Circuit Court for Baltimore County

Case No. 03-K-15-000215

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0682 and 0862

September Term, 2016

No. 0682
PERETZ DAROND ANDERSON
v.
STATE OF MARYLAND

No. 0862
MARK EUGENE GARLAND
v.
STATE OF MARYLAND

CONSOLIDATED CASES

Wright,
Graeff,
Krauser, Peter B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 6, 2018

Appellants, Peretz Darond Anderson and Mark Eugene Garland, were indicted in the Circuit Court for Baltimore County, Maryland, and charged, *inter alia*, with first-degree murder, robbery with a deadly weapon, and use of a handgun in the commission of a felony. The case was tried by jury on March 15-18, 2016. On March 18, 2016, Anderson and Garland were convicted of first-degree murder, robbery with a deadly weapon, and use of a handgun in the commission of a crime of violence. On May 27, 2016, Anderson and Garland were sentenced to a total term of life with all but fifty years suspended with two years' probation. Anderson[1] and Garland[2] timely noted this appeal,

[1] In his brief, Anderson phrased his Questions Presented as follows:

1. Did the trial court err in denying Appellant's Motion to Suppress, because police lacked reasonable suspicion to conduct a stop of a vehicle in which Appellant was a passenger and lacked probable cause to arrest Appellant?

2. Did the trial court err in admitting the testimony of a State's witness regarding the meaning of the word "shoes" as used, allegedly by Appellant and his co-defendant, in a jailhouse call?

3. Did the trial court err in granting the State's motion to jointly try Appellant and his co-defendant and in admitting the co-defendant's hearsay statements?

4. Did the trial court err in admitting testimony from a State's witness regarding the reason for his appearing in handcuffs?

5. Where jurors were exposed to prejudicial information from outside the courtroom and where there were undisclosed communications with jurors, did the trial court err in denying Appellant's motion for mistrial and motions for new trial, and violates Maryland 4-231 and Maryland Rule 4-326?

[2] In his brief, Garland phrased his Questions Presented as follows:

1. Whether the suppression court erred in denying Garland's motion to suppress evidence because the police lacked reasonable suspicion to conduct a stop of a vehicle in which Garland was a passenger?

2. Whether the evidence is insufficient as to Garland's participation and criminal agency in the offense?

and present the following questions for our review, which we have reworded and consolidated:

> 1. Did the circuit court properly deny Appellants' motion to suppress?
>
> 2. Did the circuit court properly exercise its discretion in denying Appellant's motion for a mistrial and new trial?
>
> 3. Did the circuit court properly exercise its discretion in admitting lay testimony regarding the meaning on the word "shoes?"
>
> 4. Did the circuit court properly exercise its discretion in granting the State's motion to jointly try Appellants?
>
> 5. Did the circuit court properly exercise its discretion in permitting testimony from a witness explaining why he was in handcuffs?
>
> 6. Was the evidence sufficient to convict Garland?

For the following reasons, we answer all the questions above in the affirmative and affirm the judgment of the Circuit Court for Baltimore County.

BACKGROUND

The Suppression Hearing

Officer Eric Brennan, Baltimore County Police Department, Canine Unit, was on patrol on December 26, 2014. Around 11:00 p.m., Officer Brennan responded to a call of a shooting in room 123 at The Welcome Inn, located at 8729 Loch Bend Drive. Officer Brennan was given a description that the suspects were "two Black males in their 20's and further advised that that the two suspects fled on foot, one "up Raven Drive," the other "up Loch Bend." The suspect who ran up Raven Drive was last seen running

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> 3. Whether the trial court abused its discretion in denying Garland's motions for mistrial and motions for new trial, where Maryland Rules 4-231 and 4-326 were violated?

through an alley in the direction of 1720 East Joppa Road. Officer Brennan and Officer Kelly[3] searched the area, with canine support; the canine did not establish a track for either suspect "because of the high volume foot traffic in the area."

At one point, the Baltimore County Police Department Aviation Division responded to the scene, and Officer Brennan relayed information about the suspects' description and their direction of travel. The Aviation Division informed Officer Brennan that they "witnessed a suspicious vehicle at Conrad Crabs," located at 1720 East Joppa Road. Conrad's Crabs is approximately 300-400 yards from The Welcome Inn.

Officer Conrad Butler, Baltimore County Police Department, was heading to The Welcome Inn around 11:13 p.m. when he heard the call from the Aviation Division that "said there was a car on the lot of Conrad's Crabs." The Aviation Division "lit up the vehicle" as Officer Butler "was coming right down the road." As the Aviation Division was relaying to officers below that there was a vehicle in the Conrad's Crabs parking lot, Officer Butler observed someone looking around, getting out of the vehicle, and then pulling out of the parking lot.

Once the vehicle pulled out of Conrad's Crabs' parking lot, Officer Butler got behind the vehicle and "pulled them over" to make a "traffic stop." Officer Butler testified that the vehicle had done nothing to violate traffic laws, was proceeding orderly and lawfully, and the individual in the car did not make any motions that concerned Officer Butler for his safety. Rather, Officer Butler stopped the vehicle because he was

[3] The officer's first name is not in the record.

conducting an "investigative stop." Officer Butler walked up to the driver's window and smelled marijuana. Officer Butler also observed that "[e]veryone was like, real animated talking, which is a little unusual."

Sergeant Anthony Dicara, Baltimore County Police Department, also responded to The Welcome Inn and was directed to assist in the search for "two, Black male subjects, wearing dark clothing last seen on foot toward Joppa Road." Sergeant Dicara set up a perimeter at "Easter's Lock and Key, Joppa Road." Sergeant Dicara also received the information about the vehicle from the Aviation Division and supervised Officer Butler as he conducted the investigative traffic stop. The driver of the vehicle was a female. Sergeant Dicara approached the passenger side of the vehicle and "noticed that there's someone driving, and two people in the back seat, but not a front passenger." Sergeant Dicara observed, "[d]arker colored clothing and black clothing in the middle of the rear seat." Sergeant Dicara smelled burnt and raw marijuana and observed a "plastic container of what would be Oreos" on its side with baggies of what he "recognized to be marijuana coming out of it."

Around 11:13 p.m., Officer Chrystal,[4] Baltimore County Police Department, was assisting "for a gunshot wound at The Welcome Inn." While there, Officer Chrystal testified that he learned that Ashley Sutton, who was with her boyfriend at The Welcome Inn on December 26, 2014, described seeing "[t]wo Black males approximately 20 to 25 years old, around 5 foot 5, wearing black jeans running out of the vestibule area of the

[4] The officer's first name is not in the record.

hotel. Sutton and her boyfriend heard "roughhousing" and a gunshot. Seconds after, they observed the two men running out within seconds of the gunshot. At trial, Sutton testified that she "didn't notice the race, but . . . noticed their facial hair," a "chinstrap on one and then, like, a long beard, on the other." She also testified that she told police the two males were wearing dark clothing, one of the men "went left in the alley," and the "other one might have went up Raven Drive."

Officer Chrystal also spoke to Malcolm White, who was sitting in the passenger seat of a car parked in front of the vestibule area in the parking lot. White told Officer Chrystal:

> [H]e observed two black males walk out of the exit area of the vestibule that leads to that room. One of them said, walk. One of them said, run. And then, he observed one of them run behind the southeast, basically, alleyway along another row of apartments. And one of them run – I'm sorry -- walk on the eastbound sidewalk of Loch Bend Drive.

