Circuit Court for Montgomery County
Case No.: C-15-CR-21-000082

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 635

September Term, 2024

GARY W. SAVAGE

v.

STATE OF MARYLAND

Berger,
Friedman,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: November 3, 2025

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

Gary W. Savage ("Appellant") was convicted by a jury in the Circuit Court for Montgomery County of voluntary manslaughter (as a lesser-included offense to first-degree murder) of Whali Shabazz, attempted murder of Amber Tucker, first-degree assault of Amber Tucker, and two counts of use of a firearm in the commission of a felony or crime of violence. The court sentenced Appellant to 10 years for the voluntary manslaughter of Whali Shabazz, 5 years concurrent for the use of a firearm in the commission of a felony or crime of violence as to Whali Shabazz, 15 years consecutive with all but 3 years suspended for the attempted first-degree murder of Amber Tucker (the conviction for first-degree assault merging with the attempted first-degree murder conviction for purposes of sentencing), and 5 years concurrent for the use of a firearm in the commission of a felony or crime of violence as to Amber Tucker. On appeal, Appellant presents three questions for our review:

1. Did the trial court err in denying Mr. Savage's motion to suppress his statements to the police?

2. Did the trial court err in admitting irrelevant and unduly prejudicial evidence?

3. Was the evidence legally insufficient to sustain Appellant's convictions?

For the reasons that follow, we shall affirm the judgment of the circuit court.

BACKGROUND

Appellant legally married Amber Tucker ("Ms. Tucker") in 2012, but the couple became estranged within five years of marriage. In 2021, while Ms. Tucker and Appellant were separated, Ms. Tucker met and developed a close relationship with Whali Shabazz ("Mr. Shabazz"). In response, Appellant sent threatening text and Facebook messages to

Ms. Tucker from July 31, 2021, through August 27, 2021. Some of the messages read, "I admit without protection I [sic] been hesitant but now as soon as I see u [sic] motherfucka [sic] u [sic] will beg me for your life[,]" "If u [sic] survive this u [sic] will never cheat on anyone else[,]" "that's why u [sic] deserve to be killed[,]" "I'm coming to the house and whoever tries to stop along with u [sic] will be shot in the face[,]" and "My dreams and PTSD tells me my wife and her boyfriend will die[.]" Appellant struggled with drug addiction and alleged he sent these messages while under the influence.

In 2021, Appellant attended treatment for his drug addiction in Florida. On July 2, 2021, approximately one month after being discharged, Appellant relapsed and used crack cocaine and beer.[1] By the end of August, Appellant was using three to four grams of crack cocaine and drinking a 24-pack of beer a day.

In early August 2021, Appellant decided to leave Florida for financial reasons and seek drug treatment in Maryland. On September 1, 2021, Appellant drove from Tampa, Florida to Silver Spring, Maryland with eleven grams of crack cocaine and some K2. By the time Appellant arrived in Maryland, he had been awake for eight days and had already smoked around eight of the eleven grams of crack cocaine.

On September 3, 2021, Appellant advised Ms. Tucker's son, Jeremy Moore, that he was coming to Mr. Moore's home. At the time, Mr. Moore was residing with Ms. Tucker in Silver Spring, Maryland. Approximately five minutes before Appellant arrived, he

[1] Appellant also used K2 (synthetic marijuana).

smoked about half a gram of the remaining crack cocaine, consumed about a half ounce of K2, and three or four 12-oz cans of beer.

Upon arrival, Appellant intentionally parked further away from the address. Unbeknownst to Mr. Moore, Appellant intended for Mr. Moore to drive him to the treatment center, and then surprise Mr. Moore by gifting Appellant's vehicle to him. Appellant saw Mr. Shabazz exit his truck. Mr. Shabazz allegedly said he "had something" for Appellant, and then, proceeded to open the back of his truck, and point a gun at Appellant, frightening him. Throughout the summer of 2021, Appellant received text messages which he perceived as threats from Ms. Tucker and Mr. Shabazz. The messages included requests for Appellant to send the $1,500 that Ms. Tucker accidently sent him, and a message from Mr. Shabazz telling him that he was "going to spaghetti my brains into my lap." Appellant shot the 9mm gun he had in his pocket at Mr. Shabazz. Mr. Shabazz died from three gunshot wounds.

Ms. Tucker, who was in the truck when Appellant shot Mr. Shabazz, ran to the front of the truck and behind another truck. Appellant climbed on top of the truck "to see if anyone was coming for him." Ms. Tucker alleged that Appellant pointed his gun towards her and fired two to three shots in her direction. Mr. Moore also witnessed Appellant stand on top of the truck, face Ms. Tucker and said, "I'm going to kill you, bitch." Appellant did not remember how many times he fired his gun and denied shooting at Ms. Tucker. Forensics recovered at the scene three fired cartridge casings that matched the characteristics of Appellant's 9mm gun.

