life imprisonment for first-degree murder, with all but fifty-five years suspended. The court imposed a consecutive ten-year term for the use of a firearm, as well as a five-year term of probation. The remaining counts were merged for sentencing purposes. This timely appeal followed.

DISCUSSION

I. The circuit court did not commit reversible error by declining to immediately conduct a Maryland Rule 4-215(e) colloquy at the May 25, 2021 pretrial hearing.

Campbell asserts the circuit court erred by failing to conduct what he contends was the necessary inquiry after his attorney informed the court that Campbell might be seeking other counsel. On May 20, 2021, Mr. Nalli filed a line requesting that the motions hearing be converted to a settlement conference because "[t]he Defendant wrote attorney Nalli asking him whether it may be possible to postpone the Motions date for the reason that Defendant may seek other Counsel."

The circuit court addressed the matter at a May 25, 2021 hearing, at which the following exchange occurred:

> [DEFENSE COUNSEL]: Hello, Your Honor. I put a line in um, we are set for motions today, but I received a letter from Mr. Campbell, it looks like he's . . . seeking other counsel, so I wouldn't – didn't want to proceed today with the motions . . . , so that's one order of business today. I did receive new discovery from [the prosecutor] and I'll hand that over to Mr. Campbell, he should get – that should be all the discovery up to date. So, that's where we are at this posture. Mr. Campbell[,] what is your intention moving forward at this point?
>
> DEFENDANT CAMPBELL: I would like to seek for a new attorney and go on from there.
>
> THE COURT: Okay. So sir, what's your time frame, in terms of retaining other counsel?
>
> DEFENDANT CAMPBELL: At least by the end of next week.
>
> THE COURT: All right. And so, are – is it your intention to have Mr. Nalli remain in the case, until you get other counsel,

to have a smooth line with new counsel retained and then Mr. Nalli can strike his appearance? Or, ask that his appearance be stricken?

DEFENDANT CAMPBELL: I mean, either or cause it's only going to be until next week, so I mean.

THE COURT: Well, if – if you are not able to retain new counsel, I would not want you to be in a situation where you're unrepresented, that would not be helpful to you.

DEFENDANT CAMPBELL: I am gonna get a new lawyer.

THE COURT: Okay. So, are you a panel attorney in this case?

[DEFENSE COUNSEL]: Yes, Your Honor, so I would ask to strike my appearance and my appearance as public defender.

THE COURT: Well, if we, you know, if we go in that direction, which I'm not sure has been requested, then I would do an advisement. I certainly won't do that unless I'm requested to by uh, by your client. Mr. Campbell[,] do you understand that if there were some hiccup in you retaining private counsel, that if I were to strike the appearance of Mr. Nalli, my understanding is that you would not be able to then get another attorney, through the public defender's office.

DEFENDANT CAMPBELL: I understand that.

THE COURT: So, if you'd like to wait . . . we can – I can reschedule a motions hearing but that way you can keep counsel in place and then if, you know, if new counsel – if you retain somebody they'll enter their appearance. Office of the public defender can be stricken out and Mr. Nalli can be stricken out, that's no problem at all. Is that what you'd like to do, just have a postponement today, have motions reset, so that you can get your new counsel in place?

DEFENDANT CAMPBELL: Yes.

THE COURT: Okay. So then I'm – Mr. Nalli[,] I'm not going to strike your appearance, you're in the case, you'll receive, he'll receive the new date. He'll pass that along to you but of course, whenever you get new counsel, they can enter their