Officer Chrystal learned that Officer Butler had detained potential suspects, so Officer Chrystal transported Sutton to the scene of the stop for a one-on-one identification. The first subject shown to Sutton was Garland. Sutton stated, "That's him. I think he came out second." The second subject shown to Sutton was Anderson. Sutton stated, "I think that's him too," she paused for approximately 3 to 5 seconds, and then continued to state, "But I am not sure. I know they both had beards."

After Sutton's identification of Garland, Officer Butler arrested him and transported him "to Headquarters." Officer Butler searched Garland and seized what he recognized to be a "gun part." Officers searched the vehicle and recovered additional evidence.

Video footage from Conrad's Crabs' parking lot, showing the vehicle in question turning around in the parking lot, was admitted at the suppression hearing.

Trial

At the start of the trial, Anderson asked the circuit court to "make sure the record reflects the Court's ruling" and basis for denying his Motion to Separate Trials, and Garland joined in the request. In response to the request, the court stated:

> [T]he argument that there's simply some prejudice or carryover from trying them jointly based upon what's been proffered in Pre-trial and, and the evidence that was disclosed at the Pre-Trial ruling. I do believe the matters should be heard together and had denied the Request for Severance on both grounds that were alleged in your Motions.[5]

Evidence obtained after the stop of the vehicle was introduced at trial including testimony about the "gun part" seized from Garland's pocket, testimony about gunshot residue found on Anderson's and Garland's hands, two dark jackets, a hat, possible marijuana, a dark sweatshirt seized from the car, and pictures taken of Anderson and Garland upon their arrest.[6]

The victim in the case was Aaron Phillip Nedd also known as "Turtle." Nedd was married to Brenda Nedd-Lyles. Due to financial problems, Nedd, Nedd-Lyles, and their daughters were living at The Welcome Inn on December 26, 2014. Nedd was selling "weed on the side." On December 26, 2014, Nedd left the room, leaving behind Nedd-

[5] On August 24, 2015, the circuit court held a motions hearing on this matter and heard oral argument from the State, Anderson, and Garland. On August 26, 2015, the court concluded that "pursuant to Md. Rule 4-253 a joint trial advances the interest of judicial economy and does not prejudice the rights of co-defendants" and ordered that "these matters shall be joined for purposes of trial."

[6] At trial, Officer Butler describes the gun part as "a black piece of metal."

Lyles, their daughters, and a man known as Marquis Martin, whose real name is Jerome Carroll, and who goes by the nickname of "Big Baby."

Around 9:30 p.m., while Nedd was out, someone called for him. This phone call was eventually attributed to a phone used by Anderson, corroborated by phone records introduced at trial. Five minutes after the call, Nedd came back to The Welcome Inn. Two minutes later, there was a knock on the door. Two African American men came in the room and discussed buying weed. One of the two men, the one with "hair," suggested that he and Nedd go into the bathroom to discuss the transaction. The other man stayed in the room with Martin. Nedd-Lyles then heard Nedd ask Martin for help. Martin stood up. The suspect outside the bathroom pulled out a gun and pointed it at Martin. Nedd-Lyles put her kids under a cover and then heard shots. Nedd-Lyles said, "it looked like . . . it was the one that was standing outside of the room" who fired the shots; she only saw the gun. Nedd-Lyles also said she did not know her husband to carry a gun. At trial, Nedd-Lyles described the "one with hair came out of the bathroom . . . jumped in my face and asked where the money was." Nedd-Lyles saw the men take the weed stored in the Oreo container.

Later at the police station, detectives showed Nedd-Lyles a photo array and she selected Anderson, the second individual who ran into the bathroom, as the shooter. Nedd-Lyles was shown a second photo array that contained Garland's photo, but she did not identify anyone in that array.

Sutton, the bystander outside of The Welcome Inn, testified about her one-on-one identification the night of the incident. Sutton recounted that she told the police that she

saw the first person and thought she saw the second person come out. Sutton also testified that she recognized the other person but was not completely sure. Sutton was not asked to identify Garland or Anderson at trial.

Officer Chrystal testified that Sutton was presented with two possible suspects, that the first suspect was shown to her and she stated, "that's him, I think he came out second." Officer Chrystal did not remember which person Sutton was referring to, but he was satisfied that one person was Garland and one person was Anderson.

Sergeant Dicara provided testimony at trial, similar to the testimony at the suppression hearing, regarding the stop of the vehicle and subsequent investigative stop. Officer Butler provided testimony at trial, similar to the testimony that he provided at the suppression hearing, regarding conducting the stop of the vehicle where Garland and Anderson were passengers. He also testified that when he searched Garland, he seized from Garland's pocket what he recognized as a "gun part."

Brian Miller, Technician, Baltimore County Police Department, processed the shooting scene at The Welcome Inn on December 27, 2014, and also swabbed both Anderson and Garland for gunshot residue ("GSR"). Technician Miller conducted the GRS swabbing before processing the shooting scene. At the scene, he found three shell casings and one live round. Technician Miller took multiple photographs of the scene and sketched a diagram of the scene. Technician Miller recovered an iPod from the scene and $196.00 from the pocket of Nedd.

Michael Thomas, Firearm and Toolmark Examiner for the Baltimore County Crime Lab, was accepted as an expert in firearms and toolmark examination and

identification. Examiner Thomas opined that the three shell casings recovered from the scene were "caliber 9 millimeter Lugar." The live round was a "22 long rifle, rim fire round." Examiner Thomas also opined that the piece of metal recovered from Garland during the investigative stop was "a swing arm assembly from a Harrington and Richardson revolver." The piece was not broken but showed some wear; however, Examiner Thomas did not have a firearm to match with the gun part. Additionally, Examiner Thomas testified that a firearm missing the gun part recovered on Garland during the investigative stop could fire without that part, but he could not tell whether the piece had recently been involved in a firing.

Michael Gorski, Forensic Scientist at R.J. Lee Group, was accepted as an expert in GSR. Scientist Gorski analyzed the swabbing taken by Technician Miller and opined that GSR was present on the left and right hands of Anderson and Garland. According to Gorski, a person only has GSR on their hands if he or she fired a weapon, is in close proximity to a weapon being fired, or came "into contact with these particles in the environment in some manner." Gorski offered no opinion as to how Anderson or Garland came into contact with GSR. Gorski also confirmed that GSR could have been transferred from one person to another through testing cross-contamination.

Carrie Bialek, Forensic Service Technician II, processed the vehicle that was stopped in which Anderson and Garland were passengers. Technician Bialek took multiple photographs of the interior and exterior of the vehicle. Technician Bialek took from the vehicle a "wool like pea coat-styled coat, black in color," a "jacket denim button, front styled jacket with sweatshirt sleeves and hooded, gray and blue in color," a

"knit-style hat, black in color with white-colored label," vegetable matter, raw in Ziploc baggies and burnt, suspected as "possible marijuana," a "hooded, zippered front sweatshirt style jacket, black in color, Love Cultured Brand," a cup, and a payroll document. Additionally, Technician Bialek recovered two projectiles from the medical examiners and a phone battery in front of The Welcome Inn on Loch Bend Drive.

Martin testified that he was in the room with Nedd-Lyles and her daughters, and that Nedd returned with the two men behind him. Martin further testified:

> I got up. The other guy that walked in the room he, he pulled out a gun, held it to my head . . . and told me you need to go sit back down. And I sat back down in the chair. And then the next thing you know the other guy came out of the bathroom and then you heard the gunshot.

According to Martin, each man had a gun, and neither he nor Nedd had a gun. Martin also testified that the men took his iPod and marijuana that he had in a cup. Martin was not asked to identify Garland or Anderson at trial.

