

Circuit Court for Charles County
Case No. C-08-CR-21-000296

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 959

September Term, 2022

GREGORY DESHAWN COLLINS, JR.

v.

STATE OF MARYLAND

Tang,
Albright,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.
Concurring and Dissenting Opinion by Eyler, J.

Filed: November 21, 2025

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

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After a jury trial in the Circuit Court for Charles County, Gregory Deshawn Collins, Jr., the appellant, was convicted of felony murder, armed robbery, and related counts arising from the robbery of a 7-Eleven store. On appeal, the appellant presents three questions for our review, which we have rephrased:

1. Did the court err by denying the appellant's motion to suppress statements that he made to police?
2. Did the court err by denying the appellant's motion *in limine* to exclude evidence of cell-site analysis and mapping?
3. Did the court err by denying the appellant's motion to strike the notice of the State's intent to seek life imprisonment without the possibility of parole?

For the reasons that follow, we answer the first question in the affirmative and answer the remaining questions in the negative. Accordingly, we reverse the judgments of the circuit court and remand the case for proceedings consistent with this opinion.

FACTUAL BACKGROUND

At approximately 12:50 a.m. on October 1, 2020, police responded to a shooting at a 7-Eleven store in Waldorf, Maryland. Police found the store clerk, Lynn Maher, fatally shot and lying on the floor behind the counter.

Police pulled surveillance footage captured from multiple cameras. The videos showed the shooter enter the store, walk around, and pick up an iced tea bottle before approaching the store clerk. The shooter was a Black male, wearing a black hoodie with the hood up, a surgical face mask, acid-washed jeans, and blue sneakers. He pulled out a gun and pointed it at the clerk. A witness inside the store heard the shooter demand money from the clerk and then a gunshot. The shooter ran out of the store. Another witness saw

the shooter run past the gas pumps, cross the parking lot, and jump over a fence in the direction of an adjacent neighborhood.

A resident in the neighborhood looked outside her window after having heard a “loud pop.” She saw an “African American” man wearing blue tennis shoes and blue jeans “standing there with a handgun.” She recognized him as someone who “walks around in [her] neighborhood” and who she had seen a couple of days earlier.

Inside the 7-Eleven, police recovered a shell casing across from the counter. The bullet fragment was tested and was consistent with a .40 caliber Smith & Wesson or a 10-millimeter auto-caliber firearm. Police lifted fingerprints in the store, but none had evidentiary value. After canvassing the area around the 7-Eleven, including the nearby woods, police recovered a surgical mask, a “7-Eleven tea bottle,” a black knit hat, a cell phone, and U.S. currency in various denominations, all of which were swabbed for DNA. Although most results were inconclusive, the black hat produced a mixture of DNA contributors, the major contributor of which matched the appellant’s DNA profile.

Suspecting that the shooter lived near the 7-Eleven, police researched calls for service from the surrounding neighborhoods, which led them to an address associated with the appellant. Police found a known photograph of the appellant and compared it with the image of the shooter from the 7-Eleven video footage. Based on the comparison, police observed similar characteristics in skin tone, height, weight, and eyes.

On October 2, 2020, police executed a search warrant on the address associated with the appellant. The appellant was not present, but the police interviewed his mother and brother.

On October 19, Detective Jeffrey Feldman of the Charles County Police Department, the lead detective, learned that the appellant had been arrested in Hinesville, Georgia. After he and another detective drove from Maryland to the Hinesville detention center, Detective Feldman interviewed the appellant. During the interrogation, the appellant admitted to his involvement in the robbery and shooting at the 7-Eleven.

At some point, the police obtained a cell phone number associated with the appellant and acquired his cell phone records from his service provider for the period around October 1. Detective Andrea Worley of the Charles County Sheriff's Office conducted cell phone mapping analysis using the call details from those records. Detective Worley concluded that the appellant's cell phone was "estimated" to be in a "coverage area" for a tower near the 7-Eleven at the time of the shooting, but she acknowledged that there was "no way" to determine "exactly" where the phone was located within that area.

