

Circuit Court for Baltimore City
Criminal Case No. 115299028

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 910

September Term, 2017

AUBREY STOKES

v.

STATE OF MARYLAND

Leahy,
Reed,
Fader

JJ.

Opinion by Fader, J.

Filed: August 21, 2018

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

A jury in the Circuit Court for Baltimore City convicted appellant Aubrey Stokes of second degree murder and openly carrying a dangerous weapon with intent to injure in connection with the stabbing death of Travis Dixon. A judge sentenced Mr. Stokes to 33 years' imprisonment. Mr. Stokes argues that the court erred in permitting the State to introduce a recording and transcript of Mr. Stokes's interrogation that included numerous statements by the officers that directly challenged his credibility. We agree and therefore reverse the judgments and remand for a new trial.

For the guidance of the court on remand, we also address Mr. Stokes's contention that the trial court erred in admitting lay-opinion testimony of an investigating detective regarding the reason why Mr. Stokes terminated his cell phone service following the murder. As to that issue, we find no abuse of discretion.

BACKGROUND

Mr. Stokes and Mr. Dixon lived in the same neighborhood in Baltimore City. In March of 2015, Mr. Stokes believed that Mr. Dixon owed him \$400. In the days preceding Mr. Dixon's murder, the two exchanged text messages about the debt, including:

- The day before his murder, Mr. Dixon texted Mr. Stokes that "4 [hundred dollars] aint worth beefin ova"; told Mr. Stokes that he was taking things too far in threatening him over "dis petty shit"; wrote "U Wanna kill me ova dat bullshit dan go ahead n try"; and texted that he was doing what he could to get Mr. Stokes his money.
- At 2:15 on the afternoon of the murder, Mr. Stokes texted Mr. Dixon: "U getting dealt with"; followed shortly by: "[You're] a nobody clown."

- At 2:22, Mr. Dixon responded that he “dnt got no control ova my ppls” and “u just threat[en]ing me.. But look my cuz Thug just got shot about an hour ago.. U Will try 2 kill me.. Try ya luck.”
- At 2:31, Mr. Dixon texted “I Dont live here.. N You must dont listen.. You come 2 my ppls shit.. U Going 2 jail.”

At approximately 3:32 p.m. on March 27, Mr. Dixon’s aunt, Beverly Mills, called 911 from her home at 2204 Chelsea Terrace to report that “[s]ome guy came to the door and my nephew opened the door and they were—the guys were fighting and all of a sudden my nephew was on the floor and was bleeding.” Ms. Mills reported that Mr. Dixon was unconscious and neither moving nor, she believed, breathing. Shortly thereafter, Officer Joshua Phoebus of the Baltimore Police Department responded to Ms. Mills’s home, where he found Mr. Dixon lying in the hallway “in a pool of blood.” Mr. Dixon was pronounced dead on site as a result, it was later determined, of five stab wounds.

Aubrey Stokes’s Testimony

Other than Ms. Mills, who could not identify the assailant(s) and who died before trial, the only eyewitness to the murder who testified at trial was Mr. Stokes himself. He admitted to being present at the scene of the murder, but claimed that a man named Louis Hicks killed Mr. Dixon.

According to Mr. Stokes, his then-girlfriend, Tiffany Brown, directed most of the actions leading up to and following the murder. He testified that Ms. Brown was very

upset that Mr. Dixon had not repaid the debt and wanted to get the money back.¹ When her request that her son, Zane Bogie, beat up Mr. Dixon went unheeded, she told Mr. Stokes to enlist the assistance of Mr. Hicks, a known murderer. Mr. Stokes did so.

Messrs. Stokes and Hicks went to Mr. Dixon's house to "scare" him into paying the money. After an initial argument on the porch, Mr. Dixon pulled a "medium-sized" kitchen knife from his "dip" (waistband), which Mr. Stokes tried to wrestle from him. Mr. Hicks then attacked Mr. Dixon, who fell to the ground. Only after Mr. Stokes saw blood did he know "that Hicks must have been stabbing him." Mr. Stokes did not join in, but stood watching "in shock." Messrs. Stokes and Hicks then fled the scene, with Mr. Hicks in the lead carrying Mr. Dixon's knife.

Mr. Stokes denied having a knife with him during the encounter. In the days after the incident, he claimed, Ms. Brown directed him to "get rid of [his] phone" and promised that she would "take care of everything."

Mr. Stokes was first brought in for questioning about the murder on September 30, 2015. In his recorded interview, he first claimed that he was not present for the murder and made a number of other statements that he later admitted were lies. He then admitted that he was present for the murder but blamed it on Mr. Hicks, telling essentially the same story that he later told at trial (as summarized above). The interview itself will be discussed below at some length. Notably, however: (1) once he admitted to being

¹ According to Mr. Stokes, Mr. Dixon needed the \$400 "to flip his money." Mr. Stokes, who had recently come into some money, lent it to Mr. Dixon to be helpful.

present for the murder, Mr. Stokes continuously maintained that Mr. Hicks had committed it; and (2) by the time of the interview, Mr. Stokes knew that Mr. Hicks was deceased.