> appearance, then Mr. Nalli's appearance will be stricken at that time. That way you have a smooth continuity of counsel and you're not stuck, right?
>
> DEFENDANT CAMPBELL: Okay.
>
> ***
>
> THE COURT: Okay. All right . . . , so Mr. Campbell, has new counsel actually been retained yet? I know you're on the cusp but have you actually done it yet?
>
> DEFENDANT CAMPBELL: No, I'm on the cusp[.] [W]hen I get back I'm gonna make the calls, that I need to make and . . . my family [is] going through that process.
>
> THE COURT: Okay. All right well sir, [the prosecutor] raises a very good point, which is with a November trial date it's certainly important that action be taken immediately because you – you know, for a complicated case . . . counsel won't be able to get involved right before the case. And there is absolutely no guarantee you would get a postponement, if counsel gets involved even right up next to trial date. So, taking action now while there's still time to ramp up and prepare, is – is very important. So, I'm glad you're being proactive about that. In the meantime, know that Mr. Nalli is in the case for you. I'll go ahead and have the assignment clerk set a new motions date.

When the parties next appeared before the circuit court on August 12, 2021, the prosecutor advised the court that at the prior hearing, defense counsel had informed the court that Campbell anticipated hiring new counsel and that the court had "left Mr. Nalli in the case and just advised the defendant that . . . if he sought new counsel there could be a substitution at that point." Defense counsel advised the court that he had "talked to Mr. Campbell about his options, and he wishes to retain me as his attorney for his case."

On appeal, Campbell asserts that the circuit court violated Maryland Rule 4-215(e) by failing to conduct a Rule 4-215(e) colloquy at the May 25, 2021 hearing. Campbell contends that he is entitled to a new trial because the circuit court, in his view, did not strictly comply with the requirements of Maryland Rule 4-215(e). As we shall explain, we are not persuaded.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to counsel. *Lopez v. State*, 420 Md. 18, 33 (2011). These constitutional guarantees encompass not only the right to assistance by an attorney but also the right of a defendant to reject counsel and represent himself. *Id.* Maryland Rule 4-215 implements the constitutional mandates for waiver of counsel and provides in section (e):

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

The requirements of Maryland Rule 4-215(e) are considered mandatory in order "to protect the fundamental rights involved, to secure simplicity in procedure, and to promote fairness in administration." *Parren v. State*, 309 Md. 260, 280 (1987). "[S]trict compliance" with the Rule is required, and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012). "In evaluating the trial court's compliance with Rule 4-215(e), Maryland appellate courts generally apply a *de novo* standard of review." *Cousins v. State*, 231 Md. App. 417, 438 (2017).

Compliance with Maryland Rule 4-215(e) is triggered by "any statement from which a court could conclude reasonably that the defendant may be inclined to discharge counsel." *Gambrill v. State*, 437 Md. 292, 302 (2014) (internal quotation omitted). Campbell asserts that Mr. Nalli's line indicating that Campbell "may seek other counsel" as well as Mr. Nalli's comment at the May 25, 2021 hearing that it "look[ed] like" Mr. Campbell was "seeking other counsel," as well as Campbell's statement that he "would like to seek for a new attorney and go on from there" constituted a request to discharge counsel for the purposes of Maryland Rule 4-215(e). As we shall explain, we are not persuaded.

Campbell's request for a postponement of the motions hearing was coupled with his stated intention to potentially hire private counsel. The circuit court recognized that if the court were to rule on Mr. Nalli's request to discharge counsel, a Maryland Rule 4-215(e) inquiry would be necessary. The court, however, attempted to clarify Campbell's position

by inquiring as to whether Campbell was asking to discharge current counsel immediately or whether Campbell would prefer to have Mr. Nalli remain in the case until a different attorney could enter an appearance. Indeed, when the circuit court specifically asked Campbell whether it was his "intention to have Mr. Nalli remain in the case" until he obtained "other counsel," or if he was "ask[ing] that [Mr. Nalli's] appearance be stricken," Campbell responded, "*either or* cause it's only going to be until next week." (Emphasis supplied.)[1] Moreover, the circuit court granted the specific relief requested by Campbell -- a postponement of the motions hearings to accommodate his request for time to seek private counsel. Campbell does not cite any cases in which a trial court's decision to grant a postponement without conducting a Maryland Rule 4-215(e) inquiry was held to be reversible error.