The State also called Shaneika Billups, who was dating Anderson. Billups testified that she and Anderson picked up Garland and his girlfriend, India Cooke, that evening in her silver Chevy H.H.R. Billups was not driving because she was intoxicated, so Cook drove with Billups in the front passenger seat, and Garland and Anderson in the rear. Billups testified that Anderson, Cook, Garland, and she were on their way to the Horseshoe Casino when they stopped in the parking lot of a business. There Anderson and Garland got out of the car. Billups did not see either of them in possession of a gun. When Anderson and Garland returned, they went to the trunk.

Officer Wagner,[7] of the Baltimore County Police Department, responded to the call of a shooting at The Welcome Inn. He did not go to the scene, but "was on the perimeter listening for suspect information." Wagner heard the description from the Aviation Division of a vehicle and that a female exited the vehicle. Officer Wagner and another officer stopped the woman, whom they identified as Billups. Officer Wagner searched Billups and retrieved her phone before transporting her to Baltimore County Police Headquarters. At trial, Officer Wagner described Billups as intoxicated, cooperative, and indifferent when they detained her but noted that she did not say anything.

Cooke testified that the four of them were supposed to go out but made a stop to purchase marijuana. Cooke testified that Anderson directed her where to drive to purchase the marijuana. She testified that Anderson directed her to a place with a "hotel or rooms behind it" on Joppa Road. When they arrived at this location, Garland and Anderson got out of the car and returned in ten minutes or less. Cooke testified that when Anderson and Garland returned, they went to the trunk first, and she "heard something heavy." Then Anderson and Garland got into the backseat of the car.

Cooke drove everyone back to their neighborhood on Edge Park Road, a "five minute drive" from The Welcome Inn. Anderson and Garland got out of the car, went into Cooke's home, and returned five minutes later. They then all drove back to the area they just "left from," because Anderson had forgotten his phone. Once in that area,

[7] The officer's first name is not in the record.

Billups got out of the car to retrieve the cell phone. The police eventually stopped the vehicle and detained Anderson, Garland, and Cooke.[8]

Cooke testified that on December 28, 2014, she received a phone call from Garland and Anderson.[9] A recording of the call was played for the jury. In one portion of the call a speaker says, "This is Peretz ma . . . I need you to push on, on her about my tennis shoes, all right? There's two (inaudible)." At one point in the call, a male speaker, who Cooke identified as Garland said, "baby, you gotta get them shoes. You hear me? . . . You got gotta get them gone . . . Like far away . . . Far away baby." Cooke testified that when Garland referenced shoes on the phone call, he was referencing the weapons she discovered in her closet. Cooke's brother took the weapons and disposed of them in a dumpster. No weapons involved in the shooting were ever recovered.

Cooke informed the police about the weapons, and for her involvement, entered a plea of guilty to accessory after the fact.

Nedd died from the gunshot wounds. Dr. Jack Titus performed the autopsy and was accepted as an expert in the field of forensic pathology. Nedd had three gunshot wounds to his abdomen and upper back. Dr. Titus opined that the manner of death was homicide.

[8] Officer Matthew Jackson, Baltimore County Aviation, was the Technical Flight Officer in the helicopter dispatched in response to the shooting at The Welcome Inn. At trial, Officer Jackson testified that he observed a car pull into the parking lot of Conrad's Crabs, observed a female get out of the car, and walk in the direction of The Welcome Inn.

[9] At trial, Cook testified that Garland's mother "knocked on my door and gave me the phone and both of them were on the phone."

Additional facts will be included as they become relevant to our discussion, below.

DISCUSSION

I.

Anderson and Garland aver that the circuit court erred in denying the motion to suppress, because the police lacked reasonable suspicion to conduct a stop of the vehicle in which Anderson and Garland were passengers and lacked probable cause for an arrest. They contend that the court relied on the post-stop in its analysis of whether there was reasonable suspicion to support the stop, and the relevant factors the police relied on only amounted to a "hunch" and did not establish a reasonable articulable suspicion. They posit that because police lacked reasonable suspicion, that the arrest was not supported by probable cause. Therefore, any evidence obtained would be "fruit of the poisonous tree," and inadmissible to support a finding of probable cause for arrest.

The State avers that the police team converged on the scene to investigate the shooting at The Welcome Inn, and the State contends that the collective knowledge between all the officers at the scene was enough to generate reasonable suspicion to execute the investigatory stop of the vehicle, in which Anderson and Garland were passengers. The State further contends there was probable cause to arrest Anderson because of the evidence presented at trial to support the arrest.

We review the circuit court's ruling to grant or deny a motion to suppress by viewing the evidence in the light most favorable to the party who prevailed on the motion, and we accept the suppression court's factual findings unless they are clearly

erroneous. *Bowling v. State*, 227 Md. App. 460, 467, *cert. denied*, 448 Md. 724 (2016). To the extent that the motion court's factual findings are ambiguous, incomplete, or non-existent, the evidence is viewed in the light most favorable to the prevailing party. *Morris v. State*, 153 Md. App. 480, 489-90 (2003). "In determining the ultimate legal conclusion regarding whether a constitutional right has been violated, however, we make an independent, *de novo*, constitutional appraisal by applying the laws to the facts presented in a certain case." *Barrett v. State*, ___ Md. App. ___, No. 530, Sept. Term 2016, slip op. at 3 (November 29, 2017).

Our inquiry begins with the Fourth Amendment to the Constitution of the United States, which protects against "unreasonable searches and seizures." U.S. CONST. amend. IV; *see Lewis v. State*, 398 Md. 349, 361 (2007) ("The Fourth Amendment, however, is not 'a guarantee against all searches and seizures, but only against unreasonable searches and seizures.'") (citation omitted). This protection is "applicable to states, through the Fourteenth Amendment." *Sellman v. State*, 449 Md. 526, 539 (2016). "In determining the reasonableness of a search, each case requires a balancing of the government's need to conduct the search against the invasion of the individual's privacy rights." *State v. Nieves*, 383 Md. 573, 583 (2004) (citing *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

In denying the motion to suppress based on the challenge to the legality of the stop, the circuit court noted:

> [S]omewhere in a very short period of time from a call that says, shots fired, and officers responding to the scene of the gunshot injury, and getting witness descriptions of two people fleeing on foot, that the helicopter – that, that they got Aviation up in the air and somebody says, you know, there's a suspicious-looking car, or whatever they say in that area. And when you

> look at the video, you're are right. You don't see much, other than in a closed business, for no apparent reason, a car pulls in, someone gets out, . . . Helicopter saw the suspicious people – vehicle. Someone got out. Looked like they were looking for something in the parking lot and it – and which is odd in a closed business, that time of night, in an area that's immediately adjacent to where people are seen fleeing a shooting. They're asked to pull over the car, they light up the car, pull it over and everything that happens from that point on certainly builds on those facts.

Anderson and Garland assert that these facts were not enough to generate a reasonable articulable suspicion for the police to conduct an investigatory traffic stop. We disagree. Police may briefly detain an individual, based on reasonable suspicion that the individual is involved in criminal activity, and frisk a subject for weapons, based on reasonable suspicion that the subject may be armed and dangerous. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). However, "the necessity to strike a proper balance between the interest of the person and those of the government may require the imposition of additional restraints when the *Terry* stop is made solely to investigate a past crime." *Cartnail v. State*, 359 Md. 272, 286 (2000).