The State did not produce any physical evidence linking Mr. Stokes to the crime. Instead, the evidence against him, in addition to the text messages already mentioned, came primarily from the testimony of three individuals, none of whom witnessed the crime but all of whom presented a challenge to the credibility of Mr. Stokes's defense. These witnesses were Ms. Brown, Mr. Bogie, and Herman Sumpter.²

Tiffany Brown's Testimony

According to Ms. Brown, several days before the murder Mr. Stokes gave Mr. Dixon \$400 to buy a gun for him (Mr. Stokes). When Mr. Dixon did not produce the gun, Mr. Stokes demanded the money back. In the days leading up to the murder, Mr. Stokes became increasingly preoccupied by the debt. On the day of the murder, March 27, 2015, he was "very, very annoyed," "upset," and "mentally unraveling" about the money. By about 2:15 that afternoon, "[h]e snapped."

Ms. Brown knew Mr. Stokes to carry a long, military-style knife in his "dip." He generally carried the knife "[e]very day," although she claimed that he did not have it

² In addition to the testimony of these individuals and police officers who testified about various aspects of their investigation, the State presented the testimony of a former police officer who observed two men running in the area shortly after the murder, one carrying a knife. He saw the two men enter Ms. Brown's home. He did not identify Mr. Stokes, but his descriptions of the two men at least arguably supported the view that Mr. Stokes, and not whoever was running with him, was the individual carrying the knife.

with him on the morning of the murder or while shopping early that afternoon with her, Mr. Bogie, and Mr. Bogie's son.

Before they arrived home from shopping, Mr. Stokes got out of the car. A short while later, when he did not return a text message, she sent Mr. Bogie to look for him. About five-to-ten minutes later, Mr. Bogie "came running through the door," "shaking his head," and ran upstairs without talking. He was followed soon after by Mr. Stokes, who was carrying a knife and apologizing, though Ms. Brown did not know for what. Mr. Stokes looked "shocked," "nervous," and "worried." Unbeknownst to Ms. Brown, Mr. Stokes hid the knife on top of a utility box on a deck in Ms. Brown's home and left.

Based on the report of the former police officer who saw two men running into the home shared by Ms. Brown and Mr. Bogie shortly after the murder, the police picked up Mr. Bogie and took him in for questioning.³ While Mr. Bogie was still being questioned, Ms. Brown went to meet Mr. Stokes, who she testified then told her that he had stabbed Mr. Dixon in the front room of Mr. Dixon's home. Mr. Stokes also told her where the knife was hidden, had her bring it to him, and then disposed of it in a sewer. According to Ms. Brown, Mr. Stokes made no mention of any involvement of Mr. Hicks that day or at any time until months later, after Mr. Hicks died and Mr. Stokes was already under arrest for the murder.

³ The police also obtained a warrant to search the home. The officer in charge of the investigation testified that they did not look on top of the utility box during their search.

Prior to trial, Ms. Brown had given three statements to the police. When they briefly questioned her on the day of the murder, she did not provide any information about Mr. Stokes. When she was interviewed a second time, in September 2015, she did not identify Mr. Stokes in connection with the murder and denied having seen him with a knife or with any blood on him. She later claimed that Mr. Stokes had threatened that if she identified him, he would blame the murder on Mr. Bogie. When she gave her third statement, in April 2016, Mr. Stokes was in custody. In that statement, she told police about the knife Mr. Stokes had brought back to her home and about her role in retrieving it so that Mr. Stokes could discard it.

The defense raised questions about the credibility of Ms. Brown, who was no longer involved with Mr. Stokes by the time of trial, including:

- Although she testified that she was a licensed nurse working at a rehabilitation facility, Mr. Stokes produced evidence that the Maryland Board of Nursing had no record of a license for her;
- Ms. Brown had convictions for theft, intimidating a witness, and obstruction of justice;
- Ms. Brown’s three statements and testimony contained conflicting information, including as to whether she saw Mr. Stokes with the knife after the murder, who disposed of the knife, and where Mr. Stokes usually carried the knife. Although she took police to the sewer where she claimed Mr. Stokes had disposed of it, the police were unable to find the knife;
- Ms. Brown admitted to getting upset about a baby another woman claimed was conceived with Mr. Stokes during a time when Mr. Stokes and Ms. Brown had been together. Although Ms. Brown denied the baby was Mr. Stokes’s, she admitted to threatening to drop the baby on its head; and
- Ms. Brown testified that Mr. Stokes practices “voodoo” and “black magic,” and that she paid \$2,500 to break a “love spell” that Mr. Stokes placed on her.

