Circuit Court for Baltimore City
Case No. 115266001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 940

September Term, 2017

SPENCE JEFFERS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: November 28, 2018

A jury sitting in the Circuit Court for Baltimore City acquitted appellant Spence Jeffers of first-degree murder, but convicted him of conspiracy to commit murder, second-degree murder, use of a handgun in a crime of violence, carrying a handgun, possession of a regulated firearm by a prohibited person, two counts of second-degree assault, and two counts of reckless endangerment. The court sentenced him to a total of 80 years of incarceration, including 30 years for conspiracy to commit murder. Jeffers presents the following questions:

1. Did the trial court impose an illegal sentence when it gave Mr. Jeffers 30 years for the non-existent crime of conspiracy to commit murder, to include second degree murder?

2. Did the trial court commit plain error by instructing jurors that Mr. Jeffers could be convicted of conspiracy to commit murder, to include second degree murder?

3. Did the trial court err by admitting hearsay statements of a co-defendant against Mr. Jeffers?

For the reasons discussed below, we shall affirm the convictions.

BACKGROUND[1]

On August 26, 2015, Sergeants David Brust and Jeffrey Young of the Baltimore City Police Department were working in plain clothes, in an unmarked car, in the 100 block of South Calverton Road in West Baltimore. While talking to people on the street, Sergeant Brust noticed two black men – one wearing a white t-shirt, and the other wearing a black t-shirt. The men were coming from an open field known as "the Pit,"

[1] Much of the background in this opinion comes directly from the opinion in which this Court affirmed the conviction of Jeffers's co-defendant, Steven Johnson: *Johnson v. State*, No. 982, Sept. Term 2017, 2018 WL 5304465 (Oct. 24, 2018).

which ran between South Calverton and South Pulaski Street, a block to the east. The men walked down the sidewalk on South Calverton in the opposite direction from where the sergeants were parked. Sergeant Brust testified that he did not pay much attention to the men because they were not doing anything out of the ordinary at the time.

A short time later, however, Sergeant Brust heard gunfire. He looked in the direction from which the sound came and saw the same two men firing handguns at a third man. The third man, later identified as Kevin Gray, was sitting on the front steps of a vacant house at 123 South Calverton Road, approximately 40 yards from the sergeants. Sergeant Young also heard the gunshots and saw two black men, one with a white t-shirt and the other with a black t-shirt and brownish shorts, firing guns at Gray.

The shooters retreated on South Calverton, toward the sergeants, and went back through the Pit towards South Pulaski Street.

The sergeants got into their car, drove around the block onto South Pulaski, and notified the dispatcher of the shooting. In a radio transmission, Sergeant Young described two suspects, one as a black male, five feet, eight inches tall, with a slightly heavy build, wearing a black t-shirt and khaki-colored cargo shorts, who was running toward Payson Street (east of Pulaski); and the other as a black male, wearing a white t-shirt.

As the sergeants drove onto South Pulaski, they saw the two men come out of the Pit and approach a gold Buick Century that was parked in front of the house at 48 South Pulaski Street. The man in the white t-shirt went to the passenger side of the car, but abruptly turned and ran in the opposite direction, back into the Pit. The man in the black

t-shirt ran towards the Buick, but then turned and ran away from the sergeants and away from the crime scene. The sergeants pursued the man in the black shirt, as did three undercover detectives who were in another unmarked car. No one went after the man in the white t-shirt.

One of the undercover detectives got out of his car at the intersection of South Pulaski and Boyd Street and chased after the man in the black t-shirt. The detective lost sight of the man as he entered a field behind a vacant house. The field, which was essentially an unsanctioned dump, was overgrown with tall grass, weeds, trees, and brush and filled with debris. A wrought-iron fence, part of which was wrapped in razor wire, separated the field from the parking lot of a business next door. The detective stopped after running five to seven yards into the field because he was concerned for his safety, but other officers quickly set up a perimeter around the block and held it in place to ensure that the black-shirted suspect could not leave the area.