An investigatory stop must be based on reasonable suspicion. *Cartnail*, 359 Md. at 286. Reasonable suspicion "has been defined as nothing more than 'a particularized and objective basis for suspecting the particular person stopped of criminal activity,' . . . and as a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Stokes v. State*, 362 Md. 407, 415 (2001) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Put another way, it is "considerably less than proof of wrongdoing by a preponderance of the evidence" and obviously less than probable cause, which is a "fair probability that

contraband or evidence of a crime will be found." *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

Courts determine whether police had reasonable suspicion by examining the totality of the circumstances. *Cartnail*, 359 Md. at 287-88. Specifically, a lawful traffic stop requires:

> [T]hat the car is being driven contrary to the laws governing the operation of motor vehicles or *that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable laws.*

Delaware v. Prouse, 440 U.S. 648, 650 (1979) (emphasis added). In determining if police have reasonable suspicion to conduct a traffic stop, the Court of Appeals has proferred six factors for lower courts to consider:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Cartnail, 359 Md. at 289 (quotation omitted). When considering these factors, we are mindful of "the distinction between individual factors which are consistent with innocent travel, but nonetheless out of the ordinary and individual factors which are both consistent with innocent travel and too commonplace to be probative in tending to show criminal activity." *Id* at 291. As explained in *Cartnail*, "the factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." *Id*. at 272 (quotation omitted).

Here we are satisfied that the State met its burden of reasonable suspicion to stop the vehicle where Anderson and Garland were passengers. At the suppression hearing, Officer Butler testified that on December 26, 2014, at around 11:13 p.m., he arrived at The Welcome Inn to respond to a call of shots fired. He then received information from the Aviation Division that someone had got out of a vehicle in the parking lot of a closed establishment no more than a mere 400 yards from The Welcome Inn where he received the call that shots were fired. At the suppression hearing, Officer Butler testified that he stopped the vehicle because Officer Jackson, who was in the helicopter, told him to do so.

Sergeant Dicara testified that he too received the call for the shooting at The Welcome Inn and arrived less than five minutes later. He testified that he received information that two suspects, two black men, fled in the direction of Conrad's Crabs and set up a perimeter in the parking lot on the south side of the 1700 block of Joppa Road. Like Officer Butler, he too heard a radio communication from the Aviation Division about the suspicious vehicle in Conrad's Crabs' parking lot. Specifically, Sergeant Dicara testified that he heard that the vehicle had been parked and was coming from behind or alongside the business, which was closed, and that a female got out of the car and was walking toward The Welcome Inn.

Relying on information from Officer Jackson, Officer Butler stopped the vehicle after it exited the parking lot to conduct an investigatory stop, and Sergeant Dicara pulled right behind Officer Butler to supervise the stop. Sergeant Dicara observed that two males were the rear occupants of the vehicle, *before* the stop. They were all part of the "police team" that converged on the scene to investigate the shooting. Therefore, Officer

Jackson's, Officer Butler's, and Sergeant Dicara's knowledge "was attributable to the whole team." *Peterson v. State*, 15 Md. App. 478, 489 (1972); *see also Mobley v. State,* 270 Md. 76, 81 (1975) ("[w]hether probable cause is shown to exist may be measured in terms of the collective information demonstrated by the record to be within the possession of the entire police team."). Anderson and Garland counter that the three officers did not all communicate their suspicions to each other, but that is irrelevant. *United States v. Edwards*, 885 F.2d 377, 382-83 (7th Cir. 1989) (holding that information not known to one officer can be imputed to another officer if they both participated in the stop); *see also United States v. Thompson*, 533 F.3d 964, 969 (8th Cir. 2008) (stating "[p]robable cause exists if the totality of the circumstances known to all officers at the time of the arrest [was] sufficient to warrant a prudent person's belief that the suspects had committed or was committing an offense" and holding that based on the "totality of the circumstances known to all of the officers involved at the time of the [the suspect's] arrest" there was probable cause to arrest").

During the suppression hearing, the State introduced a video of what occurred in the parking lot from Conrad's Crabs.[10] The video clip showed that the vehicle came to a complete stop next to the alley that leads to The Welcome Inn. The video clip then showed a female exited the vehicle and started heading towards The Welcome Inn. When the Aviation Division shined a spotlight on the vehicle, the video then showed the vehicle leave the parking lot and turn west on Joppa Road. The video clip supported the

[10] Neither Anderson nor Garland objected when the State sought to admit the video recording into evidence.

testimony of Officer Butler and Sergeant Dicara that they were acting on the belief of reasonable suspicion conveyed to them from Officer Jackson in the helicopter above.

When looking at the evidence in the light most favorable to the State, it is fair to conclude that the driver planned to stay in the parking lot to wait for the female passenger to return until the driver realized that they had been noticed by the police. Officer Butler testified that he received information from the Aviation Division that the female passenger who got out of the vehicle appeared to be "looking for something." It is reasonable to be suspicious of a person who appears to be looking for something in the area where two men had fled the scene of a shooting only moments before. One could logically infer that the suspects may have lost something after the shooting, called for a ride, or pre-arranged a getaway vehicle. An alternative scenario would be that the suspects sent the woman to check on police activity. In *Williams v. State*, 212 Md. App. 396 (2013), similar to the case before us, a home invasion and gas station robbery "occurred in close temporal and physical proximity to each other," and we found that "it was not unreasonable to assume that the perpetrators were still in the area." *Id*. at 411. Here, officers conducted the investigative stop of the vehicle where Anderson and Garland were passengers minutes after Officer Jackson observed suspicious activity from the helicopter above at 11:13 p.m. Anderson and Garland contend that the suspicious activity observed was that of a woman, and a woman was driving the vehicle, which did not match the description from the witnesses, but "when the crime was committed by a group of a certain size, it makes no sense to suggest that only groups of that size may be stopped for investigation." *Id*. at 415 (4 Wayne R. LaFave, Search & Seizure § 9.4(g), at

559 (4th ed. 2004)). Even though it was a woman who the Aviation Division observed engaging in suspicious activity, officers on the ground also observed two men in the vehicle, and the investigative stop was conducted in close temporal and proximity to the shooting at The Welcome Inn.

Anderson and Garland contend that the circuit court erroneously relied on post-stop factors to justify the stop. We disagree. They are correct in noting that the circuit court stated:

> They are asked to pull over the car, they light up the car, pull it over and everything that happens from that point on certainly builds on those facts. You see two men sitting in the back seat with a female driver. You see dark clothing of some sort between them. You get the odor of marijuana from the car. And you get people seem agitated, or hyped up or what ever.

The court did not cite these facts as additional support for the stop; rather the court highlighted these facts as additional reasons the officers continued the stop and eventually arrested the parties in the vehicle.

Assuming *arguendo*, that they are correct, and the circuit court did rely on the additional factors, as we stated, *supra*, we conduct our own constitutional appraisal by applying the laws to the facts presented in a certain case. They contend that the police officers were operating on a hunch when they pulled the vehicle over. When viewed in the light most favorable to the prevailing party, we find that the video from Conrad's Crabs' parking lot corroborated Officer Jackson's observation from above in the helicopter. Paired with Officer Butler's and Sergeant Dicara's testimony these facts are sufficient support to generate reasonable suspicion to warrant an investigatory stop. Collectively, the policing team knew that a shooting occurred, had a description of the

suspects, what they were wearing, where they fled, and pursuant to this information conducted the stop.

For the reasons discussed, we hold that the police had reasonable suspicion to conduct an investigatory stop of the vehicle where Anderson and Garland were passengers.