Zane Bogie's Testimony

Mr. Bogie testified that on their way home from their trip to the mall on the morning of the murder, Mr. Stokes left the car early. Later that day, after a conversation with Ms. Brown, he went searching for Mr. Stokes. When Mr. Bogie found him just a few blocks away, Mr. Stokes appeared angry and told Mr. Bogie that he was going to get his money back. The two separated briefly and, less than one minute later, Mr. Stokes came running toward him, screaming “run.” Mr. Bogie did. He denied ever having met Mr. Dixon, knowing anything about him, or having any involvement in his death.

The defense also raised questions regarding the credibility of Mr. Bogie, who also had provided three statements to the police. Mr. Bogie did not admit that he had been on Chelsea Terrace with Mr. Stokes, as described in his trial testimony, until the third interview, when he was told that he could be charged as an accessory to murder.

Herman Sumpter's Testimony

According to Mr. Sumpter's testimony, he knew Mr. Stokes “from the streets” and from an assisted living facility on Chelsea Terrace in which they had both resided. They were best friends.⁴ He testified that about a week after the murder, during a chance meeting, Mr. Stokes told Mr. Sumpter that the homicide police might want to talk with him (Mr. Sumpter). According to Mr. Sumpter, Mr. Stokes told him that:

- “he [Mr. Stokes] gave a young kid some money, close to \$400 to get a gun”;

⁴ Mr. Stokes testified that Mr. Sumpter “barely knew [him],” while Ms. Brown claimed that Messrs. Stokes and Sumpter were “[p]retty close.”

- “[t]he kid didn’t get the gun for him and he wanted his money back and the kid wouldn’t give him his money back so he stabbed him”;
- the stabbing occurred on the porch after a few words were exchanged;
- Mr. Stokes had used an Army knife with ridges on it that Mr. Sumpter had previously observed in Mr. Stokes’s possession; and
- Mr. Stokes thought the police might come looking for Mr. Sumpter because they used to live together.

As it had with Ms. Brown and Mr. Bogie, the defense raised questions about Mr. Sumpter’s credibility. Mr. Sumpter had been convicted of multiple felony drug charges, theft, and issuing a false document. He admitted that he had first provided police with information about Mr. Stokes after he (Mr. Sumpter) was arrested for selling heroin in August 2015. In exchange for his testimony, Mr. Sumpter was not charged with the drug offense. Mr. Sumpter also: (1) originally claimed that Mr. Stokes had confessed in January 2015—two months before the murder—as they were moving out of the assisted living facility after a fire; (2) gave conflicting descriptions of the knife he claimed Mr. Stokes carried; and (3) acknowledged having spoken with Ms. Brown on multiple occasions before he first talked with the police.

DISCUSSION

I. THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING STATEMENTS OF POLICE OFFICERS QUESTIONING MR. STOKES'S CREDIBILITY AND PROVIDING THEIR OWN VERSION OF HOW THE CRIME TRANSPIRED.

A. The Trial Court Admitted Statements of Detectives Young and Rasheed During Their Interrogation of Mr. Stokes.

Mr. Stokes contends that the trial court erred in admitting portions of the recording of his interrogation in which the police officers, Detectives Young and Rasheed, expressed what he asserts were highly prejudicial and inadmissible opinions about the credibility of his defense. He does not take issue with the admission of his own statements from that interrogation. Instead, he argues that because his credibility was critical to his defense, the trial court should not have admitted statements and questions of the detectives that reflected their disbelief in his version of events, their own opinions as to what occurred, and information purportedly conveyed by third parties.

Before trial, Mr. Stokes filed a motion *in limine* seeking to suppress his recorded interrogation. The State ultimately agreed to redact certain statements made by the detectives related to Mr. Stokes's prior convictions and certain statements attributed to Ms. Mills, but did not agree to redact statements in which the detectives (1) challenged Mr. Stokes's credibility and (2) referenced identifications of Mr. Stokes that the detectives falsely attributed to others. As to the latter, the parties entered a stipulation that statements the detectives made during the interrogation claiming that Ms. Mills and another individual had identified Mr. Stokes as being at the scene of the murder were

false. The stipulation, which was read to the jury, stated that “the detectives were employing legally permitted trickery in an attempt to obtain admissions from [Mr. Stokes].” The court instructed the jurors to disregard those claims of identification.

Mr. Stokes, who contends that the stipulation was insufficient to cure prejudice from the admission of the statements, objected to the introduction of the statements of the detectives contained in the following excerpts that were played for the jury:

DETECTIVE YOUNG: Oh yeah. And listen, when somebody bumped him off, there was a person there that was at the house that knew the individual. So I don’t think it was hard for them to identify you. Not only that then you had –

MR. STOKES: Somebody identified me in the house?