Furthermore, we observe that when the parties next appeared on August 12, 2021, Mr. Nalli specifically advised the circuit court that he had "talked to Mr. Campbell about his options, and he wishes to retain me as his attorney for his case." As we explained in *Holt v. State*, 236 Md. 604, 619 (2018), when a defendant's "'last word' to the trial court indicated that any desire of [the defendant] to discharge counsel had passed," no Maryland Rule 4-215(e) inquiry is necessary. When Mr. Nalli affirmatively represented to the court that Campbell wished to retain him as his attorney on August 12, 2021, the circuit court

[1] Notably, this exchange occurred before the circuit court commented that "if there were some hiccup in [Campbell] retaining private counsel, that if [the court] were to strike the appearance of Mr. Nalli, [it was the court's] understanding . . . that [Campbell] would not be able to then get another attorney, through the public defender's office."

reasonably concluded that any past desire of Campbell to discharge Mr. Nalli had passed.[2] For these reasons, we hold that the circuit court did not err by declining to conduct a Maryland Rule 4-215(e) inquiry.

II. The circuit court did not commit reversible error by denying defense counsel's request to admit evidence of Katherine Shields's prior statement.

Campbell contends that the circuit court erred by denying defense counsel's request to admit a video recording of a prior statement made by State's witness Katherine Shields. Campbell contends that the video of Shields's statement, which defense counsel alleged was inconsistent with her testimony at trial, was a prior inconsistent statement admissible under Maryland Rule 5-802.1(a). We disagree with Campbell's contention.

"[A]ppellate review of whether evidence is hearsay and, if so, whether it falls within an exception and is therefore admissible, is *de novo*." *Hallowell v. State*, 235 Md. App. 484, 522 (2018) (citation omitted). Often, however, a trial court's ruling as to admissibility also involves a factual assessment. We review the trial court's factual findings for clear error. *See Hailes v. State*, 442 Md. 488, 499 (2015) ("In reviewing a trial court's ruling on

[2] Campbell attempts to distinguish *Holt* by focusing upon the circuit court's comment that Campbell would not be able to get another attorney through the public defender's office if Mr. Nalli's appearance had been stricken. Campbell suggested that this comment "tainted" his decision because "he may have only proceeded with Mr. Nalli because he could not hire private counsel and thought -- based on the judge's advice -- that his *only* alternative was proceeding *pro se*." (Emphasis in original.) This argument is conclusory and is contradicted by Mr. Nalli's express representation to the circuit court that he had "talked to Mr. Campbell about his options, and he wishes to retain me as his attorney for his case." This representation demonstrates that Campbell's decision to retain Mr. Nalli was based upon subsequent conversations with Mr. Nalli, not an isolated comment from the circuit court at a hearing two months earlier.

whether evidence falls under an exception to the rule against hearsay, an appellate court reviews for clear error the trial court's findings of fact[.]" (Citation and footnote omitted)).

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). Hearsay is inadmissible unless "otherwise provided by [the Maryland Rules] or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802. Maryland Rule 5-802.1 sets forth a hearsay exception for certain prior inconsistent statements, providing in relevant part:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> (a) A statement that is inconsistent with the declarant's testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and was signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement[.]

In this case, the prior statement at issue was videorecorded, and, Campbell asserts, should have been admitted pursuant to Md. Rule 5-802.1(a)(3).

The issue arose during the cross-examination of Shields. During direct examination, Shields had testified that she arranged to sell a Percocet pill to her friend Ayaga McKell, whom she had arranged to meet at the cookout. Shields testified that McKell brought Campbell with him to the cookout. She explained that there was "awkward tension" when Campbell arrived, and Campbell "put his hood up and was trying not to be seen by

[Robinson]'s dad." There was a verbal altercation between Campbell, Robinson, and Robinson's father, and "[e]verybody was just arguing." Shields decided to "t[a]k[e] what [she] was doing to [her] yard," and Shields, Campbell, and McKell went to her yard "up the street." As they walked up the street, Campbell was making "threats toward [Robinson's] unborn child" and "[t]hreats towards him." Shields testified that she d[id]n't recall [Robinson] saying stuff back," but she "kn[e]w he was upset about whatever [Campbell] was saying." When asked again if she heard Robinson saying anything back to Campbell, Shields again testified, "I don't recall if he was saying anything back."