When Appellant jumped off the truck, he alleged he felt like his clothes were burning, so he stripped down naked. Eventually, Ms. Tucker was able to call 911 for help. During the 911 call, Ms. Tucker expressed the following remarks to Appellant: "[y]ou know better," and "[Mr. Shabazz] hasn't done a damn thing." Officer John Gallagher arrived on the scene in response to a call for a shooting. The officer testified that he observed two vehicles in the driveway that were struck by gunfire. Additional officers arrived, including Detective Alexandria MacKinnon who testified at trial that Appellant "did not seem impaired in his ability to walk. . . . His speech was normal." Appellant was then taken into custody.

During custodial interrogation on September 3, 2021, Appellant was seen yawning and holding his head and stomach. Appellant also dozed off during the interrogation and described his "level of tiredness" to be at "about 75%[.]" Nevertheless, Appellant stated he was fair and sober. He was interrogated for approximately two hours and fifty minutes. He waited "at best two hours" between the time he was arrested and the time he was interrogated.

Appellant was charged by indictment with first-degree murder of Whali Shabazz, use of a firearm in the commission of a felony or crime of violence, attempted first-degree murder of Amber Tucker, first-degree assault of Amber Tucker, and use of a firearm in the commission or a felony or crime of violence as to Amber Tucker.

Appellant filed a motion to suppress his custodial statements, arguing violations under *Miranda*,[2] including two invocations of the right to counsel that were not honored. Appellant also argued that, due to his level of intoxication, he was incapable of knowingly and voluntarily waiving his *Miranda* rights and providing a voluntary statement.

On June 2, 2023, the circuit court heard Appellant's motion to suppress, which was granted and denied in part. The circuit court found Appellant's first invocation of his *Miranda* rights, where he stated he "might want to get a lawyer because I don't want to say nothing—and incriminate myself,"[3] was too ambiguous to constitute a proper invocation. Additionally, the circuit court found Appellant waived any invocation of silence when he acted in a manner "contrary to and inconsistent with [his] expressed sentiment" by immediately continuing to speak without further questioning by the detectives. Appellant's pre-*Miranda* statements and statements made after he made a clear invocation of the right

[2] *Miranda v. Arizona* requires officers to take procedural safeguards in interrogating a suspect. 384 U.S. 436, 444–45 (1966). Specifically, "the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." *Id.*; *Lee v. State*, 418 Md. 136, 149 (2011) (citing to *Miranda*, 384 U.S. at 479); *see also Rush v. State*, 403 Md. 68, 89 (2008) (finding warnings were adequate under *Miranda*).

[3] Appellant's exact words are unknown. As the circuit court noted: "It remains unclear to the Court what Mr. Savage said except that it included 'get a lawyer.'" However, Appellant himself argues the words were "might want to get a lawyer because I don't want to say nothing—and incriminate myself."

to counsel and to remain silent at timestamp 18:59:12 were suppressed. All other statements were admitted.

The circuit court found Appellant was not intoxicated or mentally incapacitated to the extent that rendered his statements involuntary. The circuit court cited several factors in making this determination, including Appellant's confirmation he was sober, understood English, held a college degree, and was a military veteran. The court also cited to the passage of time—that "[i]f Mr. Savage was intoxicated when the police first encountered [sic], the passage of 4 hours likely allowed Mr. Savage to sober up to some extent." Additionally, the circuit court found, upon reviewing the interrogation recording, Appellant understood the detective's questions and gave clear and coherent answers that "did not reflect disorientation or confusion." The circuit court found the interrogating officer's recitation of the *Miranda* warnings was neither "garbled" nor "speedy," and that "Mr. Savage clearly and unequivocally told [the interrogating officer] that he understood his rights." The court detailed that in coming to this conclusion, it had considered:

> [T]he totality of the circumstances, including, without limitation, where the interrogation was conducted, the length of the interrogation, who was present during the interrogation, how the interrogation was conducted, the interview's content, whether Mr. Savage was given *Miranda* warnings, Mr. Savage's mental and physical condition, age, background, experience, education, character, and intelligence, when Mr. Savage was taken before a court commissioner following his arrest, whether Mr. Savage was physically mistreated or intimidated or psychologically pressured, and the extent to which Mr. Savage was under the influence of drugs and alcohol.