DETECTIVE YOUNG: Why you think you’re here? Coming to the front door.

* * *

DETECTIVE YOUNG: [The locational data on your phone] puts you right there, where [the murder] happened at. It don’t put you down at no North and Greenmount, North Avenue. It put you right there. And you’re the one saying, hey track my phone. Guess what? We tracked your phone. And even if you cut off the day after, Aubrey, it doesn’t – it doesn’t change the fact that we already tracked your phone. We already know where it pinged at.

MR. STOKES: Yo, I didn’t kill that man.

DETECTIVE YOUNG: Detective.

MR. STOKES: Detective, I didn’t kill him.

DETECTIVE YOUNG: Well, there’s no doubt in my heart, Aubrey, no doubt. You’ve been identified. We got the cell records and you already told people.

* * *

DETECTIVE YOUNG: . . . And you know [what's] interesting is, is we brought in Zane.

MR. STOKES: Right.

DETECTIVE YOUNG: Right? And, I don't know, maybe Zane was with you, maybe he wasn't. But, I can tell you this, Zane didn't – if it was him or other the person [sic], they stayed, you know, away from the house. And you went up the steps, you had a conversation with the victim. . . . [Y]ou can sit there and you can look dumbfounded. But you – you know that I'm not lying to you. One thing I'm not going to do is sit here and lie to you. So you know I'm telling you the truth[.]

* * *

DETECTIVE YOUNG: . . . [Y]ou've been asking him for your money, asking him for the money, and it escalated. . . . You[re] angry. You get upset and your text messages speak volumes, because you do get upset. It's getting to the point where he is disrespecting you. . . . [W]e've had some people get killed for a dollar. It has nothing to do with the money, it's all about respect. And he disrespected you.

* * *

DETECTIVE YOUNG: Aubrey, if you're honest with me I'll be honest with you. We – I understand what happened. . . . [B]ecause the aunt . . . said you all was out on the porch and we didn't know who started it. And that's the truth. You knew I knew about you the day of this. . . . [Y]ou have your side. And I know what she told us. But . . . you have to be honest with us.

* * *

[MR. STOKES]: I didn't talk to Zane.

DETECTIVE YOUNG: Oh, I have. I talked to Tiffany. I talked to people at the house, the house up the street, and there's no doubt that you did it. We're not here to discuss whether or not you did it.

* * *

DETECTIVE YOUNG: Well, I mean, we back to square one, Aubrey. And I think that, as you already know, that it's not a matter of whether . . . you was there. So you said you was standing there with [Hicks] and then now you say you wasn't just standing there. . . . [Y]ou know yourself, that don't make sense

* * *

DETECTIVE YOUNG: . . . [Y]ou know I know who the other person is [who witnesses saw running with you]. And I know you know who the other person is.

* * *

MR. STOKES: Hicks did it. Hicks did it, I'm not lying. Hicks did it.

DETECTIVE YOUNG: Okay. So how – how have you been identified?

* * *

DETECTIVE YOUNG: I don't think you knew it was going to escalate to this. I don't. But you know what, I can't say that for you, Aubrey. That's you. . . . [T]hat's up to you to tell us. Because if you don't then it's pretty much it is what it is. You know, but I already know that it was – unfortunately Travis is deceased. The grandmother told us . . . that [Mr. Dixon] went to the porch, you all was arguing[.] . . . She can't tell us who started it. She can't tell us what happened. That's up to you, that's it. So I mean, that's up to you, Aubrey. But as far as Hicks . . . [w]e already know who was on the porch. So it wasn't two people, it was one person[.]

MR. STOKES: You just said it was two people.

DETECTIVE YOUNG: And you have – this is your only shot and that's the truth. And we had to make the decision whether we wanted to bring you here or not or just send you over [to booking]. But you know what, I do believe that something else happened, I do. And that is something that that [sic] his aunt can't tell us. You know, she don't know who initiated it. And that's the truth. Other than that, I wouldn't even have no conversation for you. . . . But I tell you what, is decisions that will be made when you tell us will be brought to the State's Attorney and they'll make that decision. But you have to be honest with us, Aubrey. You do have to be honest with us. Were you all fighting on the porch? You all were fighting?

* * *

DETECTIVE YOUNG: Now, I asked you to be honest, right? And I do believe to a certain point, I'm going to be honest with you, because I'm not going to sit here and play games.

* * *

DETECTIVE YOUNG: And the person says that you had the knife running across [the street]

MR. STOKES: I didn't – I didn't have the knife. Hicks had the knife.

DETECTIVE YOUNG: Well, how would they get – you all – definitely one is bald and one is curly.