Anderson contends that, even if the stop was supported by reasonable suspicion, the police lacked probable cause to arrest him. Anderson's argument ignores other important factors that supported the arrest. "[P]robable cause exists where 'the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed [by the person to be arrested].'" *Longshore v. State*, 399 Md. 486, 501 (2007). Therefore, "to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion." *Bailey v. State*, 412 Md. 349, 375 (2010).

Here, there is ample evidence to support Anderson's and Garland's arrest. Anderson and Garland matched the description of two short black males seen running from The Welcome Inn immediately after the shooting. Shortly after the shooting, they were found in the backseat of a suspicious vehicle, with dark clothing between them, 400 yards away from The Welcome Inn. Sutton identified Anderson and Garland as the men she saw running within seconds of the gunshot. Sutton was less sure of her identification of Anderson, but was confident that Garland was one of the suspects, and that both

suspects had beards, as did Garland and Anderson when they were stopped. The facts and circumstances generated sufficient probable cause to justify Anderson's and Garland's arrest, following the investigatory stop.

II.

Next, Anderson and Garland assert that the circuit court erred in denying their motions for mistrial and new trial, based on an "out of court witness confrontation" between Billups and an unidentified male, which some jurors saw, and *ex parte* communications between court personnel and the jury. The State responds that the court properly exercised its discretion. We agree.

A. The Billups Incident

On the second day of the trial, at the conclusion of Billups's direct testimony, the circuit court disclosed that it received information regarding the jurors having heard communication between Billups and an unidentified man. The court explained the incident as follows:

> We're doing this in parts because I've got two jurors . . . . Both of them say essentially the same thing. As they were leaving, they saw Ms. Billups talking to the gentleman who walked out with her. And he was saying to her basically, you know everything. Why are you pretending you know nothing? And one of them says that she didn't remember anything because she was drunk. And he said, you knew everything that happened. So, basically, whoever the friend is here is confronting her on the fact that she appeared to be feigning a lack of memory.

Juror #4 and #12 reported the incident and acknowledged that they discussed with each other a "little bit" regarding "what happened." Alternate juror #4 also returned with

jurors #4 and #12 to report the incident, but indicated that he did not hear or see anything in the hallway, but was present when one of the jurors read out what she wrote in the court note.

The following day, Anderson and Garland moved for mistrial, which the circuit court held *sub curia*. Anderson objected to *voir dire* in a group setting because "people may be afraid to speak up." The court asked the jurors as a group whether any other jurors overheard the Billups conversation in the hallway. Alternate juror #3 reported that, among other jurors, "there were comments made when we got on the elevator because . . . it was so disconcerting." After alternate juror #3's comments, the court individually questioned each juror. Ultimately, juror #9 was struck, in part, because she did not acknowledge having observed the Billups incident, when asked in a group setting, and because of a motion requesting such made by Garland. All of the remaining jurors said that they could put the incident out of their mind, decide the case fairly and impartially, based solely on the evidence presented in court. Moreover, to cure the matter, with the State's agreement, the court offered to strike Billups's testimony. Both Anderson and Garland rejected the offer.

The circuit court denied Anderson's and Garland's motion for a mistrial stating that the jurors who heard specific content of the conversation, whether from themselves or from another juror, said unequivocally that they could ignore it and consider the defendants' guilt impartially based on the evidence at trial. After again offering to have Billups's testimony stricken, the State recalled Billups solely for the purposes of providing the defendants an opportunity to cross-examine her about the testimony she

provided the day before. The State did not ask any questions, nor seek to introduce her prior inconsistent statements.

Despite the circuit court's attempts to cure any effect of the jurors witnessing Billups's conversation, Anderson and Garland contend that the circuit court abused its discretion because the jury was likely to infer that Billups was fully able to recall what happened but chose not to out of fear for her safety.

A criminal defendant's right to a fair trial, under both the United States Constitution and the Maryland Declaration of Rights, "relies on the promise that a defendant's fate will be determined by an impartial fact finder who depends solely on the evidence and argument introduced in open court." U.S. CONST. amend. VI; Md. Decl. Rts. Art 21; *Summers v. State*, 152 Md. App. 362, 375 (2003) (quoting *Allen v. State*, 89 Md. App. 25, 42 (1991)). We review the denial of a motion for a mistrial under the abuse of discretion standard, because the trial court, not the reviewing court, is in the best position to evaluate if a defendant's right to an impartial jury has been compromised beyond repair. *Dillard v. State*, 415 Md. 445, 454 (2010). When a defendant moves for a mistrial asserting improper communication occurred with jurors, which may be prejudicial, the "trial court must balance the probability of prejudice from the face of the extraneous matter in relation to the circumstances of the particular case." *Allen*, 89 Md. App. at 46.

We reject Anderson's and Garland's assertion that the circuit court abused its discretion in denying their motion for a mistrial. In the present case, jurors involuntarily came upon extraneous information while they were leaving the courthouse and

voluntarily informed the court of the incident. The one juror, juror #9, who did not volunteer her knowledge of the incident, was excused. The circuit court *voir dired* each juror that came in contact with the extraneous information, directly or indirectly, and each of the remaining jurors assured the court that they could remain impartial and rely only on the evidence presented at trial. The goal of *voir dire* is to determine whether there is prejudice. *Dillard*, 415 Md. at 461. After the *voir dire,* the circuit court appeared satisfied that the jurors could continue to hear the case, and we see nothing in the record to support any assertions to the contrary.

Anderson and Garland are also required to demonstrate that the prejudice from the extraneous information was so substantial that it could not be cured short of a mistrial. *Nash v. State,* 439 Md. 53, 79 (2014). Their claims of potential inferences that the jury could have made, based on Billups's feigned memory loss was out of fear for her safety, are not sufficient for us to conclude that the only cure was a mistrial. The improper information went to the credibility of Billups, a State's witness, and did not go directly to the guilt of either defendant, so the circuit court's remedy to strike her testimony was sufficient to cure any impact it may have caused.

B. Ex Parte Communication

After the jury retired for deliberations, communication between court personnel and jurors were disclosed by a jury note advising, "we've been asked serval times to quiet down. There's a court in session right next to us." A circuit court judge, not related to the trial, acknowledged that he asked the jurors if they could "keep [their] voices down."

This judge's law clerk also asked the jurors to "keep it down" a day before his judge spoke to the jurors.

The circuit court judge presiding over the trial also revealed that another circuit court judge sent an e-mail on the second day of the trial indicating that the jurors were making too much noise as they were in the hallway. The circuit court judge presiding over the trial instructed her law clerk to tell the jurors "to keep their voices down in the hallway" because court was in session. Anderson and Garland again moved for a mistrial and again were denied.

On appeal, Anderson contends that the various communications between court personnel and the jury violated Md. Rule 4-326(d)[11] and Md. Rule 4-321(b)[12] and

[11] Md. Rule 4-326(d) states:

> (d) **Communications with jury.** (1) Instruction to Use Juror Number. The judge shall instruct the jury, in any preliminary instructions and in instructions given prior to jury deliberations that, in any written communication from a juror, the juror shall be identified only by juror number.
>
> (2) Notification of Judge; Duty of Judge. (A) A court official or employee who receives any written or oral communication from the jury or a juror shall immediately notify the presiding judge of the communication.
>
> *(B) The judge shall determine whether the communication pertains to the action. If the judge determines that the communication does not pertain to the action, the judge may respond as he or she deems appropriate*.

(Emphasis added).