The trial occurred on June 26-29 and July 5-7, 2023. On May 24, 2024, Appellant was sentenced to 10 years for the voluntary manslaughter of Whali Shabazz, 5 years concurrent for the use of a firearm in the commission of a felony or crime of violence of

Whali Shabazz, 15 years consecutive with all but 3 years suspended for the attempted first-degree murder of Amber Tucker (the conviction for first-degree assault merging with the attempted first-degree murder conviction for purposes of sentencing), and 5 years concurrent for the use of a firearm in the commission of a felony or crime of violence of Amber Tucker. This appeal followed.

STANDARD OF REVIEW

A. Custodial Statements

The circuit court's determination regarding whether a confession was voluntary is a mixed question of law and fact. *Winder v. State*, 362 Md. 275, 310 (2001). An appellate court considers the voluntariness issue under a de novo standard of review, *id.* at 311, accepting the fact finding of the circuit court, unless clearly erroneous. *Whittington v. State*, 147 Md. App. 496, 515 (2002). In reviewing the circuit court's ruling, the appellate court is limited to the record of the suppression hearing. *Id.* Furthermore, the facts in the record are viewed in the light most favorable to the prevailing party—in this case, the State. *Knight v. State*, 381 Md. 517, 535 (2004).

A defendant's statement is admissible in the State's case-in-chief only if it is "(1) voluntary under Maryland common law or nonconstitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*." *Griner v. State*, 168 Md. App. 714, 730 (2006) (quotations omitted); *see also* U.S. CONST. amend. XIV; MD. CONST. DECL. OF RTS. art. 22 ("That no man ought to be compelled to give evidence against himself in a criminal case."); *Miranda*

v. Arizona, 384 U.S. 436, 444 (1966) (outlining procedural safeguards required to inform a suspect of the privilege against self-incrimination).

B. Admission of Relevant Evidence

There is a two-step analysis in determining whether evidence was properly admitted on relevancy grounds. The appellate court first reviews *de novo* whether the evidence was relevant. *Akers v. State*, 490 Md. 1, 24 (2025). Then, the appellate court considers whether the circuit court abused its discretion by admitting relevant evidence which should have been excluded as unfairly prejudicial. *Id.* at 25.

C. Sufficiency of the Evidence

When reviewing the sufficiency of evidence, the court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). When making this determination, the appellate court "gives deference to a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation." *Koushall v. State*, 479 Md. 124, 149 (2022) (cleaned up). As the fact finder, the jury "possesses the ability to choose among differing inferences that might possibly be made from a factual situation. . . ." *Bible v. State*, 411 Md. 138, 156 (2009) (cleaned up). Thus, the appellate court determines "whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 431 (2015).

DISCUSSION

I. The Circuit Court Correctly Denied Appellant's Motion to Suppress Because His Custodial Statements Were in Compliance with *Miranda*.

Appellant argues his statements made during custodial interrogation should have been suppressed because his statements were: (1) involuntary and provided without the mental capacity to waive his *Miranda* rights due to his "severe" intoxication, and (2) produced in violation of his *Miranda* rights because such statements were made after Appellant invoked his right to remain silent and to have an attorney present. These arguments fail because the circuit court correctly determined: (1) Appellant was not so intoxicated or mentally incapacitated as to render his statements involuntary, and (2) the relevant request for a lawyer was ambiguous and his invocation of his right to remain silent was effectively waived. Thus, we find the circuit court properly admitted Appellant's statements. We explain below.

A. The Circuit Court Properly Determined Appellant Had the Requisite Level of Comprehension to Waive His *Miranda* Rights.

The case at bar presents conflicting testimony regarding the extent of Appellant's intoxication during custodial interrogation. Viewing the evidence in the light most favorable to the State, we find Appellant's statements were voluntary.

A confession is voluntary under Maryland nonconstitutional law if it is "freely and voluntarily made at a time when [the defendant] knew and understood what he was saying."

Hoey v. State, 311 Md. 473, 481 (1988). The relevant inquiry here[4] into whether the statements were made "freely and voluntarily" is determining whether the defendant was mentally capable of understanding what he said when he confessed, or whether he was "so far deprived of his sense of reason as not to be responsible for what he may have done or said." *Id.* In making this assessment, a court must look at the totality of the circumstances. *Whittington*, 147 Md. App. at 519.