On June 25, 2021, the State indicted the appellant for first-degree murder, armed robbery, and related offenses. On July 7, Detective Feldman visited the appellant at the Charles County Detention Center and handed him the State's Notice of Intention to Seek Sentence of Imprisonment for Life Without Possibility of Parole. The appellant moved for sanctions, alleging prosecutorial misconduct. The appellant sought to strike the notice, but the court denied the motion.

A multi-day jury trial commenced on May 2, 2022. After trial, the jury convicted the appellant of felony murder, armed robbery, and related counts. The court sentenced him to life imprisonment without the possibility of parole.

Additional facts will be supplied in the discussion as necessary.

DISCUSSION

I.

MOTION TO SUPPRESS

The appellant argues that the circuit court erred in denying his motion to suppress his statements after he twice invoked his right to remain silent during the interrogation. The State contends that the court properly denied the motion.

“When we review a trial court’s denial of a motion to suppress, we limit our review to the record of the suppression hearing and consider the evidence in the light most favorable to the prevailing party.” *Vargas–Salguero v. State*, 237 Md. App. 317, 335 (2018) (internal citation omitted). “We will not disturb the trial court’s factual findings unless clearly erroneous, but we use those facts to make our own independent constitutional appraisal.” *Id.* (citation modified).

We begin with the record of the suppression hearing.

A.

Suppression Hearing

The circuit court held a hearing on the appellant’s motion to suppress his statements. Detective Feldman testified at the hearing, and the court admitted the audio recording of

the interrogation, the substance of which is summarized in relevant part below. The two invocations at issue are emphasized in bold.

1. Interrogation

On October 19, 2020, when Detective Feldman learned that the appellant had been arrested in Georgia, he drove there with his partner to interrogate the appellant. The interrogation began around 2 a.m. on October 20 and lasted just under two hours.¹ Detective Feldman advised the appellant of his *Miranda* rights, and the appellant indicated that he understood them.

Detective Feldman told the appellant that he was investigating the shooting of a woman at the 7-Eleven. The detective said that he knew what happened and that his only questions were “why and how,” implying that the appellant may have committed the shooting either accidentally or in self-defense. The detective asked the appellant whether he made a “mistake” in shooting the victim:

[DET. FELDMAN]: And it’s a tough pill to swallow, I get it. But we can’t go back to three weeks ago. Can we agree on that? *Can we agree a mistake was made that day?*

[APPELLANT]: (No audible response.)

The discussion turned to the appellant’s stay in an abandoned building a couple of blocks from his grandmother’s house in Chicago. The appellant explained that he left Chicago after speaking to certain people about “turning [himself] in.” The detective returned to the subject of the 7-Eleven:

¹ The other detective was present, but he did not ask any questions.

[DET. FELDMAN]: So talk to me, man. What happened that night? You went in looking for money, you got some money—

[APPELLANT]: Yeah.

[DET. FELDMAN]: —and then the gun goes off. What happened?

[APPELLANT]: (No response.)

The detective explained that he had already spoken with the appellant's child's mother and learned that the appellant had apparently needed money when he went to the 7-Eleven. Still, he wanted the appellant to explain what had happened. The appellant responded:

[APPELLANT]: I will say that throughout my life I made a lot of decisions that I'm not too proud of.

[DET. FELDMAN]: Uh-huh.

[APPELLANT]: And I regret a lot of the things I did. Never realized how much a decision could really affect you mentally until you make that decision.

[DET. FELDMAN]: Mm-hmm.

[APPELLANT]: As far as this case I'm on.

[DET. FELDMAN]: [D]o you regret the decision you made . . . on this day?

[APPELLANT]: My thing is—

[DET. FELDMAN]: I mean, you said you regret a lot of things, a lot of decisions you made.

[APPELLANT]: Mm-hmm.

[DET. FELDMAN]: This has got to be one of the biggest regrets you've got. Is that safe to say?

[APPELLANT]: Safe to say that—yeah, as regards to this case, I—I'm not going to say that I did this, I'm not going to say that I didn't do this.