After additional officers arrived, SWAT officers searched the field and the surrounding area for the suspect. After about an hour of searching, they found Spence Jeffers hiding between a brick wall and a wooden shed in the adjacent parking lot. Jeffers was wearing khaki cargo shorts and no shirt, but the officers located a black t-shirt hidden underneath the shed, within reach of where Jeffers was found. Sergeant Young testified that Jeffers "had the same shorts, . . . the same physical build, skin complexion, and close cut hair," as the assailant whom he saw wearing the black t-shirt.

Jeffers was handcuffed, and gunshot residue (GSR) samples were collected from his hands. One unique particle of GSR was found on Jeffers's right hand.

At the time when Jeffers was arrested, he had a key to the gold Buick in his possession. His latent fingerprints were found both on the exterior of the driver's door and on a bottle inside the car. He did not, however, have a gun in his possession. The police were unable to locate Jeffers's gun despite extensive searches on August 26 and 27, 2015.

A victim of the shooting, Kevin Gray, died as a result of six gunshot wounds, mostly to his back. Another victim, a 93-year-old woman who was sitting on her front steps when the shooting occurred, suffered a graze wound to her head. She was treated and released from a hospital.

The elderly victim, Clara Canty, lived next door to where Gray was shot. She said that she saw two black men approach Gray. Without saying anything, one of the men started shooting. Gray attempted to run, but fell on the sidewalk.[2]

Just before noon on the day after the shooting, Jeffers's co-defendant, Steven Johnson, walked into Franklin Square Hospital, in eastern Baltimore County. He complained of a gunshot wound to his right forearm. He told the medical personnel that he had been shot the day before, from a distance of 10 to 15 feet.

Because Johnson claimed to have been shot in Baltimore City, Sergeant Joseph

[2] A third person, Quandre Dixon, walked into another hospital several hours after the shooting, suffering from a gunshot wound. Dixon claimed to have been shot in the 100 block of South Calverton. A homicide detective interviewed him, and he voluntarily provided a DNA sample that was to be compared to the blood samples that were recovered from the murder scene. The detectives determined that Dixon may have been shot during a different incident, but that he was not a victim of the shooting that killed Gray and injured Ms. Canty.

Dobry, who was assigned to the violent crimes unit in the northeastern district, went to the hospital to investigate. Johnson told Sergeant Dobry that he had been shot during the robbery of a dice game on the 2000 block of East 33rd Street. He also told Sergeant Dobry that he had been wearing a white t-shirt and black shorts at the time of the shooting, but that he had discarded the clothing before going to the hospital. Johnson was unable to provide any specific details about the alleged robbery and refused to give a recorded statement.

Sergeant Dobry canvassed the area where Johnson claimed to have been shot, but found no blood or other evidence that a shooting had occurred. He determined that the police had received no calls complaining of gunshots being fired or of someone being shot near the 2000 block of East 33rd Street at around the time when Johnson claimed to have been shot.

Meanwhile, at the crime scene on South Calverton Road, the investigators collected several blood samples for DNA analysis. They found a blood trail running from the sidewalk on the South Calverton side of the Pit, through the Pit, and onto the sidewalk on South Pulaski where the Buick was parked. Lieutenant Rhoden[3] found a .40 caliber Glock handgun, which had blood on the grip of the magazine, in the backyard of 48 South Pulaski Street. As the result of an analysis of the samples taken from the .40 caliber handgun and the blood trail, the police determined that Johnson was the single male contributor of DNA on the grip and the magazine of that handgun.

[3] Lieutenant Rhoden's first name does not appear in the record.

Seven cartridge casings were found in front of 123 South Calverton. Three were .40 caliber casings and were marked "Blazer 40 S&W." Four were 9 mm. Luger casings and were marked "PMC 9mm Luger." Daniel Lamont, one of the State's firearms examination, comparison, and operability experts, testified that the three .40 caliber cartridge casings had been fired from the .40 caliber Glock that was found by Lieutenant Rhoden – *i.e.*, the weapon that had Johnson's DNA on the magazine and the grip. At the time of the firearms expert's initial examination, he was able to conclude that the 9 mm. Luger casings had all been fired from the same firearm, but the identity and location of that firearm was then unknown.