[12] Md. Rule 4-231(b) states:

> (b) **Right to be present – Exceptions.** A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the

consequently stripped him of his right to a fair trial. Md. Rule 4-231(b) is clear in its mandate that the defendant has the right to be present at all stages of the trial with few exceptions. Any communication between the judge and jury, which pertain to the action, constitutes a stage in the trial at which the defendant is entitled to be present. *Grade v. State*, 431 Md. 85, 95 (2013).

Here Md. Rule 4-326 did not require the circuit court to notify the parties of the communication at issue. The rule only applies to the trial judge and all court personnel who are subject to the direction and control of the judge. *Black v. State*, 426 Md. 328, 342 (2012). Neither the circuit court judge who spoke to the jury directly, nor his law clerk were under the direction or control of the presiding circuit court judge. Further, the circuit court judge's request that the jury keep their voices down was not communication that pertained to the action of deliberating. Only actions that implicate or concern a juror's ability to continue to deliberate pertain to an action. *State v. Harris*, 428 Md. 700, 715-16 (2012). Anderson and Garland try to argue that the judge's request was tantamount to admonishing the jury, which limited their ability to deliberate. We find this claim to be hyperbolic and incorrect as a matter of law. The circuit court judge's request did not relate to any issues being deliberated on by the jury. We agree with the State's contention that the request was ministerial in nature and more akin to court

trial, except (1) at a conference or argument on a question of law; (2) when a *nolle prosequi* or *stet* is entered pursuant to Rules 4-247 and 4-248.

personnel telling the jury to go to lunch, or the need to move the jury because of a HVAC problem, than an attempt by the circuit court judges to impact the jury's deliberations.

C. The jury note

When the circuit court was advised that the jury had a verdict, the court also received a note from the jury. After the verdict was announced, the court acknowledged that the jurors would be escorted out of the building to the garage because the note indicated that the jurors feared for their safety. This issue was not properly persevered for our review. After the jury rendered their verdict and the court acknowledged the note, the court asked if there was anything further, to which Garland replied "[n]o Your Honor. Thank you very much." Anderson did not respond.

The court then went to the jury room to excuse the jury. When the judge returned to the courtroom, Anderson and Garland moved for a new trial, alleging that the note "shows the jury was affected and prejudiced," and the defendants were denied a fair trial. The purpose of the preservation requirement is to prevent sandbagging on appeal and to give the circuit court an opportunity to correct possible mistakes. *Bazzle v. State*, 426 Md. 541, 562 (2012). Here it was impossible to correct the mistake, because the jury had already been excused, so the court could not *voir dire* the jury to ascertain why they felt unsafe.

Anderson contends that the fear was derived from the Billups incident; however, the jury could have felt unsafe because they just convicted two men of armed robbery and homicide. When error occurs during the course of a trial, a defendant is required to bring it to the attention of the court quickly enough to allow the court to prevent or cure

mistakes. *Prince v. State*, 216 Md. App. 178, 194 (2014). Anderson and Garland were aware of the note before the jury was excused and neither asked to inspect the note nor objected to the court's excusing the jury.

III.

Next, Anderson avers that the circuit court erred in admitting the testimony of India Cooke regarding the meaning of the word "shoes" as used by Anderson and Garland in a jailhouse call. Anderson contends that the court erred in admitting this testimony from Cooke because the State never established that Cooke was qualified to interpret the supposed code-word "shoes;" nor did she testify to her prior experience of anyone using the word "shoes" to mean weapons. The State contends that the testimony was properly admitted as lay opinion testimony. During direct examination of Cooke, the following ensued:

> [STATE]: Okay. Did you tell them whether you did whether, did you tell them about the content of the phone call?
>
> MS. COOKE: They asked me if I knew what they meant.
>
> [STATE]: What who meant?
>
> MS. COOKE: What they meant when, as far as the conversation, Peretz and, and Garland. They asked me if I knew exactly what they meant by what they were saying.
>
> [STATE]: Saying about what?
>
> MS. COOKE: The weapons. About some shoes.
>
> [ANDERSON]: Objection.
>
> [GARLAND]: Objection.

COURT: Overruled.

[STATE]: So, did, in a conversation that you had, the initial conversation- -

MS. COOKE: Uh-hum.

[STATE]: - -on that jail, on, during that call - -

MS. COOKE: Right. Uh-hum.

[STATE]: Did you have a conversation with Garland and Anderson?

MS. COOKE: Yes.

[STATE]: And did you have an understanding about what they meant by shoes?

[ANDERSON]: Objection.

[GARLAND]: Objection.

The court sustained the objection "because there's no predicate yet."

After the State played the recording of a jailhouse call, as discussed, *supra*, and the direct examination of Cooke continued as follows:

STATE: When Mr. Garland talked to you about shoes, did you have an understanding as to what he meant?

[GARLAND]: Objection.

THE COURT: Overruled.

MS. COOKE: Initially I just wanted him to be quiet. I wasn't really focused on what he was saying because I knew what he was saying was incriminating, I could say that.

[ANDERSON]: Objection.

[GARLAND]: Objection.

THE COURT: Overruled.

MS. COOKE: I felt as though he was incriminating himself by saying that.

[STATE]: Why?

MS. COOKE: Because I –

THE COURT: Overruled. Go ahead. You can answer.

MS. COOKE: Ok. I'm sorry. The way that it was said lead me to believe that you know, later I understood what he meant by that. So I didn't want anything said.

[STATE]: When did, when did you understand it?

MS. COOKE: I understood at, the, when I um, listened to the recording again, when the police asked me I understood what he meant by it because of what I already did.

[STATE]: What do you mean by what you already did?

MS. COOKE: As far as my brother –

[GARLAND]: Objection.

[ANDERSON]: Objection.

[GARLAND]: I'd ask for a continuing objection.

THE COURT: You can have a continuing objection. Ask that question again.

[ANDERSON]: Both counsel.

[STATE]: You said that you understood it because of what you had already done?

MS. COOKE: Yeah.

[STATE]: What do you mean?

MS. COOKE: As far as when I came home that same night and you know, I found the weapons as my brother took the weapons away.

The decision to admit lay opinion testimony rests soundly within the discretion of the trial judge. *Kelly v. State*, 392 Md. 511, 530 (2006). The trial court's decision to admit such evidence will not be overturned unless it is shown that the trial court abused its discretion. *Prince*, 216 Md. App. at 198; *Thomas v. State*, 183 Md. App. 152, 174 (2008). As this Court has explained:

> [A]n abuse of discretion occurs where no reasonable person would take the view adopted by the [trial] court . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court . . . or when the ruling is violative of logic and fact.

Sibley v. Doe, 227 Md. App. 645, 658 (2016) (quotations omitted).

Md. Rule 5-702, **Testimony by experts**, provides as follows:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Md. Rule 5-701, **Opinion testimony by lay witnesses**, provides as follows:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

Together, the two Rules provide restrictions on opinion testimony that depend on the type of witness providing testimony, and the witness's qualifications to provide such testimony.

It is clear from the testimony that the State did not offer Cooke as an expert witness on the meaning of "shoes," and it does not appear that the State attempted to proffer that Cooke was an expert on the matter of the code word for "shoes." Pursuant to Md. Rule 5-701, the requirement "for the admissibility of lay opinions are conjunctive. Thus a lay opinion must be based on the perception of the witness *and* must be helpful to the trier of fact." *Goren v. U.S. Fire Ins. Co.*, 113 Md. App. 674, 686 (1997).