The detective proceeded to “paint the picture” of a potential trial, where the judge and jury would view the surveillance video “from every different angle,” showing the

appellant demanding money from the victim, pulling out a gun, taking the money, and shooting her. The detective claimed that the appellant’s fingerprints and probably his DNA were collected from the scene. The following exchange ensued:

[DET. FELDMAN]: Gregory, I told you I was going to lay it out for you when I got here, okay? That’s what I’m doing. But I need you to give me a little bit, too. Okay? I just want to be able to go back and tell them that it was an accident, that it was some type of self-defense. I want to be able to say that, I want to be able to say that for you and I want to be able to say that to [the victim’s] family. So what do you think?

[APPELLANT]: Before I say anything in this case, I believe I would much rather speak in front of the Judge.

[DET. FELDMAN]: Speak in front of the Judge?

[APPELLANT]: Speak in front of—**I don’t want to say anything right here right now about the 7-Eleven. If you all have other questions you want to ask me, I’ll answer other questions, but I don’t want to say nothing about the 7-Eleven.**

[DET. FELDMAN]: Can I—can I ask you one question about the 7-Eleven?

[APPELLANT]: (No audible response.)

[DET. FELDMAN]: Walking into that 7-Eleven, did you intend this to happen?

[APPELLANT]: I’m not going to say that I did walk into that 7-Eleven.

[DET. FELDMAN]: Okay. Do you have any questions for me?

[APPELLANT]: Do you know when I will be extradited?

(Emphasis added).

Detective Feldman estimated that extradition would take at least a week. The detective then told the appellant that he did not “want to leave here without giving you your full opportunity to talk to me,” remarking that he could “tell just by the way you’re sitting here and some of the stuff going on, that you want to[.]” The detective said that “this is a

tragic case all the way around,” but “we can’t take what happened on October 1st back. We can man up and look it in the eye and admit our faults. Okay?” The detective continued:

[Y]ou’re probably not going to see me tomorrow . . . the next time you see me very well could be trial, if that’s where we end up going.

So, I just want to make sure that you have the knowledge, okay, and you’re comfortable with me walking out that door and not giving your side of the story. Because your side of the story is important, . . . Gregory. It is. And what you tell me is going into a report.

* * *

I don’t want my report to tell your story. And I don’t want anybody else associated with this case—witness-wise, you know, co-Defendant-wise, anything to tell the story.

The appellant asked the detective whether there was, in fact, a co-defendant, but the detective declined to elaborate other than stating, “You might. Still looking into that one. I know somebody that got you away from that area.” The appellant asked, “You know somebody did or you know who did?” The appellant expressed that “there’s a couple things that I do want to say” but also that he knew “what I say can be used in [c]ourt[.]” The detective agreed, but responded, “just because you say it, doesn’t necessarily mean it hurts you in [c]ourt.”

Detective Feldman reiterated:

[W]hether you did this or not is not the question. The question is the intent behind it, okay? Did you intend to walk into that 7-Eleven to rob her, or did you intend to walk into that 7-Eleven to rob and kill her?

There’s two vastly different things there, okay?

* * *

Did you intend to purposely shoot her or were you defending yourself? It’s two totally different things. Two totally different things.

The appellant explained that October 1 was his birthday and that all he had wanted was to see his daughter. The following exchange ensued:

[DET. FELDMAN]: Okay. So what happened, [your daughter's mother] didn't let you see your daughter? . . .

[APPELLANT]: Really. What I'm going to say is the person who shot that woman, I'm pretty sure that person has been suffering behind it.

[DET. FELDMAN]: All right, Greg. I can tell. You made mistakes in your life, right?

[APPELLANT]: I really—it's like, you know—

[DET. FELDMAN]: Go ahead.

[APPELLANT]: —I want to talk to you, but I know what I say in this room could possibly cost me the rest of my life.

[DET. FELDMAN]: Well, listen, you have a decision to make. Do you want to continue to talk to me or do you want me to stop asking questions?