On cross-examination, Shields was asked again about the threatening comments in the following exchange:

> [DEFENSE COUNSEL]: So [McKell and Campbell] didn't want to fight; right?
>
> [SHIELDS]: No.
>
> [DEFENSE COUNSEL]: Okay. And then --
>
> [SHIELDS]: But they were making comments when they were walking up the street. No -- [McKell] was not, but [Campbell] was making comments as he walked up the street, threatening [Robinson's] baby['s] mom's life and her unborn child.
>
> [DEFENSE COUNSEL]: Okay. And did you tell that to the detective?
>
> [SHIELDS]: Um, not at the moment, I don't believe so.
>
> [DEFENSE COUNSEL]: You believe that?
>
> [SHIELDS]: I might have.

Defense counsel later sought to admit a recorded interview of Shields on the basis of it being a prior inconsistent statement. The following exchange occurred during a bench conference:

> [DEFENSE COUNSEL]: . . . I still think it's going to be an inconsistent statement. I would like to play the video.
>
> THE COURT: What inconsistent statement?
>
> [DEFENSE COUNSEL]: [Shields] was saying that, that [Campbell] -- she said that [Campbell] was making these comments about the baby and so forth like that. That is not what she said earlier in, in the recording.
>
> THE COURT: What did she say earlier that makes that an inconsistent statement today?
>
> [DEFENSE COUNSEL]: That only [Robinson] was saying stuff, not [Campbell].
>
> THE COURT: Well that's not necessarily inconsistent, it's just not included in the previous statement; correct?
>
> [DEFENSE COUNSEL]: Okay. Okay, Your Honor.
>
> THE COURT: That's it?
>
> [DEFENSE COUNSEL]: That's it.
>
> THE COURT: Denied. Step back.

On appeal, Campbell contends that the circuit court committed reversible error by failing to admit Shields's prior recorded statement.

For the purposes of Maryland Rule 5-802.1(a), a prior statement is "inconsistent" if it "present[s] a material contradiction." *Wise v. State*, 471 Md. 431, 453 (2020). Testimony about "peripheral details alone" does "not amount to a positive contradiction" that would constitute a prior inconsistent statement. *Id.* at 456. A prior inconsistent statement for the

purposes of Rule 5-802.1(a) is a statement that is "impossible to square factually" with the witness's testimony at trial. *Id.* at 455 (quoting with approval *Wise v. State*, 243 Md. App. 257, 272 (2019)). In this case, defense counsel proffered that Shields had previously stated that "only [Robinson] was saying stuff, not [Campbell]," while at trial, Shields testified that Campbell had made threatening comments to Robinson.

The circuit court reasoned, based upon defense counsel's proffer, that Shields's prior statement was "not necessarily inconsistent," i.e., not impossible to square with Shield's trial testimony. On appeal, Campbell asserts that Shields's prior statement was an affirmative declaration that Campbell was not "saying stuff." In our view, the trial court's understanding of defense counsel's proffer as "not necessarily inconsistent" with Shields's trial testimony was reasonable. Defense counsel's proffer that Shields had previously said that "only [Robinson] was saying stuff, not [Campbell]" could have been understood as meaning that Shields had previously stated that Robinson was "saying stuff" but had omitted anything about Campbell "saying stuff." Defense counsel did not make clear that Shields had previously made an affirmative, express statement that Campbell was not "saying stuff."