MR. STOKES: Yeah, [Hicks] got curly hair.

DETECTIVE YOUNG: Yeah. They said a bald guy.

MR. STOKES: No, I didn't have it though. I didn't have it. You wanted me to tell you the truth, I'm telling you the truth of what happened. You know what I'm saying? (Inaudible).

DETECTIVE YOUNG: And for – for – well, rest his soul, but Hicks, you're just blaming it on him because he's already dead. But for Hicks –

MR. STOKES: No, could blame it on somebody else but I wouldn't (inaudible).

DETECTIVE YOUNG: (Inaudible) on a dead person, they ain't going to lie.

MR. STOKES: No, I (inaudible) it on somebody else.

DETECTIVE YOUNG: No, the dead is the best person, right?

MR. STOKES: No, I'm not. I'm not – I'm being honest. . . . That still – that still puts me in it. I'm still in it. No matter how you look at it it was my fault.

DETECTIVE YOUNG: But just don't you think (inaudible) saying you takin the blame for it, it's your fault, you still in it. But I'm not – that was never a discussion, we already knew you was in it. But my thing of it is, would be – why would the witness lie to me, and you know I'm telling you the truth. The guy described you[.]

* * *

MR. STOKES: ... That was a big fucking knife. And that's why I grabbed [Mr. Dixon's] wrist. And that's why I believe Hicks went off that, you know, that [Mr. Dixon] had a big fucking knife like that.

DETECTIVE RASHEED: All right. All right.

DETECTIVE YOUNG: I don't know. I mean, honestly, I'm not sure if I can believe that part, if I'm honest with you. Only because what the – you know the grandmother told us, that he was sitting there – that [Mr. Dixon] was sitting there on the couch. And when the knock happened at the door, I mean, I think he was – didn't think you was coming over there, because he said if you do come over he would call the police. When he went to the door there wasn't no confrontation, maybe he didn't [sic] a knife.

* * *

DETECTIVE YOUNG: Well, Hicks, I don't know about that. Hicks was a killer, he don't beat people up. He kill people. I mean, you said it yourself that he killed people.

MR. STOKES: Yeah, he killed people.

DETECTIVE YOUNG: So when he was called to do a job –

MR. STOKES: No. . . . I didn't want to kill him.

DETECTIVE YOUNG: . . . I don't think it's possible to hold yourself back from being a killer to just a personal assault. No, it's a way – if he – had the mentality to go over there and beat him[] up, then you're with him, you say hey, I'll knock on the door, we're going to talk to him. If it get out of hand, just assault him, don't kill him.

MR. STOKES: I had it fixed to just intimidate him. That's all. I'm like – (inaudible) scared anyway.

DETECTIVE YOUNG: Right. I don't think you needed Hicks for that. I don't even know if Hicks was there, but that's what you said. Because you know what? You're intimidating alone. And you know that. Your rep, your build.

* * *

MR. STOKES: Man, I didn't bring no knife to his house. I wouldn't bring a knife to somebody's house when they said they were going to call the police.

DETECTIVE YOUNG: Well, I'm pretty sure he didn't have one that day, Aubrey.

MR. STOKES: That's (inaudible).

DETECTIVE YOUNG: He didn't come – he didn't come to the door with a knife.

MR. STOKES: That's where the knife come from, I didn't have no knife on me. I didn't.

DETECTIVE YOUNG: So you all got it from him?

MR. STOKES: Yes, he had a knife in his dip.

DETECTIVE YOUNG: That was a big knife to have in your dip.

MR. STOKES: He did. He had it in his dip. When she pushed him out there, that's when he pulled it out.

DETECTIVE YOUNG: Right.

* * *

DETECTIVE YOUNG: . . . [T]he problem that we have is, everybody see one person on the porch, Aubrey. And the person is the same person who came in and they was fighting him, that – that end up in the hallway. She don't see and she's not crazy she – she – do you think – do you think she would ever forget this? Ever? Think about it.

* * *

DETECTIVE YOUNG: Aubrey, they said you had the knife. That is – that is – it ain’t they think, they 100 percent sure you had the knife. So they’re 100 percent sure, Aubrey. I can’t get around that. And that’s the truth. That’s why I told you to be honest. They say you had the knife. You. They didn’t say one of them had the knife. They said Spanky [Mr. Stokes’s nickname].

MR. STOKES: I don’t know how they know – I don’t know how they know that nickname.

DETECTIVE YOUNG: No, no, they said you[.] I’m calling you Spanky. Right. Right. So because they say [they’re] seeing you going across the street and you even said they followed you across the street.

MR. STOKES: Right.

The State admitted that no witness placed Mr. Stokes at Mr. Dixon’s doorstep on the day of the murder.