On February 4, 2016, a little more than five months after the shooting, Detective Sergeant Gregory Ostrander was conducting an unrelated investigation in the field where Jeffers had been apprehended. During that investigation, Detective Ostrander found a 9 mm. Glock handgun hidden amongst some debris. One of the State's firearms experts, Mr. Lamont, determined that the 9 mm. Glock was the gun that fired the four 9 mm. Luger cartridge casings that were found at the scene of Gray's shooting.

Jeffers and Johnson were tried together. At the end of the trial, neither of them asked the court to instruct the jury that under *Mitchell v. State*, 363 Md. 130 (2001), the charge of conspiracy to murder does not encompass the form of second-degree murder that involves an intent to kill without premeditation. Nor did they request a special verdict sheet that informed the jury that it could not convict them of conspiracy to commit second-degree murder. Both confirmed that they had requested the relevant pattern jury instructions, which do not expressly state that a person cannot conspire to

commit second-degree murder. *See* Maryland Pattern Criminal Jury Instruction 4:08. They did not preserve any objection to the relevant instructions or to the verdict sheet.

The jury convicted Jeffers of the form of second-degree murder that involves an intent to kill without premeditation. The jury also convicted Jeffers of conspiracy to commit murder. The jury, however, acquitted Jeffers of first-degree murder.

We shall discuss additional facts as they become relevant.

ANALYSIS

I. Legality of Sentence for Conspiracy to Murder

"Under Maryland law, murder remains a common law crime that, by statute, has been divided into two degrees." *Mitchell v. State*, 363 Md. 130, 146 (2001). First-degree murder is perpetrated "by means of poison, lying in wait, 'or by any kind of wilful, deliberate and premeditated killing[.]'" *Id.* at 146-47; *see* Md. Code (2002, 2012 Repl. Vol.), § 2-201(a)(1)-(3) of the Criminal Law Article; or by killing a person "in the perpetration of or an attempt to perpetrate" certain serious felonies, such as arson, burglary, carjacking, mayhem, or rape. *See* § 2-201(a)(4)(i)-(xii) of the Criminal Law Article. Second-degree murder, by contrast, is a:

> killing . . . (other than by poison or lying in wait) with the intent to kill, but without the deliberation and premeditation required for first degree murder; killing another person with the intent to inflict such serious bodily harm that death would be the likely result; and what has become known as depraved heart murder – a killing resulting from the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.

Mitchell v. State, 363 Md. at 147 (quotation marks omitted); *accord Alston v. State*, 414 Md. 92, 109 n.5 (2010).

"A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means." *Townes v. State*, 314 Md. 71, 75 (1988). "The essence of a criminal conspiracy is an unlawful agreement." *Id.* "In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown." *Id.*

In *Mitchell v. State*, 363 Md. at 149, the Court of Appeals held that Maryland does not recognize the crime of conspiracy to commit the form of second-degree murder that involves an intent to kill without premeditation. The Court reasoned that "the kind of awareness and reflection necessary to achieve the unity of purpose and design for a conspiracy is essentially the same as that required for deliberation and premeditation." *Id.* Consequently, the Court reversed a conviction for conspiracy to commit second-degree murder. *Id*. at 150.[4]

Jeffers was acquitted of first-degree murder, but convicted of second-degree murder and of conspiracy to commit murder. In light of his acquittal on the charge of first-degree murder, Jeffers argues that the jury may have convicted him of the

[4] In *Alston v. State*, 414 Md. 92, 117 (2010), the Court of Appeals went on to hold that "a charge of conspiracy to murder" also "excludes second degree murder based upon an intent to inflict grievous bodily harm." The Court explained that a murder based on an intent to inflict grievous bodily harm "'involves an unintentional killing[.]'" *Id.* at 116 (quoting *Thornton v. State*, 397 Md. 704, 713 (2007)) (emphasis removed). By contrast, "a conspiracy to murder means a malicious intent to kill with deliberation and premeditation, *i.e.*, first degree murder, as the conspiracy necessarily supplies the elements of deliberation and premeditation." *Id.* at 117. "[U]nder Maryland law," the Court concluded, "[t]here is no such offense" as "conspiracy to commit second degree murder of the type based on an intent to inflict grievous bodily harm." *Id.* at 118.

nonexistent crime of conspiracy to commit second-degree murder. He faults the circuit court for failing to inform the jury, in the instructions and on the verdict sheet, that it could not convict him of a conspiracy to commit second-degree murder.