Furthermore, when the circuit court judge expressed his understanding of the proffered prior statement as "not necessarily inconsistent" because "it's just not included in the previous statement," defense counsel did not clarify or otherwise attempt to correct any misunderstanding by the circuit court regarding the proffer. If, in fact, Shields's prior comment was an affirmative statement that Campbell was not "saying stuff," rather than

Shields previously mentioning Robinson "saying stuff" and omitting anything about Campbell, defense counsel could have clarified the misunderstanding at that time. Instead, when the circuit court judge explained why he viewed the prior statement as "not necessarily inconsistent," defense counsel responded, "Okay, Okay Your Honor."

The trial court's conclusion regarding the prior statement's admissibility was premised upon the court's uncontradicted understanding that Shields had not mentioned the threatening comments during the recorded interview. The record reflects that the trial court did not understand defense counsel's proffer to mean that Shields had previously affirmatively stated that Campbell was not "saying stuff." Our review of the trial court's decision to deny defense counsel's request to admit the prior statement must be confined to the record, and, specifically, to the proffer presented before the circuit court. In our view, based upon the defense counsel's proffer, the circuit court's conclusion that the prior statement was "not necessarily inconsistent" was reasonable. Accordingly, we reject Campbell's contention that the circuit court's denial of defense counsel's request to admit Shields's prior statement constitutes reversible error. [3]

[3] In his reply brief, Campbell asserts that in addition to being substantively admissible pursuant to Maryland Rule 5-802.1(a)(3), the prior statement was admissible for impeachment purposes under Maryland Rule 5-616(b)(1). Because this issue was not raised in Campbell's opening brief, we shall not address it. *See Jones v. State*, 379 Md. 704, 713 (2004) ("[A]n appellate court ordinarily will not consider an issue raised for the first time in a reply brief.").

III. The circuit court did not commit reversible error by determining that there was sufficient foundational proof to admit electronic messages recovered from a phone identified as belonging to Ayaga McKell.

Hagerstown Police Department Sergeant Jesse Duffey testified regarding messages recovered from a telephone that was identified as belonging to Ayaga McKell. He was admitted as an expert in digital forensics and data recovery. Sergeant Duffy testified that he was provided with a phone that had been recovered from the site of the shooting and he subsequently obtained a search warrant to access the information on the phone. Sergeant Duffy identified the phone as belonging to McKell based upon a photo of McKell that was set as the phone's wallpaper, as well as additional information he later recovered from the telephone, including a voicemail from "a probation agent leaving a message for Ayaga McKell."

Sergeant Duffy determined that the phone number associated with the device was 240-329-8949. Sergeant Duffy testified regarding the process by which he extracted data from the phone. During his testimony, Facebook messages between McKell and Shields and iMessages[4] between McKell and Campbell were introduced into evidence through Sergeant Duffy. On appeal, Campbell asserts that the Facebook messages and iMessages were not properly authenticated, and, therefore, the circuit court erred by admitting them into evidence.

[4] "iMessages are texts, photos, or videos that [are] sen[t] to another iPhone, iPad, iPod touch, or Mac over Wi-Fi or cellular-data networks." *See What is the difference between iMessage and SMS/MMS*, available at https://support.apple.com/en-us/HT207006 (last visited March 30, 2023), archived at https://perma.cc/FU7L-Z3ZH. The record uses the terms "iMessage" and "text message" interchangeably.

Md. Rule 5-901(a) sets forth the requirements for authentication and provides generally: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." The Rule lists, by way of illustration and not limitation, several ways to authenticate evidence, including: "[t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be." Md. Rule 5-901(b)(1). "[T]he burden of proof for authentication is slight, and the court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the jury ultimately might do so." *Dickens v. State*, 175 Md. App. 231, 239 (2007) (quotation marks, citation, and emphasis omitted). When a proponent makes a prima facie showing that a proffered document is genuine, then an item "comes in, and the ultimate question of authenticity is left to the jury." *Gerald v. State*, 137 Md. App. 295, 304 (quotation marks and citation omitted). We review a trial court's decision to admit such evidence for an abuse of discretion. *Id.* at 305.