B. The Trial Court Erred in Admitting the Detectives’ Statements.

Ordinarily the admission of evidence is left to the “sound discretion” of the trial court. *Thomas v. State*, 429 Md. 85, 96 (2012) (quoting *Merzbacher v. State*, 346 Md. 391, 404-05 (1997)). We will not disturb that discretion unless the evidence is inadmissible under a particular rule or principle of law or there has been a clear abuse of discretion. *Decker v. State*, 408 Md. 631, 649 (2009). A trial court has no discretion to admit an opinion that is inadmissible as a matter of law; doing so, unless harmless, is reversible error. *Bohnert v. State*, 312 Md. 266, 279 (1988).

In *Crawford v. State*, the Court of Appeals overturned a defendant’s murder conviction based on the trial court’s error “in admitting into evidence certain portions of

taped recordings of interrogations of the accused by the police.” 285 Md. 431, 433 (1979). In two interviews, the defendant had admitted to stabbing the victim but consistently claimed she did so in self-defense. *Id.* Throughout the interviews, “the police attempted to have her recant her version of the incident by indicating their disbelief in her story, by exhorting her to tell the truth and arguing with her, by recounting what other persons, some named, some unnamed, had told them, by stating their opinions as to what had occurred, and by referring to what the victim had said when deposed five months before her death” in an unrelated civil matter. *Id.*⁵ As here, the

⁵ Among the numerous examples relayed in the Court’s opinion were:

Ms. Crawford, it is very improbable that [the victim] received all those wounds and you didn’t receive any.

* * *

But she had one clear, clean cut around her throat, not a bunch of slashes that you are describing that took place in this fight.

* * *

[N]ow every time we keep on talking we find out that you are not telling the truth about something else.

* * *

I think you’re gonna feel better if you get all this off your chest I think you really feel bad now, you feel guilty because you got carried away and you had your chance there and you got rid of her you just kept doing it and you’re going to fe[e]l better after you tell somebody about it you can’t keep it all bottled up inside you Ms. Crawford you can’t keep it all inside you you can’t get all up tight in knots.

* * *

You threatened to kill her at 7:00 o’clock when those two maintenance men were changing the lock, we have signed statements from both of them, they heard you threaten her, we know you hid the knife under the sheets of the bed, under the pillow of the bed, Renee told us that.

Continued . . .

defendant in *Crawford* did not object to the introduction of her own statements to the police, but objected to the introduction of the officers' statements and questions. *Id.* at 434-35. The trial court refused to redact the statements of the officers, instead offering a cautionary instruction that the jury should disregard the questions and statements of the officers because they were not evidence. *Id.* at 435-38, 442-43, 447; *see also id.* at 453 n.4 (quoting the instruction).

The Court of Appeals found that the trial court erred in allowing the introduction of the questions and statements of the officers, which violated the defendant's due process rights and "fatally infected the trial." *Id.* at 453. The Court observed that "[t]he credibility of the accused was all important in the determination by the jury of the validity of her claim throughout the interrogations that she killed in self-defense." *Id.* at 451. The admission of the statements and questions at issue thus "tended to seriously prejudice the defense." *Id.* In light of "[t]he nature of the objectionable matter, the constant repetition of it before the jury, and its direct adverse relation to the defense," the court's cautionary instruction to disregard the statements and questions of the officers was insufficient. *Id.* at 455-56. That case thus "furnish[ed] one of the exceptional instances in which a caution to disregard is not sufficient to cure the error in placing improper matters before the jury." *Id.* at 455.

Mr. Stokes also finds support for his contention in *Casey v. State*, 124 Md. App. 331 (1999), and *Snyder v. State*, 104 Md. App. 533 (1995). In *Casey*, the trial court

Crawford, 285 Md. at 440-44.

admitted a portion of a recorded statement in which the questioning officers repeatedly stated that they did not believe the defendant’s version of events. 124 Md. App. at 337-38.⁶ We held that the portion of the statement read to the jury should have been excluded because “[i]t is . . . well settled that the investigating officers’ opinions on the truthfulness of an accused’s statement are inadmissible under Maryland Rule 5-401.” *Id.* at 339.⁷

In *Snyder*, the trial court permitted an investigating detective to testify regarding a list of questions he wanted to ask the defendant, many of which seemed designed to

⁶ The prejudicial statements highlighted by the court include:

[OFFICER COLE]: Um you know we have too much information for you to sit here and tell us that you don't know what we're talking about. OK? Um and we're talking about something serious, OK. This isn't play time.

[APPELLANT]: This is obviously serious.

[OFFICER COLE]: . . . I can see exactly what happened here [F]rom what I'm hearing you're the type of guy if somebody needs a hand you're glad to lend it. . . . I think that's what happened basically, is Daughton's [sic] were having a problem and they came to you and . . . I think you got uh hooked into something you didn't want to be And um it, and it's up to you. You can sit and, you know, we, you can sit here and tell us you don't know anything about it and we know that's not true. Um we know some of the people. And it's not just what [Daughton] told us. We've talked to [Gill] . . . and we have some other records, you know, we have access to a lot of records that can back up some of the information that [Daughton] and [Gill] were telling us[.]