Jeffers, however, does not deny that he never asked the circuit court to do what he now says it should have done. Hence, he tacitly admits that his claims of instructional error are unpreserved. He endeavors to avoid the procedural obstacles of waiver and nonpreservation (*see* Md. Rule 4-325(e); *Alston v. State*, 414 Md. at 110-11) by arguing that the circuit court imposed an illegal sentence when it sentenced him to consecutive term of 30 years' imprisonment for conspiracy to commit murder. A "court may correct an illegal sentence at any time[,]" Md. Rule 4-345(a), including on direct appeal, when no objection was made in the trial court. *Walczak v. State*, 302 Md. 422, 427 (1985); *accord Johnson v. State*, 427 Md. 356, 367 (2012) (quoting *Chaney v. State*, 397 Md. 460, 466 (2007)) (stating that an illegal sentence "'may be attacked on direct appeal'").

Nevertheless, the scope of a motion to correct an illegal sentence "'is narrow.'" *Johnson v. State*, 427 Md. at 367 (quoting *Chaney v. State*, 397 Md. at 466-67); *accord Colvin v. State*, 450 Md. 718, 725 (2016); *Rainey v. State*, 236 Md. App. 368, 374, *cert. denied*, 460 Md. 23 (2018). "'[A] motion to correct an illegal sentence is not an alternative method of obtaining belated appellate review of the proceedings that led to the imposition of judgment and sentence in a criminal case.'" *Colvin v. State*, 450 Md. at 725 (quoting *State v. Wilkins*, 393 Md. 269, 273 (2006)); *accord Rainey v. State*, 236 Md. App. at 375. Instead, a motion to correct an illegal sentence can succeed only if the illegality "'inhere[s] in the sentence itself[.]'" *Johnson v. State*, 427 Md. at 367 (quoting

Matthews v. State, 424 Md. 503, 512 (2012)).

An illegality "'inheres in the sentence itself'" when "'there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed and, for either reason, is intrinsically and substantively unlawful.'" *Colvin v. State*, 450 Md. at 725 (quoting *Chaney v. State*, 397 Md. at 466); *accord Rainey v. State*, 236 Md. App. at 374. For example, a motion to correct an illegal sentence will lie if the circuit court imposes a sentence for a crime with which the defendant was not charged, *Johnson v. State*, 427 Md. at 370-71; if the court imposes a sentence for a charge on which the defendant was acquitted, *Ridgeway v. State*, 369 Md. 165, 171 (2002); if the court imposes a sentence that exceeds the maximum sentence identified in a binding plea agreement, *Matthews v. State*, 424 Md. at 519; or if the court imposes a sentence that was not permitted by statute. *See, e.g.*, *Holmes v. State*, 362 Md. 190, 195-96 (2000) (citing *Matthews v. State*, 304 Md. 281, 285-86 (1985); *Walczak v. State*, 302 Md. at 433).

In summary, a motion to correct an illegal sentence will lie only if the trial court "lacked the power or authority to impose the contested sentence." *Johnson v. State*, 427 Md. at 370; *accord Rainey v. State*, 236 Md. App. at 381. A court, however, does not "lack[] the power or authority to impose the contested sentence" merely because it allegedly committed an error that might undermine the validity of the judgment. *Rainey v. State*, 236 Md. App. at 382.

This case does not fall within the "narrow" scope of a motion to correct an illegal sentence. Because the jury convicted Jeffers of conspiracy to murder, the court certainly

did not sentence Jeffers for a crime of which he was not convicted. *Compare Johnson v. State*, 427 Md. at 370-71. Nor did the court lack the power or authority to impose a sentence for conspiracy to murder. *See* Md. Code (2002, 2012 Repl. Vol.), § 1-202 of the Criminal Law Article ("[t]he punishment of a person who is convicted of conspiracy may not exceed the maximum punishment for the crime that the person conspired to commit").