As to the first requirement, Cooke only testified about her perception of what she believed was meant by the "shoes" in the jail house call. Anderson contends that Cooke did not have any personal knowledge of the caller's use of the word "shoes" and instructs us to review *Moreland v. State*, 207 Md. App. 563 (2012). Unlike *Moreland,* where the issue turned on the witnesses' "substantial familiarity" with the defendant, Cooke only testified about her perception of the meaning of "shoes" on the call, and how she responded when the caller repeatedly urged her to dispose of the "shoes." *Id.* at 573.

Specifically, Cooke's testimony about what Garland meant by "shoes" was proper lay opinion testimony because it was based on her perception and was helpful to the jury in understanding a fact at issue. In *Ragland v. State,* 385 Md. 706 (2005), the Court of Appeals noted that opinion testimony by a lay witness: "[R]elates to the appearance of persons or things, identity, the manner of conduct, competency of a person, degrees of light or darkness, sound, size, weight, distance, and an endless number of items that cannot be described factually in words apart from inferences." *Id.* at 717-18 (2005) (citing *Asplundh Mfg. Div. v. Benton Harbor Eng'g*, 57 F.3d 1190. 1196-98 (3rd Cir.1995)). The *Ragland* Court ultimately held "that Md. Rules 5-701 and 5-702"

prohibit the admission as "lay opinion" of testimony based upon specialized knowledge, skill, experience, training, or education. *Id*. at 725. This Court addressed this issue and concluded that lay opinion testimony from police officers is admissible under Md. Rule 5-701 if "[t]heir testimony related to their own perception of events and their rational inferences drawn from that perception, not on scientific, technical, or specialized knowledge." *Matoumba v. State*, 162 Md. App. 39, 53 (2005), *aff'd*, 390 Md. 544 (2006). In *Matoumba,* officers were allowed to testify about what they observed, their perception of events, and "their rational inferences drawn from that perception, not on scientific, technical, or specialized knowledge." *Id*. Similar to the facts in *Matoumba*, Cooke had first-hand knowledge of what occurred on December 26, 2014, and what property, if any, Garland left in her home. This personal knowledge and her perception placed her in a better position than the jury to infer what Garland meant by shoes. Cooke's perception of what Garland meant by "shoes" required no scientific, technical, or specialized knowledge. On the contrary, Cooke's knowledge, testimony, and subsequent act of getting her brother to dispose of the guns, were all based on her personal perception of what she thought Garland meant, either directly or through the process of elimination.

As to the second requirement in Md. Rule 5-701, Anderson argues that Cooke's testimony was not helpful to the trier of fact. We disagree. "The requirement that lay opinion testimony be helpful to the trier of fact precludes a lay witness from offering conclusions and inferences that the jury is capable of making on its own when analyzing the evidence." *Washington v. State*, 179 Md. App. 32, 55 (2008), *rev'd on other grounds*,

406 Md. 652 (2008). The circuit court exercised its discretion and found that Cooke's testimony about what she thought "shoes" meant would be helpful for the jury. We intervene when the circuit court's exercise of its discretion is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *DeLeon v. State*, 407 Md. 16, 21 (2008). Relying on this standard of review, we see no need to disturb the court's ruling.

In the present case, it is reasonable for the circuit court to conclude that the jury may not know that the word "shoes" was code for weapons, as related to the conversation between Anderson and Cooke. When deciding whether to admit lay opinion testimony, the court must assess whether the "lay trier of fact lacks the knowledge or skill to draw the proper inferences from the underlying data" and focus "on the relative knowledge and experience of the witness versus the trier of fact." *Robinson v. State*, 348 Md. 104, 120 (1997). We agree with the State that the term "shoes" could have meant a variety of things (including simply shoes), making Cooke's testimony, about her impression of what the word meant, admissible testimony that the court could reasonable assume would be outside of the jury's knowledge.

Other appellate courts have also held that a knowledgeable lay witness may give an opinion as to the meaning of code words or deliberately ambiguous language when the opinion is rationally based on the witness's perception and is helpful to an understanding of a disputed fact. *See*, *e.g., United States v. Lizardo*, 445 F.3d 73, 82-84 (1st Cir. 2006) (holding that admission of a cooperating coconspirator's testimony was warranted because the co-conspirator was present and participated in many conversations with the

defendant, and therefore was in a position to understand code words and other unclear conversations); *State v. Davidson*, 242 SW. 3d 409, 413-14 (Mo. Ct. App. 2007) (affirming the admission of lay testimony, as to a witness's perception of the meaning of a defendant's letters to her, and stating that it cannot be assumed "that mere words are always a complete index of the meaning which the hearer knew to accompany them").

Anderson also attacks Cooke's testimony by alleging it was irrelevant. "The determination of whether evidence is relevant is a matter of law, to be reviewed *de novo* by an appellate court." *DeLeon,* 407 Md. at 20. Md. Rule 5-401 provides, "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Anderson asserts, without any support, that Cooke's testimony "was not useful to the jury" and "had no probative value." We find these claims unavailing.

As the State correctly states, Cooke's testimony was relevant because it established Garland's consciousness of guilt. "Consciousness of guilt evidence is considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind[,] and state of mind evidence is relevant because the commission of a crime can be expected to leave some mental traces on the criminal." *Decker v. State*, 408 Md. 631, 641 (2009) (internal quotations omitted). Therefore, "guilty behavior should be admissible to prove guilt if we can say that the fact that the accused behaved in a particular way renders more probable the fact of [his or her] guilt." *Id*.; *see also Thomas v. State*, 372, Md. 342, 352 (2002). When viewing the facts in the

light most favorable to the prevailing party below, Cooke's testimony was relevant because it demonstrated Garland's consciousness of guilt and desire for Cooke to dispose of evidence that would incriminate Anderson and Garland.

IV.

Next, we turn to Anderson's contention that the circuit court erred in granting the State's motion to jointly try Anderson and Garland and admitting Garland's statements from the jailhouse call.

Prior to trial, the State moved for a joint trial of Anderson and Garland. After holding a hearing on the State's motion, the circuit court granted it and Anderson was tried, in a single trial, with Garland. Anderson claims the circuit court erred in granting the State's motion to join the charges.

In pertinent parts, Md. Rule 4-253 provides:

> (a) **Joint trial of defendants.** On motion of a party, the court may order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses . . . . (c) **Prejudicial Joinder.** If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.
>
> The test for determining whether joinder is appropriate is as follows:
>
> (1) is evidence concerning the offenses or defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments

> favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate.

Conyers v. State, 345 Md. 525, 553 (1997). Once the mutual admissibility requirement is met, the court then weighs the risk of prejudice to the defendant against "judicial economy *and* the avoidance of the inconvenience of duplicate trials." *Bussie v. State*, 115 Md. App. 324, 332 (1997) (emphasis in original). "[T]he defendant must show that non-mutually admissible evidence will be introduced and that the admission of such evidence will result in unfair prejudice." *State v. Hines*, 450 Md. 352, 376, (2016). The determination of mutual admissibility is a legal determination which we review *de novo*, but the weighing of prejudice is reserved to the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Wieland v. State*, 101 Md. App. 1, 10-11 (1994).

Anderson's claim of error arises from the circuit court's decision to admit the jailhouse phone call into evidence. Anderson claims that court erred in admitting the jailhouse phone call, because it was inadmissible hearsay that did not qualify under the party co-conspirator exemption. Md. Rule 5-803(a)(5) allows the admission of a "statement by a co-conspirator of the party during the course of and in furtherance of the conspiracy." Anderson relies on *McClurkin v. State,* 222 Md. App. 461 (2015), to argue the jailhouse phone call was made after the conspiracy between Garland and Anderson was complete, which reflects a partial reading of *McClurkin* and a misapplication of facts before us.