* * *

[OFFICER COLE]: [W]e've been working on this [a] year and a half and it's too long for you to . . . tell us we don't know what we're talking about, cause we know that's not true. . . . [D]on't sit here and tell us you don't know anything about it cause we know that's not true.

Casey, 124 Md. App. at 337-38 (alterations in original).

⁷ We also held that the trial court erred in admitting the portion of the statement in which the defendant invoked his right to counsel. *Casey*, 124 Md. App. at 339.

challenge his credibility. 104 Md. App. at 551-53. The evidence in the case was entirely circumstantial. *Id.* at 538. Observing that the questions “put into evidence the detective’s disbelief of appellant’s statement regarding his activities, and the events surrounding his wife’s murder, as well as the detective’s opinion as to inconsistencies in appellant’s statements,” this Court held that the court erred in allowing the detective to testify to them. *Id.* at 554. Because the Court could not say beyond a reasonable doubt that the admission of the statements did not contribute to the guilty verdict, we reversed and remanded for a new trial. *Id.*

In a related line of cases, our courts have overturned verdicts where witnesses were permitted to testify in court as to the credibility of other witnesses. *See Fallin v. State*, ___ Md. ___, 2018 WL 3410022, No. 79, Sept. Term, 2017, at *13, *15 (July 12, 2018) (holding that court erred in admitting testimony of forensic examiner that child victim did not show “signs of fabrication” based on “general rule that one witness may not opine on the credibility of another witness’ testimony in a case”); *Hunter v. State*, 397 Md. 580, 585-86, 595 (2007) (finding that the trial court erred in allowing the prosecution to ask the defendant if police officers lied when they said he had confessed “because [it] encroached on the province of the jury by asking [the defendant] to judge the credibility of the detectives and weigh their testimony”); *Bohnert v. State*, 312 Md. 266, 277 (1988) (recognizing that it is “error for the court to permit to go to the jury a statement, belief, or opinion of another person to the effect that a witness is telling the truth or lying”); *id.* at 277-79 (holding that trial court erred in allowing social worker to testify that child was

victim of sexual abuse, based solely on child’s statements, because that testimony “was tantamount to a declaration by her that the child victim was telling the truth and [the defendant] was lying”). “Testimony from a witness relating to the credibility of another witness is to be rejected as a matter of law.” *Id.* at 278.

Mr. Stokes points out that the statements of Officers Young and Rasheed were very similar to those at issue in *Crawford* and *Casey*. The State responds that this case is distinguishable from those cases because the officers’ statements here were not admitted to undermine Mr. Stokes’s credibility but to show his consciousness of guilt and provide context for his responses. The State cites as support *Donaldson v. State*, 200 Md. App. 581 (2011). In *Donaldson*, a defendant was charged with planning and participating in the execution-style murder of a friend. *Id.* at 584. During questioning, the detectives confronted the defendant about his omission of certain facts and discrepancies in his story, including his failure to mention a conversation with his girlfriend in which she disclosed that she had an affair with the victim. *Id.* at 587. The defendant objected to the introduction of video of the interrogation, primarily because he had not consented to the video recording and he thought that his demeanor on video would be unduly prejudicial. *Id.* at 587-88. In the course of rejecting those arguments, we identified no problem with the fact that the statement included the questioning detective’s “recitation of his belief of the facts of the crime.” *Id.* at 595.

Even if our opinion in *Donaldson* had really addressed the issue presented here, which it did not,⁸ there is no indication that the statements there repeatedly expressed disbelief in the defendant’s story or challenged that story with fabricated statements of other alleged witnesses. Here, similar to the problematic statements in *Crawford*, *Casey*, and *Snyder*, Detectives Young and Rasheed repeatedly called into question Mr. Stokes’s credibility by saying that they did not believe him (“I can’t get around that and that’s the truth. That’s why I told you to be honest.”), admonishing him to tell the truth (“Aubrey, . . . you have to be honest with us.”), expressing certainty that Mr. Stokes was guilty (“[T]here’s no doubt that you did it.”), and providing a version of events that was at odds with what Mr. Stokes had said (“[Y]ou’ve been asking him for your money, . . . and it escalated You[’re] angry. . . . It has nothing to do with the money, it’s all about respect. And he disrespected you.”). To the extent the questions asked Mr. Stokes to explain discrepancies between his statements and those of others, the statements of others were ones that the detectives had deliberately fabricated. Although such deceit is a permissible tactic for police questioning, that does not make the officers’ false and misleading statements admissible to challenge the defendant’s credibility.