[APPELLANT]: **I want the questions to stop.**

(Emphasis added).

At this point, Detective Feldman began “closing up the conversation[.]” The exchange continued as follows:

[DET. FELDMAN]: You want the questions to stop? Okay. You're comfortable with me walking out the door with what you've told me?

[APPELLANT]: (No audible response.)

[DET. FELDMAN]: All right. I appreciate your time. I can give you a card if you want one, that way if you want to get in touch with me—do you have a lawyer? No? When you get one, if you want to talk, that's how your lawyer gets in touch with me. Okay? When you get to the Detention Center in Charles County, if you want to talk to me, put the request in with the corrections officers, they'll get ahold of me and I'll come down and talk to you. Okay? I have questions for you, but I don't want to do anything that you don't want to do.

[APPELLANT]: Well, I don't—just—what am I being charged with?

[DET. FELDMAN]: Right now you're being charged with—off the top of my head this is what I can think of. There's a couple other things, there's, like, carrying of a firearm in the commission of a Felony, robbery, theft, armed robbery, and Murder Second Degree.

[APPELLANT]: How much does second degree (inaudible)?

[DET. FELDMAN]: I don't know off the top of my head what it is, okay? But what I can tell you is we have a First Degree Murder statute in Maryland, right? You didn't get charged with First Degree Murder, which is the worst. So apparently some people think that maybe this was a little bit more than just a stone-cold shooting. Right? Because they didn't charge with First Degree Murder, they charged you with Second.

The appellant then proceeded to speak uninterrupted for more than ten minutes about the circumstances leading up to the day of the shooting. He explained his desire to see his daughter and his strained relationship with her mother. According to the appellant, his daughter's mother had told him that he needed to get some money before he could see his daughter, that she had insinuated that he should rob someone, and that a few days later “that whole situation took place.”

Detective Feldman again tried to steer the conversation back to “what happened with the 7-Eleven,” asking to “talk to [the appellant] about it” with the appellant's “permission.” The appellant responded, “I want to talk to you. I want to talk to you, but—I can't. I can't. I would love to talk to you, sit down. But I give you my word, after [c]ourt and everything, if I haven't talked to you before—.” The detective interjected, stating that “it's going to be too late” by that time. The appellant reiterated, “I want to talk to you, but I—there is nothing I can say that can't incriminate me.” The detective responded, “It's not about incrimination,” noting that the store video showed the appellant, even though his face was covered by a mask. After further questioning, the appellant eventually confessed

to his involvement in the robbery and shooting at the 7-Eleven. He explained that he was drunk. He demanded money from the victim and aimed the gun at her. He thought he saw her reaching for something, and his gun went off.

2. Court’s Denial of the Suppression Motion

In seeking to suppress his statements, the appellant argued that he unambiguously invoked his right to remain silent twice before confessing: *first*, when he told the detective, “I don’t want to say anything right here right now about the 7-Eleven”; and *second*, when he later stated, “I want the questions to stop.” According to the appellant, the detective should have ended the interrogation after the first invocation. But even if the court considered the first invocation unclear, he argued that the interrogation should have ended after the second invocation. Because the detective did not scrupulously honor either invocation, the appellant argued, his entire statement should be suppressed.

The court denied the motion. As to the first invocation, the court determined that the appellant’s attempt to selectively invoke his right to silence was ambiguous. It explained:

[The appellant] did not clearly indicate he wanted the interrogation to end. There’s no statement that the [appellant] was unequivocally asserting his right to remain silent. There was a qualifier that he would answer other questions, just not about 7-Eleven. What was meant by “not about 7-Eleven” and “nothing about 7-Eleven” is ambiguous. Those phrases could be interpreted in many different ways. There’s no indication what the perimeters [*sic*] were limiting the questions. There’s no fine line determining the right and left limits of what questions the detective would be permitted to ask under that statement. It’s impossible to determine what the [appellant] meant by he would only answer questions, just nothing about 7-Eleven. Did that—did the [appellant] intend to cover his movements prior to entering the 7-Eleven? Or the Charles County, Maryland area, because of the 7-Eleven incident? Did it cover his intent on that day to obtain money? It’s impossible for a reasonable person to know what questions the [appellant] would . . .

answer and not answer based on that statement. It's clear the [appellant] was willing to answer some questions, clear he did not expect the detective to refrain from talking to him.