In *Wiggins v. State*, the Supreme Court of Maryland found the defendant's statements admissible despite suffering from hallucinations as a result of alcohol withdrawal when they were made. 235 Md. 97, 101-02 (1964) (stating the defendant alleged the day after he confessed, he hallucinated having "rabbits in his hands" and "angel's hair" in his body). In *McCray v. State*, this Court determined the defendant's statements were admissible despite being so under the influence of alcohol that the defendant "slurred her speech and paused before answering the detectives' questions," urinated on herself, disrobed in front of male detectives, and answered questions "off base." 122 Md. App. 598, 614-15, 616 (1998) (finding that the defendant was nevertheless able to understand "what was going on around her" and "her rights [when she] voluntarily waived them."); *see also Hoey*, 311 Md. 473, 482-83 (finding the defendant's statements to be admissible despite expert opinion arguing the defendant was too mentally disturbed to really understand what he was doing). In *Whittington v. State*, the defendant argued she

[4] In determining whether a confession was given "freely and voluntarily," the Court must also determine that the confession was not induced by force, undue influence, improper promises, or threats. *Hoey*, 311 Md. 483. Despite the foregoing, Appellant does not argue coercion was at play here.

was, *inter alia*, too sleep deprived when she made her confession to have made it a voluntary confession. 147 Md. App. at 508. The defendant there was "groggy" due to her medication, in police custody for twenty-eight hours before she was eventually brought before a commissioner, and in custodial interrogation for at least eighteen hours. *Id.* at 509, 525. Nevertheless, the confession was found to have been voluntary since the defendant's grogginess improved "rather quickly" while in custody. *Id.* at 525; *see also Harper v. State*, 162 Md. App. 55, 84-85 (2005) (finding the defendant—who was then sleep deprived and under the influence of marijuana, alcohol, and cocaine—made his statement voluntarily because of his apparent awareness and understanding of what was said during the interview).

In the case at bar, Appellant argues he was too impaired by crack cocaine and alcohol to appreciate the nature of his statements.[5] Nevertheless, the facts point otherwise. Appellant was in custody for at least four hours. The length of the interrogation provided sufficient time for Appellant to have sobered up. Appellant admitted he was "fair" and sober, and advised the interrogating officer that he understood his rights. Furthermore, Appellant dozed off during the interrogation and described his "level of tiredness" to be at "about 75%[.]" The fact that Appellant was seen yawning, holding his hand, and holding his stomach throughout the interrogation was not sufficient to reflect severe intoxication. Based on these facts, we find Appellant's statements were made voluntarily.

[5] Although Appellant mentioned taking K2, Appellant does not elaborate on how the K2 impacted his cognizance during the interrogation. Rather, Appellant argues only the crack cocaine and alcohol impaired his ability to give a voluntary statement.

Furthermore, if the circuit court erred, the error was harmless. "Under a harmless error analysis, an appellate court does not reverse a conviction based on a trial court's error or abuse of discretion where the appellate court is satisfied beyond a reasonable doubt that the trial court's error or abuse of discretion did not influence the verdict to the defendant's detriment." *Gonzalez v. State*, 487 Md. 136, 184 (2024) (cleaned up).

Appellant argues it was an error to admit his statements because they were involuntary. Although Appellant does not specifically argue the following statements were prejudicial and should have been suppressed,[6] Appellant mentions in his brief he made statements pertaining to: not taking his medications, using crack cocaine, having eleven grams of crack cocaine by the time he reached Washington, D.C., and smoking the remaining three grams of crack cocaine and drinking beer before arriving at Ms. Tucker's

[6] Appellant's argument that his statements were involuntary, and thus should have been suppressed, is limited to the following:

> "As a result of being severely under the influence of drugs and alcohol, Mr. Savage also lacked the mantal capacity to effect a waiver of his *Miranda* rights when he signed the Advice of Rights form. The State failed to shoulder its 'heavy burden' of demonstrating that Mr. Savage's waiver was voluntary, knowing, and intelligent. *See Miranda*, 384 U.S. at 475 (citing *Escobedo v. Illinois*, 378 U.S. 478, 490 n.14 (1964) ('If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.')).
>
> The only evidence in the record that Mr. Savage was competent to waive his rights was the testimony of Detective Kwarciany, who even acknowledged that he was not sure that Mr. Savage even read the *Miranda* form. (M11. 46-47). That testimony is contradicted by Detective Kwarciany's knowledge that officers at the scene had been concerned about Mr. Savage's drug use, the fact that Mr. Savage was naked at the scene, and Mr. Savage's testimony of sleep deprivation and drug use. Detective Kwarciany's mere conclusion is not sufficient to carry the 'heavy burden.'"

residence. These statements pertain to Appellant's drug use, for which he was not on trial. We find such statements to constitute harmless error because Appellant's intoxication served as the foundation for his defense. *Cf. Linkins v. State*, 202 Md. 212, 224 (1953) ("If inadmissible evidence is admitted over objection and the same evidence is later admitted without objection, or produced by the party who objected, the error is harmless."). Thus, we cannot say the admission of his custodial statements "influence[d] the verdict to the defendant's detriment." *Gonzalez*, 487 Md. at 184.