First, Cooke pled guilty to being an accessory after the fact so the criminal conspiracy was larger than just Anderson and Garland alone. Moreover, in *McClurkin* the tapes played were recordings of the then incarcerated appellants attempting to put pressure on a victim. *Id*. at 470. Here, the phone call between Cooke and Garland was presented by the State to prove that Garland was still actively engaged in the conspiracy. In *State v. Rivenbark*, 311 Md. 147 (1987), the Court of Appeals recognized that a conspirator's statement pertaining to the concealment are ordinarily admissible even if made after the completion of the crime that was the object of the conspiracy:

> This is not to say that statements made in connection with acts of concealment are never admissible. As noted above, conspirators do not necessarily achieve their chief aim at the precise moment when every element of a substantive offense has occurred. Before the conspirators can be said to have successfully attained their main object, they often must take additional steps, *e.g.*, fleeing, or disposing of the fruits and instrumentalities of crime. Such acts further the conspiracy by assisting the conspirators in realizing the benefits from the offense which they agreed to commit. Therefore, statements made in connection with such acts occur before the conspirators have attained their chief objective and are admissible. On the other hand, it is necessary to distinguish statements made in connection with acts of concealment performed long after the conspirators have realized all benefits from the offense which they had agreed to commit. Such statements occur after the conspirators attained their principal aim and are, therefore, ordinarily inadmissible.

State v. Rivenbark, 311 Md. 147, 158 (1987) (citations omitted). The initial conspiracy to rob Nedd was still ongoing during the phone call made 48 hours after Anderson and Garland were arrested. The call was a continuation of Anderson and Garland's efforts to conceal and retrieve evidence immediately after the robbery and shooting. Cooke testified that when Anderson and Garland returned from purchasing marijuana, she heard them place something heavy in the trunk of the vehicle. When they arrived at Cooke's

house, Garland and Anderson went inside while Cooke and Billups remained in the vehicle. They all returned to Conrad's Crabs to retrieve Anderson's phone, and they were subsequently arrested. The evidence clearly suggests that this phone call was an attempt to ensure that there was a meeting of the minds between Cooke, Anderson, and Garland to dispose of the weapons.

V.

Next, Anderson claims that the circuit court erred in admitting testimony from Marquis Martin regarding why he appeared in court in handcuffs. Anderson argues that Martin's testimony on the matter was either irrelevant, or in the alternative, relevant evidence which probative value was outweighed by the danger of unfair prejudice. The State responds that the circuit court properly exercised its discretion. We agree.

The standard of review regarding whether evidence is relevant is *de novo*. *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 619 (2011); State v. Simms, 420 Md. 705, 725 (2011). "Once a finding of relevancy has been made, we are generally loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion." *Merzbacher v. State*, 346 Md. 391, 404-05 (1997). The circuit court's discretion is very broad when it is tasked with weighing the probative value of evidence against the risk that said evidence maybe unfairly prejudicial. *Oesby v. State*, 142 Md. App. 144, 167 (2002).

Here the evidence was relevant because Martin was in handcuffs when he was giving his testimony. A jury may suspect the credibility of a witness who appears in

court wearing handcuffs. *See State v. Hartzog*, 635 P.2d 694, 703 (1981). Martin's explanation of why he was in handcuffs was relevant because Martin was in handcuffs because he failed to obey a subpoena to appear in court, not because he committed a crime that may adversely affect his credibility with the jury.

We agree with the State and also find nothing in the record to support Anderson's claim that this testimony would unfairly prejudice the jury and lead them to believe that Martin did not appear because he was afraid of Anderson. This claim is also undermined by Martin's testimony that he failed to appear because he had a job interview.

VI.

Finally, Garland avers that the evidence adduced at trial was insufficient to convict, because he was never identified as the second shooter or person in the room. Garland maintains that since Nedd-Lyles, Martin, and Sutton never identified him before or during trial, no rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. We disagree.

"The test of appellate review of evidentiary sufficiency is 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.'" *Donati v. State,* 215 Md. App. 686, 718 (2014). This standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). "While we do not re-weigh the evidence, 'we do determine whether the verdict was

supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Id.*

Accordingly, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State,* 157 Md. App. 1, 11 (2004) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati,* 215 Md. App. at 718. Moreover, "[w]e defer to the fact finder's 'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314.

In Maryland:

> Murder is a common law crime in Maryland, separated into first and second degrees for the purpose of punishment. First-degree murder includes murder that is committed in the perpetration, or attempt of, specific enumerated felonies, including robbery. Under the felony murder doctrine, the common law *mens rea* requirement for murder is satisfied by the actual malice of a defendant while committing the underlying felony. Accomplice liability for the murder extends to the participants in the underlying felony, even if they did not participate in the actual murder.

McMillan v. State, 428 Md. 333, 351-52 (2012) (citations omitted). Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article, § 4-204(a) provides that "[a] person may not use an antique firearm capable of being concealed on the person or any handgun in the commission of a crime of violence . . . or any felony,"

Here, there is sufficient evidence to support Garland's convictions for first-degree murder, robbery with a deadly weapon, and use of a handgun in the commission of a felony. Garland concedes that the evidence was sufficient to place him in the parking lot of Conrad's Crabs, which is adjacent to The Welcome Inn where the robbery and murder occurred. In addition, he does not argue that Nedd was not killed during a robbery, nor does he argue that anyone who participated in the robbery would not be guilty of felony murder and the use of a firearm in a crime of violence.

Instead, Garland contends that because there was no identification of him as one of the two men, there was not sufficient evidence to convict. This argument assumes that the State was required to present an eyewitness who could identify Garland, which is a legally incorrect assumption. Circumstantial evidence is as persuasive as direct evidence. *State v. Smith,* 374 Md. 527, 534 (2003); *Mangum v. State*, 342 Md. 392, 400 (1996) (citation omitted); *Wagner v. State*, 160 Md. App. 531, 560 (2005); *Allen v. State*, 158 Md. App. 194, 249 (2004), *aff'd*, 387 Md. 389 (2005).

At trial, Nedd-Lyles, the victim's wife, testified that shortly before her husband was killed she received a call from someone looking for Nedd. Martin testified that both men had a firearm. Shortly after the shooting of Nedd, police observed a vehicle in the parking lot of Conrad's Crabs that they deemed suspicious and conducted an investigatory stop where they found Anderson and Garland in the back seat with dark clothing between them. Police also found an Oreo container with baggies of marijuana in it, which is what Nedd-Lyles testified was stolen after her husband was shot. Anderson and Garland had gunshot residue on their hands, which permitted the inference that

Garland either shot a firearm or was in close proximity to one when it was discharged. Specifically, when Garland was searched, police found a gun part, which matched a .22 caliber weapon, and matched one of the live caliber cartridges found in the bathroom where Nedd was shot.

We are satisfied that there was sufficient evidence for a trier of fact to conclude that Garland participated in the robbery and shooting of Nedd. "[C]ircumstantial evidence . . . is 'sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused.'" *Painter,* 157 Md. App. at 11 (quoting *Hall v. State*, 119 Md. App. 377, 393 (1998)). Relying on the evidence presented at trial, a trier of fact could be convinced beyond a reasonable doubt that Garland participated in the robbery and shooting of Nedd. The trier of fact in this case had ample evidence from which to draw an inference that Garland was guilty beyond a reasonable doubt.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APELLANTS.