A. Facebook Messages Between McKell and Shields

During Sergeant Duffy's testimony, the State sought to introduce certain Facebook messages recovered from McKell's phone into evidence. First, Sergeant Duffy identified State's Exhibit 85 as "Facebook messages between Katie Shields'[s] Facebook and Ayaga McKell" that "beg[a]n on [September] 27th around 4:33 P.M. and they end at 8:00." The exhibit contained a conversation discussing a sale of "perks," or Percocet pills, from Shields to McKell. When the State moved to admit Exhibit 85, defense counsel objected,

arguing that the Facebook messages had not been authenticated properly. Defense counsel argued that "it's just the Detective saying what he thinks they are" and "Ms. Shields would have been the best person to authenticat[e]" the messages. Defense counsel further argued that Sergeant Duffy "can say [the messages are from] Ayaga McKell's phone, but I don't think he can say that [the messages are between McKell and] Katie Shields."

The prosecutor responded that Sergeant Duffy's testimony established that the messages "came from the device," i.e., McKell's phone, and that "[t]here's no requirement that the State authenticate a document through only one witness." The prosecutor referred to Shields's earlier testimony, explaining that "what we've heard from Ms. Shields is she had been communicating with Ayaga McKell through Facebook Messenger on . . . September 27, 2019" and "they had been communicating about him purchasing Percocets." The circuit court overruled defense counsel's objection and admitted State's Exhibit 85 into evidence.

On appeal, Campbell asserts that the trial court did not consider the authorship of the messages prior to admitting the exhibit and instead concluded that the testimony of Sergeant Duffy alone was sufficient to authenticate the Facebook messages recovered from McKell's phone. We disagree. In our view, the combination of Sergeant Duffy's testimony and Shields's testimony was more than sufficient to establish that the evidence was "more likely than not" what the State claimed. *State v. Sample*, 468 Md. 560, 568 (2020). There is no requirement that evidence be authenticated by a single witness. Indeed, Campbell acknowledges that evidence can be authenticated in a variety of ways, including

"[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be." Md. Rule 5-901(b); *see also Sample*, *supra*, 468 Md. at 567-68 (concluding that "Facebook-related evidence" was sufficiently authenticated by circumstantial evidence).[5]

Campbell contends that the record reflects that the circuit court only considered the expert testimony, however, and not additional evidence demonstrating that State's Exhibit 85 was what the State purported it to be. We disagree. The prosecutor specifically referred to Shields's earlier testimony regarding the Percocet transaction when responding to defense counsel's objection. The circuit court did not expressly refer to Shields's testimony when ruling on defense counsel's objection, but the circuit court was not required to precisely explain the basis for the ruling. *See Rainey v. State*, 480 Md. 230, 267 (2022) ("[G]enerally, circuit courts do not need to fully articulate their reasoning for decisions on the record, because each decision is presumed to correctly and faithfully apply the law."). We hold that there was adequate foundational proof to allow a reasonable juror to conclude that the Facebook messages contained in State's Exhibit 85 were what they were purported to be, i.e., Facebook Messenger messages between Katie Shields and

[5] Indeed, when discussing his subsequent objection to State's Exhibit 86, which we shall address *infra* in Part III.B. of this opinion, defense counsel argued that State's Exhibit 86, which contained iMessages between McKell and Campbell, was "different from the last one," referring to the Facebook messages contained in Exhibit 85. Defense counsel observed that "Katie Shields testified that -- their location and everything. So I understand the authenticating of that one."

Ayaga McKell. Accordingly, we reject Campbell's contention that the circuit court erred by admitting State's Exhibit 85.