After summarizing the subsequent exchange between the appellant and Detective Feldman, the court concluded that the first invocation was ambiguous:

[The appellant's] statement that he wants to answer questions, but not about the 7-Eleven is not a clear invocation of a right to remain silent. It certainly did not prevent the [appellant] from continuing to talk to [the detective]. . . . [T]he detective indicated at one point he intended to leave, but the [appellant] continued to talk. The [appellant] ultimately brought up the death of the victim in the 7-Eleven without prompting, before clearly stating he wanted the questions to stop. The [c]ourt finds that the [appellant's] statements regarding answering some questions, but not about the 7-Eleven was clearly ambiguous.

As to the second invocation, the court found that the appellant had unambiguously invoked his right to remain silent. The court found that the detective “appeared to be scrupulously honoring the [appellant's] wishes” but that the appellant had reinitiated the conversation when he asked the detective what he had been charged with. The court found that the appellant then knowingly and voluntarily waived his right to remain silent and ultimately confessed to the robbery and shooting at the 7-Eleven.

The recorded interview was subsequently admitted at trial and played for the jury subject to redactions agreed upon by the parties.

B.

Overview of Relevant Law

The Fifth Amendment protects a defendant from being “compelled in any criminal case to be a witness against himself.” *Miranda v. Arizona*, 384 U.S. 436, 442 (1966). Those

safeguards include advising the suspect of his right to remain silent and right to counsel before any questioning. *Id.* at 444. These rights may be waived if “the waiver is made voluntarily, knowingly and intelligently.” *Id.*

Although *Miranda* “devised a set of two prophylactic protections” (a right to silence and a right to counsel for suspects being subjected to custodial interrogation), “[t]he right to silence is invoked in precisely the same way that the right to counsel is invoked. The right to counsel is waived in precisely the same way that the right to silence is waived.” *In re Darryl P.*, 211 Md. App. 112, 154, 168–69 (2013) (citing *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010) (“[T]here is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel Both protect the privilege against compulsory self-incrimination by requiring an interrogation to cease when either right is invoked.” (internal citations omitted))).

This case involves the right to remain silent. A defendant’s invocation of his right to remain silent must be both unequivocal and unambiguous. *Williams v. State*, 445 Md. 452, 470–71 (2015). An invocation is clear when “a reasonable police officer in the circumstances would understand the statement to be an invocation of the right to silence.” *Id.* at 475 (citing *Berghuis*, 560 U.S. at 381–82). “No specific combination of words is required” *Vargas-Salguero*, 237 Md. App. at 344. When assessing whether an invocation is clear, the analysis should involve not only the suspect’s words as they appear on their face, but also the circumstances surrounding the invocation. *Williams*, 445 Md. at

472. “If the statement fails to meet the requisite levels of clarity, [then case law] does not require that the officers stop questioning the suspect.” *Davis v. United States*, 512 U.S. 452, 459 (1994). “[O]fficers are not required to ask clarifying questions to determine if the defendant is asserting his rights.” *Vargas-Salguero*, 237 Md. App. at 336.

Any unambiguous invocation of the right to remain silent must be “scrupulously honored.” *Michigan v. Mosley*, 423 U.S. 96, 103 (1975) (quoting *Miranda*, 384 U.S. at 479). “If the . . . right to remain silent is invoked at any point during questioning, further interrogation must cease.” *Berghuis*, 560 U.S. at 388. If the interrogating officer fails to respect the defendant’s proper invocation of his rights, “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from [the] custodial interrogation of the defendant.” *Miranda*, 384 U.S. at 444.