We are unpersuaded by Jeffers's argument that his sentence was illegal because he may have been convicted of the nonexistent crime of conspiracy to commit second-degree murder. Jeffers was charged under the statutory short form with conspiracy to murder. *See* § 1-203 of the Criminal Law Article. He did not challenge the indictment. Nor did he challenge the sufficiency of the evidence that the State adduced in support of the charge of conspiracy to murder. He agrees that Maryland does not recognize the crime of conspiracy to commit second-degree murder with an intent to kill, but without premeditation. It follows, therefore, that Jeffers was charged with conspiracy to commit first-degree murder and that the court properly submitted the charge of conspiracy to commit first-degree murder to the jury, which found him guilty. In these circumstances, the court had the power and authority to sentence Jeffers for conspiracy to murder.

The court had the power and authority to sentence Jeffers for that offense notwithstanding that the jury had acquitted him of first-degree murder. "[W]here the charge is made and the evidence shows that the defendant conspired to kill another person unlawfully and with malice aforethought, the conspiracy is *necessarily* one to commit murder in the first degree (even if a murder pursuant to the conspiracy never

occurs or, for whatever reason, amounts to a second degree murder), as the agreement itself, for purposes of the conspiracy, would supply the necessary deliberation and premeditation." *Mitchell v. State*, 363 Md. at 149 (emphasis added). "'[A]s the conspiracy occurs when the agreement is made, it is not affected by the degree of the substantive crime actually committed[.]'" *Savage v. State*, 226 Md. App. 166, 175 (2015) (quoting *Mitchell v. State*, 363 Md. at 138). Therefore "'it was legally possible for [Jeffers] to conspire to commit first degree murder even though the crime actually committed amounts only to second degree murder.'" *Id.* (quoting *Mitchell v. State*, 363 Md. at 138).

At bottom, Jeffers's argument involves an unpreserved claim of instructional error – the failure to inform the jury that it could not convict Jeffers of conspiracy to commit second-degree murder. "Countless opinions" have held that, "when no timely objection to the jury instructions is made in the trial court, [a Maryland appellate court] ordinarily will not review a claim of error based on those instructions." *Alston v. State*, 425 Md. at 111. Jeffers cannot avoid the force of those opinions by recharacterizing an unpreserved claim of instructional error as a motion to correct an illegal sentence. Because the circuit court had the power and authority to convict Jeffers for conspiracy to murder notwithstanding any alleged instructional error, we affirm his conviction and sentence on that charge.[5]

[5] Jeffers asks us to overlook his failure to preserve an objection to the jury instructions concerning conspiracy to murder and to review the court's actions for plain error. "In the exercise of our discretion, we decline to do so." *Wallace v. State*, 237 Md. App. 415, 439 (2018).

II. Medical Records

At the end of the State's case, it sought to introduce the medical records for the treatment that Jeffers's co-defendant, Johnson, received for his gunshot wound. Within the records, the section captioned "History" of the "Provider Triage & Medical Screening Examination" form reported the following information: "S+A 28 y/o [illegible] who was shot *from [approximately] 10-15'* away in rt arm thru + thru last nt. He rinsed it [illegible] cold water + Today decided to get it [checked] out. He has full use of the arm, no weakness, no numbness/[illegible] . . . ." (Emphasis added.) In referring to Johnson's reports of pain, other portions of the medical records stated: "X 2200 while running *from police*, pt suspects was shot w/ gun. 2 wounds noted, on on [sic] internal aspect and on external, about 2-3 cm; not actively bleeding. Guaze [sic] applied. Pt denies falling/[loss of consciousness]/hitting head/[chest pain]/[shortness of breath]." (Emphasis added.)

Jeffers objected and asked for the redaction of any portion of the narrative that was unrelated to Johnson's medical treatment. He identified two objectionable statements: (1) the statement that Johnson was running from the police when he was shot and (2) the statement that Johnson was shot from a distance of approximately 10 to 15 feet.

The court agreed to redact the words "from police," but declined to redact the reference to the distance from which Johnson was shot. The court expressly stated that, in deciding what to redact and what not to redact, it was following Md. Rule 5-803(b)(4), the exception to the general prohibition against hearsay for "[s]tatements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the

inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment."