The detectives’ repeated statements expressing disbelief in Mr. Stokes’s story and challenging his credibility were inadmissible and it was error for the circuit court to admit

⁸ Notably, the defendant in *Donaldson* did not object to the introduction of the transcript of the interrogation; he objected only to the video that showed his demeanor. *Id.* at 587-90.

them. A trial court has no discretion to admit an opinion that is inadmissible as a matter of law. *See Bohnert*, 312 Md. at 279.

C. The Error in Admitting the Detectives’ Statements Was Not Harmless.

The next question is whether the court’s error was harmless. The standard for determining whether error was harmless is whether we are “satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.” *Dionas v. State*, 436 Md. 97, 108 (2013) (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). “[W]here credibility is an issue and, thus, the jury’s assessment of who is telling the truth is critical, an error affecting the jury’s ability to assess a witness’ credibility is not harmless error.” *Devincentz v. State*, ___ Md. ___, 2018 WL 3854532, No. 74, Sept. Term, 2017, at *17 (Aug. 13, 2018) (quoting *Dionas*, 436 Md. at 110); *see also Lupfer v. State*, 420 Md. 111, 140-41 (2011) (finding that error in allowing prosecutor to question defendant about his post-arrest, post-*Miranda* silence was not harmless where his defense at trial, that he shot the victim accidentally, “hinged” on his credibility); *Smith v. State*, 423 Md. 573, 599 (2011) (holding that the erroneous exclusion of evidence that supported the defense theory that the murder victim had committed suicide was not harmless).

The State does not argue that the admission of the detective’s statements was harmless and we cannot find that it was. There was no forensic evidence tying Mr. Stokes to the murder and no eyewitness saw him do it. The evidence against Mr. Stokes consisted primarily of the text message exchanges that preceded the murder and the

testimony of several witnesses whose credibility was challenged. Mr. Stokes’s defense that he did not murder Mr. Dixon rested on his own credibility. Credibility was thus the central issue in the case. The cautionary instruction/stipulation, which did not address the issue of the credibility challenges, was not sufficient to render harmless the error caused by the officers’ repeated expressions of disbelief in his story. We cannot conclude beyond a reasonable doubt that the error in admitting those statements did not affect the verdict. We therefore reverse the verdict and remand for a new trial.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING DETECTIVE YOUNG TO TESTIFY AS TO HIS PERCEPTION OF WHY MR. STOKES TERMINATED HIS CELL PHONE SERVICE.

For the benefit of the trial court on remand, we also address Mr. Stokes’s contention that the trial court abused its discretion in permitting Detective Young to testify as to what he thought when he learned that Mr. Stokes had terminated his cell phone service following Mr. Dixon’s murder. Detective Young testified that he thought that Mr. Stokes “had turned the phone off right after this incident happened to keep us from tracking it.” Mr. Stokes argues that the testimony should not have been admitted because it was “pure speculation” and therefore inadmissible lay opinion testimony. The State argues that Detective Young’s remark was admissible because it was based on the detective’s direct perceptions and because it was consistent with Mr. Stokes’s statements to police. We agree with the State.

Maryland Rule 5-701 provides that lay opinion testimony is admissible when the testimony consists of “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." Specifically, a person's "manner of conduct" and "the mental state or responsibility of another" are the type of evidence that is specifically contemplated by Rule 5-701. *Ragland v. State*, 385 Md. 706, 718 (2005) (quoting *Asplundh Mfg. Div. v. Benton Harbor Eng'g*, 57 F.3d 1190, 1196-98 (3d Cir. 1995)); see also *Matoumba v. State*, 162 Md. App. 39, 53 (2005) (holding that police officers' lay opinion testimony as to their reasonable articulable suspicion for frisking the defendant was admissible under Md. Rule 5-701 because it "related to their own perception of events and their rational inferences drawn from that perception, not on scientific, technical, or specialized knowledge").

Here, Detective Young's testimony was based on his perception of the text messages between Mr. Stokes and Mr. Dixon and the rational inference that he drew from Mr. Stokes's subsequent cancellation of his cell phone service during the course of his investigation. The detective's testimony was rationally connected to the underlying facts. Moreover, Mr. Stokes had admitted in his recorded statement, which was played for the jury, that the reason he had requested that the service be cut off right after the incident was because he "knew what . . . it was going to look like." Detective Young's testimony added little, if anything, to this admission. We perceive no abuse of discretion in the

circuit court's admission of Detective Young's testimony regarding his perception of Mr. Stokes's cancellation of his cell phone service.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED.
CASE REMANDED TO THAT COURT
FOR A NEW TRIAL. COSTS TO BE PAID
BY THE MAYOR AND CITY COUNCIL
OF BALTIMORE.**