However, even when a suspect has invoked the right to remain silent, interrogation may sometimes be “reinitiated” by the police. *See Mosley*, 423 U.S. at 104–05 (concluding that police honored defendant’s right to remain silent about a specific topic, ceased the first interrogation immediately upon assertion of the right, and only re-initiated after the passage of time and on a different topic). Relevant to the discussion below, an interrogation may also be reinitiated by the suspect. *See Lovelace v. State*, 214 Md. App. 512, 539 (2013) (“[T]he police may question a suspect who reinitiates communication, exchanges, or conversations with the police following an invocation of his or her right to remain silent.”).

C.

Analysis

1. The Appellant Selectively But Unambiguously Invoked His Right to Remain Silent “About the 7-Eleven.”

The appellant maintains, as he did below, that he unambiguously invoked his right to remain silent in response to questions about the robbery and shooting at the 7-Eleven when he told Detective Feldman, “I don’t want to say anything right here right now about the 7-Eleven. If you all have other questions you want to ask me, I’ll answer other questions, but I don’t want to say nothing about the 7-Eleven.” The appellant argues that the detective’s failure to scrupulously honor that invocation rendered any of his subsequent statements inadmissible. He further contends that the admission of his statements was not harmless beyond a reasonable doubt. The State argues that the invocation was ambiguous and therefore ineffective.

“Through the exercise of his option to terminate questioning[, a suspect] can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation.” *Mosley*, 423 U.S. at 103–04. Thus, “just as a suspect in custody may refuse to answer all questions, he may selectively exercise his *Miranda* rights to silence and to counsel.” *Michaels v. Davis*, 51 F.4th 904, 921 (9th Cir. 2022). “The mere fact that [a suspect] may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries” *Miranda*, 384 U.S. at 445. “The purpose of *Miranda*’s prophylactic protections is to counteract the coercive pressures of the custodial setting by giving the defendant the power

to exert some control over the course of the interrogation.” *Michaels*, 51 F.4th at 921 (citation modified). “That an individual in custody can selectively invoke his *Miranda* rights does not obviate the requirement that a suspect must invoke any *Miranda* right unambiguously and unequivocally to trigger its protection.” *Id.* at 922 (citing *Berghuis*, 560 U.S. at 381–82, and *Davis v. United States*, 512 U.S. 452, 459 (1994)).

“‘A defendant may express an unwillingness to discuss certain subjects without indicating a desire to terminate an interrogation already in progress.’” *Raras v. State*, 140 Md. App. 132, 154–55 (2001) (citation omitted) (collecting cases); *see also State v. Wright*, 537 N.W.2d 134, 137 (Wis. Ct. App. 1995) (“[R]efusals to answer specific questions do not assert an overall right to remain silent.”); *People v. Silva*, 754 P.2d 1070, 1084 (Cal. 1988) (en banc) (“A defendant may indicate an unwillingness to discuss certain subjects without manifesting a desire to terminate ‘an interrogation already in progress.’” (citation omitted)). When a suspect unambiguously invokes the right to remain silent regarding certain matters, the police must scrupulously honor that invocation as to those matters. As the Third Circuit concisely explained:

Law enforcement must honor the suspect’s request and cease interrogation concerning any topics covered by the invocation. If the suspect then initiates discussion of covered topics without prompting from law enforcement, interrogation can resume as to those topics. If the suspect validly waives the right to silence and the previously invoked right to counsel, then the suspect’s statements on the covered topic may be admissible at trial.

United States v. Rought, 11 F.4th 178, 190 (3d Cir. 2021). *See, e.g., Smith v. Boughton*, 43 F.4th 702, 711 (7th Cir. 2022) (“After discussing the van for 15 minutes, Detective Guy asked about a robbery. Only then did Smith indicate that he didn’t ‘want to talk about this.’