B. iMessages Between McKell and Campbell

Campbell takes further issue with the circuit court's authentication determination regarding certain iMessage conversations recovered from McKell's phone. Specifically, the circuit court admitted State's Exhibit 86, which contained iMessages that purported to be between McKell and Campbell. Detective Duffy testified, without objection, that in the course of his investigation, he had become familiar with a phone number associated with Juwan Campbell: 240-527-7695. This number was saved in McKell's contacts as "Wann."[6]

When the prosecutor moved for admission of State's Exhibit 86, defense counsel noted an objection. Defense counsel argued that the iMessages had not been properly authenticated because there was no evidence establishing that Campbell's phone number was 240-527-7695 other than Detective Duffy "saying Juwan Campbell's phone number is this number." The court responded, "Well that's going to be ripe for cross examination; correct?" The following exchange subsequently occurred:

> THE COURT: It's something [Sergeant Duffy] extracted from the phone. He described it as being communication between Ayaga [McKell] and this Wan[n].
>
> [DEFENSE COUNSEL]: And a Wan[n].

[6] The detective was cut off while he was spelling the name "Wann," so the transcript reflects a spelling of "Wan," but the exhibit reflects that the contact was actually saved as "Wann."

> THE COURT: Okay. So it is what it is. I assume the State will show its relevance later on.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: And I feel like the fact that he is an expert and did the extraction is enough foundation. So I'm going to admit [State's Exhibit] 86.

On appeal, Campbell contends that the circuit court erred by determining that Exhibit 86 had been sufficiently authenticated. Campbell asserts that the court admitted the exhibit solely on the grounds that it had been extracted from McKell's phone and that the court should have considered whether there was sufficient direct or circumstantial evidence that these messages were actually written by their purported authors. As we explained *supra*, circuit courts are not required to "fully articulate their reasoning for decisions on the record." *Rainey*, *supra*, 480 Md. at 267. The circuit court reasonably concluded that there was sufficient foundational proof to admit State's Exhibit 86 when: (1) the iMessages had been recovered from a phone associated with McKell, whom many individuals had testified was with Campbell at the time of the shooting; (2) were sent between McKell and an individual identified in the phone's contacts as "Wann,"[7] which witnesses testified was Campbell's nickname; and (3) the telephone number saved in the contacts as "Wann" was a telephone number that Sergeant Duffy testified (without objection) that he had learned during his investigation was associated with Campbell. In

[7] For example, Keion Abraham testified that Campbell's nickname was Wann. The name Wann was mistakenly transcribed as "Juan," which is a homophone for Wann. Shields similarly testified that she knew Campbell by his "street name," which was transcribed as "Juan."

our view, this is more than enough to establish that the iMessages contained within State's Exhibit 86 were "more likely than not" what the State claimed. *Sample*, 468 Md. at 568. Accordingly, we reject Campbell's contention that the evidence was improperly admitted.

IV. The circuit court did not commit reversible error by permitting Sergeant Duffy to testify about how he came to attribute a particular telephone number to Campbell.

Campbell's final appellate argument is that Sergeant Duffy's testimony regarding the way in which he came to attribute the telephone number 240-527-7695 to Campbell contained inadmissible hearsay. As we shall explain, we are not persuaded that the circuit court erred by overruling defense counsel's objection to Sergeant Duffy's testimony.

As we explained *supra* in Part II of this opinion, 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). Hearsay is inadmissible unless "otherwise provided by [the Maryland Rules] or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802.

The challenged testimony was elicited during Sergeant Duffy's re-direct examination. During direct examination, Sergeant Duffy testified, without objection, that during the course of his investigation, he had become familiar with the telephone number 240-527-7695 being associated with Campbell. Sergeant Duffy further testified that this phone number was stored in McKell's phone contacts with the name "Wann" and that McKell had communicated via text message with "Wann" over "a couple of months" leading up to the September 27, 2019 shooting. One of the communications on

September 27 included an exchange between "Wann" and McKell in which Wann asked if McKell was "on [D]ale."[8]

During cross-examination, defense counsel inquired of Sergeant Duffy whether he had "anything from the phone company or anything that says that's [Campbell's] phone number?" Sergeant Duffy replied that he did not. During re-direct examination, the prosecutor inquired as to the way in which Sergeant Duffy came to attribute the phone number to Campbell in the following exchange:

> [PROSECUTOR]: Okay. The -- how through the course of your investigation did you – or why did you attribute that 240-527-7695 number to Juwan Campbell?
>
> [SERGEANT DUFFY]: Because of the communication with Ayaga [McKell] as well as the communication with Jaheim Scott.
>
> [PROSECUTOR]: Okay. *What about that led you to attribute that to Juwan Campbell?*
>
> [SERGEANT DUFFY]: *The interview with Ayaga.*
>
> [PROSECUTOR]: Okay.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: And was, was there anything about the nature of the communication that helped you – or assisted you in identifying or confirming which person – humans – were associated with which phone numbers?

[8] Another detective had testified that McKell had a known address on Dale Street.

> [SERGEANT DUFFY]: Yeah. The communication on the 27[th] in the afternoon, a particular communication about who was on Dale Street and when they were on Dale Street.[9]

(Emphasis supplied.) State's Exhibit 86 contained a message from the 240-527-7695 number to McKell on September 27, 2019 asking McKell to "[let me know] when you rey be on dale."

Campbell contends that the "only rational conclusion" that the jury could draw from Sergeant Duffy's answer "[t]he interview with Ayaga" is that McKell told him that the number was Campbell's, and, accordingly, defense counsel's objection should have been sustained because the testimony constituted inadmissible implicit hearsay. We disagree.

Campbell relies upon the case of *Zemo v. State*, 101 Md. App. 303 (1994), in arguing that Sergeant Duffy's statement regarding his "interview with Ayaga [McKell]" contained inadmissible implicit hearsay. In *Zemo*, we held that a detective's statement contained hearsay when he testified that "he 'received information' which 'led [him] to a couple of names,' to wit, which then gave him some 'suspects.'" *Id.* at 312. We explained that "[t]he only rational conclusion that one can draw from the testimony is that the unnamed source passed on to the detective knowledge that the appellant . . . was implicated in the [crime]." *Id.* at 312-13.

In our view, in this case, unlike *Zemo*, there are a range of inferences that the jury could have drawn from Sergeant Duffy's testimony that he attributed the phone number to

[9] Defense counsel lodged an objection to this answer as well, arguing that it contained inadmissible hearsay. The court overruled the objection on the basis that it was not being offered for the truth of the matter asserted.

Campbell based on his "interview with [McKell]." As Campbell posits, it is possible that McKell told Sergeant Duffy that Campbell's phone number was 240-527-7695. It is also possible, however, that McKell conveyed other information to Sergeant Duffy that would lead to the conclusion that the phone number was associated with McKell. For example, McKell could have conveyed information to Sergeant Duffy regarding Campbell being on Dale Street, which would be consistent with the text exchanges between McKell and the 240-527-7695 telephone number saved in McKell's contacts with the name "Wann," such as information about Campbell being on Dale Street on September 27, 2019. Such a statement would not have been offered to actually prove Campbell was on Dale Street, but, rather, to explain why the phone number stored as "Wann" in McKell's phone likely belonged to Campbell. Indeed, Sergeant Duffy specifically referenced the text message about Dale Street when explaining how he came to associate the 240-527-7695 number with Campbell.

Because the jury could have drawn various conclusions from Sergeant Duffy's statement that he attributed the telephone number to Campbell, at least in part, due to his "interview with Ayaga [McKell]," this case is unlike *Zemo*. This is not a circumstance in which "the only rational conclusion that one can draw from the testimony," *Zemo, supra*, 101 Md. App. at 312, is a specific conveyance of one particular piece of information that was offered for the truth of the matter asserted. Accordingly, we reject Campbell's contention that Sergeant Duffy's testimony constituted inadmissible hearsay. We hold that

the circuit court did not err in overruling defense counsel's objection to Sergeant Duffy's testimony about his interview with McKell. For these reasons, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.