Since Appellant fails to specify any statements that should have been suppressed, we turn to the entirety of the statements played during trial. During trial, a short portion of Appellant's almost three-hour interrogation was admitted. The jury heard Appellant's admissions that he: "know[s] something bad [happened]; was at Ms. Tucker's residence on September 3, 2021; felt "rejected" by Ms. Tucker; intended to talk to Ms. Tucker on September 3, 2021; had a gun; fired the gun; and told his mom he shot Ms. Tucker's boyfriend on the phone. Aside from Appellant admitting he felt "rejected" by and wanted to talk to Ms. Tucker, the foregoing statements concern Appellant shooting and killing Mr. Shabazz. As discussed *infra*, there is no dispute Appellant shot Mr. Shabazz. *See infra* Section III. 2. Rather, at issue is whether Appellant had the requisite intent to convict him of his charges. Since the substance of these statements is not disputed, we find it did not "influence the verdict to the defendant's detriment." *Gonzalez*, 487 Md. at 184.

Moreover, we find Appellant's statements that he felt "rejected" and wanted to talk to Ms. Tucker to be cumulative of his circumstantial intent. Maryland has long recognized cumulativeness as an important factor for harmless error analyses. *See Gross v. State*, 481

Md. 233, 260 (2022). If properly admitted evidence is "so overwhelming" that the erroneously admitted evidence appears "insignificant by comparison," this Court can find harmless error. *See id.* The jury was presented with the following properly admitted evidence: text and Facebook messages explicitly stating Appellant wished to kill Ms. Tucker; Mr. Moore's testimony that he heard Appellant yell at Ms. Tucker, "I'm going to kill you, bitch."; Ms. Tucker's testimony that Appellant pointed his gun towards her and fired two to three shots in her direction; Appellant's killing of Mr. Shabazz; and conflicting testimony on Appellant's level of intoxication. Even if Appellant's custodial statements were suppressed, we perceive no reason from the record to suggest the jury would have returned a different verdict. The foregoing evidence was sufficient to establish Appellant's intent to kill or harm, and thus convict Appellant of his charges. Even if the circuit court erred in finding Appellant had the requisite intent to waive his *Miranda* rights, we find reversal is not appropriate because the error was harmless.

B. Appellant Did Not Unambiguously Request a Lawyer and Waived His Right to Remain Silent.

Appellant argues saying he "might want to get a lawyer because I don't want to say nothing—and incriminate myself" during custodial interrogation is an unambiguous request for counsel and invocation of his right to remain silent. Henceforth, he asserts "[t]he statements and further interrogation were in continued violation of those invocations[,]" and should have been suppressed. Furthermore, Appellant argues his statements "describing the shooting of Mr. Shabazz" were "incredibly prejudicial." As discussed *supra*, we find the admission of his statements were not prejudicial because of the harmless

error doctrine. *See supra* Section I. A. Nevertheless, we will address Appellant's argument on Fifth Amendment invocation below.

When a suspect requests counsel at any time during custodial interrogation, questioning must cease until a lawyer has been made available or the suspect reinitiates the conversation. *Davis v. United States*, 512 U.S. 452, 458 (1994). Statements made after a proper invocation of the right to counsel are not admissible. *Fare v. Michael C.*, 442 U.S. 707, 718 (1979). If a suspect makes a reference to an attorney that is ambiguous or equivocal, cessation of questioning is not required. *Davis,* 512 U.S. at 459. Similarly, any statements made after a suspect has invoked his right to remain silent are inadmissible, unless the State can show the invocation was ambiguous or the suspect later waived them. *See Berghuis v. Thompkins*, 560 U.S. 370, 381-83 (2010). The Supreme Court has found that the remark, "[m]aybe I should talk to a lawyer," is not an unambiguous request for counsel. *Id.* at 462; *see also Malaska v. State*, 216 Md. App. 492, 529 (2014) (finding suspect's statements that he "maybe" and "possibly" needed an attorney are "equivocal, and, thus, insufficient to invoke his right to counsel.").

The circuit court found:

> Beginning at 18:43:20 of the recorded interview, Mr. Savage makes a statement about a lawyer. Detective Kwarciany testified that he can't independently recall Mr. Savage's exact statement. Mr. Savage did not testify regarding this statement. Despite this clip of the recording having been played several times during the hearing, counsel did not agree on what he said. The Court has also played the clip many times since the hearing and remains uncertain as to what exactly Mr. Savage said. It remains unclear to the Court what Mr. Savage said except that it included "get a lawyer." He may have said "I might want to get a lawyer." He may also have said "I'm contemplating wantin' get a lawyer."