. . . Construed in this way, the statement was not a clear and unequivocal invocation of the right to remain silent *about any and all topics*.” (emphasis added)); *Rought*, 11 F.4th at 190 (defendant’s invocation of right to counsel during interrogation following indictment for possession with intent to distribute resulting in death was limited to circumstances of death of individual to whom he sold fentanyl, and left all other subjects open to questioning); *McGraw v. Holland*, 257 F.3d 513, 518 (6th Cir. 2001) (“Any reasonable police officer, knowing that exercise of the right to silence must be ‘scrupulously honored,’ would have understood that when [McGraw] repeatedly said she did not want to talk about the rape, she should not have been told that she *had* to talk about it.”); *United States v. Ivy*, 929 F.2d 147, 153 (5th Cir. 1991) (“Ivy expressed his unwillingness to answer questions about where he obtained materials to make a bomb, and Lieutenant Waller honored this request by moving to a different subject.”); *United States v. Thierman*, 678 F.2d 1331, 1335 (9th Cir. 1982) (“Thierman chose only to limit the subjects to be discussed and there is no evidence in the record that the police did not completely respect that limitation.”); *State v. Brennan*, 850 P.2d 202, 206 (Idaho 1993) (“Practically in the same breath as his refusal to speak of [the robberies], Brennan agreed to talk about related background events. The police complied with his requests not to record the conversation and did not ask questions about the night of [the robberies].”).

Our independent review of the record leads us to conclude that a reasonable officer would have understood that the appellant was invoking his right to remain silent about what happened at the 7-Eleven. Although the determination of whether a purported

invocation was unambiguous is an objective one, Detective Feldman’s immediate response to the appellant’s invocation—“[C]an I ask you one question about the 7-Eleven?”—indicates that the detective actually understood that the appellant did not wish to speak about what happened at the 7-Eleven.

The State contends that the invocation was ambiguous in three ways and, therefore, was ineffective. First, the State argues that the appellant immediately qualified the invocation by saying that he was willing to answer any other questions not pertaining to the 7-Eleven. We can dispose of this quickly. An invocation is not ambiguous merely because it is selective. As explained earlier, a suspect may selectively invoke the right, provided the invocation is unambiguous.

Second, the State argues that the qualifier that he would not talk “about the 7-Eleven” was ambiguous. Adopting the court’s reasoning, the State contends that the appellant’s indication that he was unwilling to speak “about the 7-Eleven” “could be interpreted in many different ways” and lacked any “fine line determining the left and right limits of what questions the detective would be permitted to ask.” We disagree.

The context of the interrogation in this case was clear: Detective Feldman was there to interrogate the appellant about the robbery-shooting that occurred at the 7-Eleven. It was abundantly clear that when the appellant said he did not want to talk “about the 7-Eleven,” he was referring to the robbery-shooting.

Dixon v. State, 72 So. 3d 171 (Fla. Dist. Ct. App. 2011), is instructive. There, the defendant was arrested following the burglary of a Home Depot. *Id.* at 172. He was then

interrogated regarding that burglary as well as two unrelated burglaries at his parents’ house, of which he was also suspected of committing. *Id.* After briefly speaking about the Home Depot burglary, the police then shifted to questioning about the home burglaries. *Id.* at 173. In response to questions about these crimes, the defendant said, among other things, “I don’t want to talk about that”; “[T]his conversation here about this house thing is through, I don’t wanna talk about that, period”; “I don’t want to go through that”; and “Let’s not talk about the house.” *Id.* at 176. Eventually, the defendant confessed to the home burglaries. *Id.* at 174. The defendant moved to suppress any statements made in response to questioning about the home burglaries, arguing that he selectively invoked his right to silence on that subject. *Id.* The trial court denied the motion, concluding that his selective invocations of the right to silence were not unequivocal. *Id.*

The District Court of Appeal of Florida reversed and remanded, holding that the defendant had unequivocally invoked his right to remain silent regarding the home burglaries when he expressed a desire not to speak about the “house thing.” *Id.* at 176. The appeals court observed that not only was it objectively clear that the defendant had invoked his right to silence, but that the interrogating detective seemed actually to understand that desire and disregarded it:

[I]t is clear from the context that [the defendant] was demanding that questioning on the home burglaries cease. Indeed, one of the detectives belied his understanding that [the defendant] did not want to talk about the home burglaries when he said: “So hear me out, *since you don’t want to talk about the house* I’ll talk about the house, so you just hear me out, I’m not gonna ask you any questions.” . . . [T]his statement demonstrates an understanding that [the defendant] wanted questioning about the home burglaries to cease.