On appeal, Jeffers challenges the court's decision not to redact Johnson's statement that he was shot from a distance of approximately 10 to 15 feet. Jeffers contends that the distance from which Johnson had been shot had no bearing on medical diagnosis or treatment. Jeffers is apparently concerned that Johnson's statement matches the State's forensic evidence, which established (based on the location of shell casings) that the assailants were about 12 feet from one another when they opened fire on their victims. We see no error in the admission of Johnson's statement.

"[H]earsay rulings are evidentiary rulings, which are typically subject to review for abuse of discretion." *Gordon v. State*, 431 Md. 527, 534 (2013). A trial court, however, "'has no discretion to admit hearsay in the absence of a provision providing for its admissibility.'" *Id*. at 536 (quoting *Bernadyn v. State*, 390 Md. 1, 8 (2005)). To the contrary, "[h]earsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule . . . or is 'permitted by applicable constitutional provisions or statutes.'" *Bernadyn v. State*, 390 Md. at 8 (quoting Md. Rule 5-802) (emphasis in original); *accord Gordon v. State*, 431 Md. at 535. We thus conduct a de novo review of whether the evidence at issue was hearsay. *Gordon v. State*, 431 Md. at 533 ("'[w]hether evidence is hearsay is an issue of law reviewed *de novo*'") (quoting *Bernadyn v. State*, 390 Md. at 8); *see also Parker v. State*, 408 Md. 428, 437 (2009).

Rule 5-803(b)(4), the exception for statements made for purposes of medical treatment or diagnosis, applies to statements that are "pathologically germane" – i.e.,

germane to the patient's treatment. *State v. Coates*, 405 Md. 131, 146 (2008). "'Pathologically germane' as that term has been defined includes facts helpful to an understanding of the medical or surgical aspects of the case, within the scope of medical inquiry." *State v. Garlick*, 313 Md. 209, 222 (1988). To be "pathologically germane," a statement "'must fall within the broad range of facts which under hospital practice are considered relevant to the diagnosis or treatment of the patient's condition.'" *Yellow Cab Co. v. Hicks*, 224 Md. 563, 570 (1961) (quoting *McCormick on Evidence*, ch. 32 § 290); *accord State v. Garlick*, 313 Md. at 222; *see also Marlow v. Cerino*, 19 Md. App. 619, 635 (1974) (stating that "pathologically germane" means "having significant bearing upon and relation to the disease or injury from which one suffers"). "Only statements that are both taken and given in contemplation of medical treatment or medical diagnosis for treatment purposes fit within the Rule 5-803(b)(4) hearsay exception." *Webster v. State*, 151 Md. App. 527, 537 (2003) (emphasis removed).

Jeffers argues that the distance between Johnson and the person who shot him has no bearing on his medical diagnosis or treatment. To the contrary, information about how far the victim was from the shooter, as well as the angle at which the victim was hit, may help to identify the bullet's trajectory and its pathway through the body. That information, in turn, may help a healthcare provider "to determine which skin wound is the likely entrance wound and to anticipate potential injury patterns and locations." *See* David Bruner, Corey G. Gustafson & Catherine Visintainer, *Ballistic Injuries in the Emergency Department*, Emergency Medicine Practice, Dec. 2011, https://perma.cc/KQV3-DMQR (last viewed Nov. 27, 2018). Therefore, it certainly can

be germane to medical treatment to know the distance between a gunshot victim and the assailant.

This case illustrates how the distance between the victim and the assailant is pathologically germane to treatment. Here, the records state that Johnson suffered "2 wounds." Yet, without information about the relatively short distance between Johnson and the shooter, a healthcare provider might first have suspected that Johnson had been shot twice, that both wounds were entrance wounds, and that the bullets remained in Johnson's arm. By contrast, with information about the short distance between Johnson and the shooter, the healthcare provider could more readily conclude that Johnson had been shot "through and through" – i.e., that one wound was an entrance wound, that the other was an exit wound, and that no bullets remained in Johnson's arm. For that reason, the court did not err in admitting Johnson's statement about the distance at which he was shot as a statement for purposes of treatment or diagnosis under Rule 5-803(b)(4), because the statement was germane to his treatment or diagnosis.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.