> Ironically, the only evidence of Mr. Savage's exact statement, the recording, is unclear. A suspect's Miranda right to counsel must be invoked "unambiguously." *Davis v. United States*, 512 U.S. 452, 459 (1994). A suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. Id. If the statement fails to meet the requisite level of clarity, the officers are not required to stop questioning the suspect. Id. "If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him." *Id.* at 461-62. Here, a reasonable police officer in the circumstances would not have understood Mr. Savage's statement to be a request for an attorney.

As the circuit court points out, Appellant's exact words are unclear. Assuming Appellant said he "might want to get a lawyer because I don't want to say nothing—and incriminate myself," the circuit court concluded this was too ambiguous to constitute a proper invocation. The circuit court reasoned a reasonable police officer would not have understood Appellant's statement to be a request for an attorney. Additionally, the circuit court found Appellant waived any invocation of silence when he acted in a manner "contrary to and inconsistent with [his] expressed sentiment" by immediately continuing to speak without further questioning by the detectives.

We agree with the circuit court. Appellant was not requesting counsel, but merely debating whether to request counsel. Using the qualifier "might" does not put a reasonable officer on notice that an invocation of counsel is being made. Under *Davis*, using "*might*" in the context of requesting counsel is insufficient to require an officer to cease questioning. 512 U.S. at 462. Appellant's remark that he "might want to get a lawyer" is substantively similar to the remark made in *Davis*. Thus, we find Appellant did not unambiguously invoke his right to counsel.

For the same reasons, we find Appellant did not unambiguously invoke his right to remain silent. Appellant's statement that he "[didn't] want to say nothing—and incriminate myself" was made in the context of him *might* wanting a lawyer. A reasonable interpretation of Appellant's remark suggests he "might [not] . . . want to say nothing—and incriminate myself." This is too ambiguous to sufficiently invoke Appellant's right to remain silent. Regardless, Appellant waived his right to remain silent when he continued answering the detectives' questions. *See Thompkins*, 560 U.S. at 386. As such, we affirm the circuit court's denial of Appellant's motion to suppress.

II. The Circuit Court Properly Admitted Appellant's Messages and Ms. Tucker's 911 Call Statements.

Any evidence that is relevant is admissible at trial, unless its probative value is substantially outweighed by the danger of, *inter alia*, unfair prejudice. Md. Rule 5-402; Md. Rule 5-403. Relevant evidence is evidence that has any tendency to make a fact of consequence more or less probable. Md. Rule 5-401; *see also Montague v. State*, 471 Md. 657, 674 (2020) (finding relevance is a very low bar to meet). Evidence is unfairly prejudicial when it tends to have some adverse effect beyond proving or disproving a fact of consequence. *Montague v. State*, 244 Md. App. 24, 39 (2019), *aff'd*, 471 Md. 657 (2020).

Appellant argues the circuit court erred in admitting three pieces of irrelevant evidence: (1) Appellant's name-calling in his text messages to Ms. Tucker, (2) Ms. Tucker's comments on the 911 call that Mr. Shabazz hadn't "do[ne] anything[,]" and (3) Ms. Tucker's comments on the 911 call stating Appellant should have known better. The State's theory was that Appellant was "an angry, estranged husband who was jealous that

Ms. Tucker was romantically involved with someone else," and the defense theory was that Appellant was too intoxicated to form the requisite intent to kill Ms. Tucker and acted in self-defense when he shot Mr. Shabazz. We find all three pieces of evidence were relevant and properly admitted.

For his first argument, Appellant argues the admission of certain insults he made—such as "a bitch," "a damn hoe," and "sorry ho bitch"—were relevant but nevertheless unfairly prejudicial. We find such name-calling was relevant given the proximity in time to the event and the defense theory of the case. We find it to be indicative of Appellant's animosity towards Ms. Tucker, making it less likely that he lacked the requisite intent to harm, as he alleges. While the name-calling may have been prejudicial, we find the statements were not *unfairly* prejudicial. As the circuit court found, jurors are not shocked to hear such language in 2023. Likewise, the circuit court found the name-calling was not as egregious as some of Appellant's other messages. We agree and hold the circuit court did not err.

Next, Appellant argues Ms. Tucker's comments made during the 911 call that Mr. Shabazz hadn't "do[ne] anything" and Appellant should have "know[n] better" should not have been admitted because Ms. Tucker did not actually witness the shooting, and her opinions are not relevant to the issue of Appellant's intent. Once again, we find the circuit court properly admitted such evidence. Ms. Tucker did not have to witness the actual shooting for her observations to be relevant. Ms. Tucker's comments were relevant to the parties' relationships, as well as Appellant's state of mind at the time. In any regard, a reasonable factfinder can weigh Ms. Tucker's comments against what she actually

witnessed in assessing both parties' credibility. The factfinder was also allowed to infer, based on the parties' past dealings, what Ms. Tucker believed Mr. Shabazz's intentions were if he were to come face-to-face with Appellant. Similarly, the factfinder was allowed to infer the likelihood that Mr. Shabazz would immediately draw a gun at Appellant given the parties' past dealings. Thus, we find the foregoing statements were all relevant and therefore properly admitted.

III. The Evidence Was Sufficient to Convict Appellant of Attempted First-Degree Murder, First-Degree Assault, and Use of a Firearm in a Crime of Violence of Ms. Tucker, and Voluntary Manslaughter and Use of a Firearm in a Crime of Violence of Mr. Shabazz.

Appellant argues there was insufficient evidence for a rational factfinder to convict him of the charges against Ms. Tucker and Mr. Shabazz. For the reasons discussed below, we conclude the contrary.

1. Amber Tucker

Appellant contends there was insufficient evidence to sustain the attempted first-degree murder and first-degree assault convictions of Ms. Tucker because he lacked the requisite intent to kill or cause serious physical injury to Ms. Tucker.

Both crimes here require a specific mens rea. To meet the requirements for attempted murder, the State "must show a specific intent to kill." *See State v. Earp*, 319 Md. 156, 162, 164 (1990) (stating the crime of attempt "consists of a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes beyond mere preparation."). The factfinder may find an intent to kill based on the surrounding circumstances. *See id.* at 167 (1990) ("[S]ince intent is subjective and, without

the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence."). For instance, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body. *See id.* To meet the requirements for first-degree assault, the State must show the defendant "intentionally cause[d] or attempt[ed] to cause serious physical injury to another." Md. Code, Crim Law, § 3-202(b)(1).

Voluntary intoxication can have the exculpatory effect on *any* crime requiring a specific intent. *Bey v. State*, 140 Md. App. 607, 631 (2001) (emphasis added). Where there is conflicting evidence on the issue of voluntary intoxication, "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *Pickney v. State*, 151 Md. App. 311, 326 (2003).

Appellant cites several pieces of evidence to support the contention he did not have the necessary intent for either offense, including that: (1) when Appellant approached Ms. Tucker's residence, he did not have a gun drawn; (2) Mr. Moore did not witness Appellant fire a gun at Ms. Tucker; (3) Appellant testified that he had no intent to hurt or kill Ms. Tucker; and (4) Appellant was under the influence of drugs and alcohol during the altercation.

On the other hand, the State emphasizes the fact that: (1) Appellant approached Ms. Tucker and Mr. Shabazz on foot with a loaded firearm; (2) Appellant shot Mr. Shabazz multiple times, killing him; (3) multiple vehicles in the driveway were damaged by gunfire; (4) Ms. Tucker was dodging and hiding from Appellant while he had the gun in his hands; (5) Appellant sent threatening messages to Ms. Tucker and Mr. Shabazz; and (6) there was

testimony contradicting Appellant's testimony about the circumstances of his shooting and his level of intoxication.

Viewing the evidence in the light most favorable to the State, the evidence was sufficient to sustain Appellant's first-degree murder and first-degree assault convictions. In this case at bar, the jury was allowed to consider: the text and Facebook messages explicitly stating Appellant wished to kill Ms. Tucker; Mr. Moore's testimony that he heard Appellant yell at Ms. Tucker, "I'm going to kill you, bitch."; Ms. Tucker's testimony that Appellant pointed his gun towards her and fired two to three shots in her direction; Appellant's killing of Mr. Shabazz; and conflicting testimony on Appellant's level of intoxication. The foregoing evidence was sufficient to find Appellant had the requisite intent to kill or cause serious physical injury to Ms. Tucker, satisfying the requisite intents for attempted first-degree murder and first-degree assault. The jury was given instructions on voluntary intoxication but they were not required to find Appellant's voluntary intoxication prevented him from forming the requisite intents. For these reasons, we affirm the lower court's judgment.

2. Whali Shabazz

Similarly, Appellant argues he did not have the intent to kill and only acted in self-defense when he shot Mr. Shabazz. Thus, Appellant argues there was insufficient evidence to sustain the voluntary manslaughter (as a lesser-included offense to first-degree murder) and use of a firearm in the commission of a felony or crime of violence convictions as to Mr. Shabazz.

Voluntary manslaughter requires the defendant to have the specific intent to kill or the intent to inflict grievous bodily harm. *Garcia v. State*, 253 Md. App. 50, 63, *aff'd*, 480 Md. 467 (2022). It has been defined as "a killing that would otherwise be second degree murder, but for the presence of a mitigating circumstance." *Id.* (quotations omitted); *see also Selby v. State*, 361 Md. 319, 332 (2000) (stating voluntary manslaughter is "an *intentional* homicide, done in a sudden heat of passion, caused by adequate provocation, before there has been a reasonable opportunity for the passion to cool.") (emphasis in original).

Crim. Law § 4–204 prohibits using a firearm in the commission of a crime of violence. Section 5–101(c) of the Public Safety Article enumerates assault in the first or second degree, voluntary manslaughter, and murder in the first or second degree as crimes of violence. To find "use of a firearm," the defendant must have simply used a firearm in the commission of a felony or crime of violence. *See Hallowell v. State*, 235 Md. App. 484, 507 (2018).

Several doctrines can mitigate a murder charge. Voluntary intoxication can mitigate a first-degree murder to murder in the second degree, *Hook v. State*, 315 Md. 25, 29 (1989), but it will not reduce first-degree murder to voluntary manslaughter. *Brown v. State*, 90 Md. App. 220, 229 (1992). Perfect self-defense is a complete defense to murder, *State v. Smullen*, 380 Md. 233, 235 (2004), while imperfect self-defense can only mitigate a murder charge to a voluntary manslaughter conviction. *Roach v. State*, 358 Md. 418, 430-31 (2000). Perfect self-defense requires the defendant to have actually and reasonably believed the defendant feared imminent danger of death or serious bodily harm. *Porter v.*

State, 455 Md. 220, 235 (2017). Imperfect self-defense requires only an honest belief, even if unreasonable, that the defendant feared imminent danger of death or serious bodily harm. *Wallace-Bey v. State*, 234 Md. App. 501, 531 (2017); *Smullen*, 380 Md. at 253 (finding that all other elements in the doctrine of perfect self-defense are also in the doctrine of imperfect self-defense).

Appellant cites several pieces of evidence to show he did not have the intent to kill, including that: (1) Appellant was under the influence of drugs and alcohol during the altercation; (2) Appellant announced ahead of time to Mr. Moore that he would arrive to Ms. Tucker's residence; (3) when Appellant approached Ms. Tucker's residence, he did not have a gun drawn; and (4) no shots were fired until Mr. Shabazz removed something from inside his truck. On the other hand, the State points to the fact that: (1) Appellant approached Ms. Tucker and Mr. Shabazz on foot with a loaded firearm; (2) Appellant shot Mr. Shabazz multiple times, killing him; (3) multiple vehicles in the driveway were damaged by gunfire; (4) Appellant sent threatening messages to Ms. Tucker and Mr. Shabazz; and (5) there was testimony contradicting Appellant's testimony about the circumstances of his shooting and his level of intoxication.

Viewing the evidence in the light most favorable to the State, the evidence was sufficient to sustain Appellant's voluntary manslaughter conviction. It is undisputed that Appellant killed Mr. Shabazz—the relevant inquiry here is whether Appellant had the requisite intent to convict him of voluntary manslaughter. Appellant's text and Facebook messages were sufficient for the jury to find Appellant had an intent to kill. Appellant's argument that he was too intoxicated to form the requisite intent to kill is improper.

Intoxication plays no role in mitigating first-degree murder charges down to manslaughter convictions. *See Brown*, 90 Md. App. at 229. The only relevant mitigating circumstance is Appellant's alleged self-defense theory. The jury was presented with testimony of what Mr. Shabazz said and did before Appellant shot him, Ms. Tucker and Mr. Shabazz's alleged threatening text messages sent to Appellant throughout the summer of 2021, and Appellant's own text and Facebook messages explicitly stating Appellant wished to kill Mr. Shabazz. The foregoing was sufficient for the jury to consider whether Appellant's fear of imminent danger of death or serious bodily harm was reasonable. We find no error in Appellant's voluntary manslaughter conviction.

Furthermore, viewing the evidence in the light most favorable to the State, the evidence was sufficient to sustain Appellant's use of a firearm in the commission of a felony or crime of violence conviction because both elements were met. *See Hallowell*, 235 Md. App. at 507 (describing the requirements for a use of a firearm in the commission of a felony or crime of violence conviction). First, it is undisputed that Appellant used a firearm when he killed Mr. Shabazz. Second, as discussed earlier, the evidence was sufficient to find Appellant committed the predicate offense, voluntary manslaughter. Therefore, we affirm.

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