Id. (emphasis added).

Likewise, in this case, the appellant told the detective that he did not want to speak “about the 7-Eleven,” which, in the context of the interrogation, was clearly directed at questions about the robbery and shooting. Not only was it objectively clear that the appellant invoked his right to silence “about the 7-Eleven,” but it was also clear that Detective Feldman actually understood his desire not to speak about it.

Finally, the State argues that the purported invocation was ambiguous because the appellant said he did not want to say anything “right here right now” about the 7-Eleven. The State cites several out-of-state cases in support of this proposition. It relies primarily on *State v. Sabetta*, 680 A.2d 927 (R.I. 1996), in which the Supreme Court of Rhode Island held that the defendant’s statement—“I don’t want to talk about it right now”—was not a clear articulation of his right to remain silent because “the words ‘right now’ operated to qualify and limit [the] defendant’s intent to remain silent only in regard to the moment.” *Id.* at 932.

The State’s reliance on *Sabetta* is unavailing. Unlike in *Sabetta*, the appellant did not limit his invocation to the singular statement indicating his desire not to talk about the matter “right now.” As we explained, the analysis of whether an invocation is clear should involve the suspect’s words as they appear on their face *and* the circumstances surrounding the invocation. *Williams*, 445 Md. at 475. In other words, context matters. *See Boughton*, 43 F.4th at 711 (“[C]ontext is an important factor in the plain-meaning analysis.” (citing *Yates v. United States*, 574 U.S. 528, 537 (2015) (Ginsburg, J., plurality opinion) (“In law

as in life, . . . the same words, placed in different contexts, sometimes mean different things.”))).

Immediately preceding the invocation, the appellant stated that he would “much rather speak in front of a judge.” The statement that he did not wish to discuss anything about the 7-Eleven “right here right now” is best understood as a reference to the setting in which he had just indicated he would be comfortable speaking—in front of a judge. In that sense, the phrase made it clear that the appellant did not want to discuss with Detective Feldman what had happened at the 7-Eleven. The appellant then told the detective, a moment later, without qualifying the time and place, “I don’t want to *say nothing* about the 7-Eleven.” (Emphasis added). Thus, even if the invocation was initially ambiguous because of the inclusion of the words “right here right now,” the invocation became unambiguous before the appellant finished speaking.²

² In addition to *Sabetta*, the State cites other cases to support the proposition that the “right here right now” remark rendered the first invocation ambiguous: *Williams*, 445 Md. at 477 (“I don’t want to say nothing. I don’t know,” was ambiguous statement); *State v. Pouliot*, 259 A.3d 798, 803–04 (N.H. 2021) (stating “no comment” in response to police officer’s question was not unambiguous or unequivocal invocation); *State v. Ortega*, 798 N.W.2d 59, 68–69 (Minn. 2011) (finding that the statement—“I ain’t got nothing else to say man. That’s it, I’m through. I told you”—did not unambiguously invoke the appellant’s right to remain silent); *State v. Rogers*, 760 N.W.2d 35, 59 (Neb. 2009) (observing that “where the suspect says he or she is not yet ready to speak, ‘now,’ or ‘at this time,’” courts have found “that the statement was equivocal”). None are availing for the reasons just discussed.

2. Detective Feldman Did Not Scrupulously Honor the Selective Invocation.

The questions about what happened at the 7-Eleven should have stopped when the appellant selectively invoked his right to silence on the forbidden topic. *See Soares v. State*, 248 Md. App. 395, 418 (2020) (“Once the right to silence has been invoked, the interrogation should stop. The police do not get to ask one question more”). However, the detective did not stop; he continued interrogating the appellant about the events of the 7-Eleven.

“‘[I]nterrogation’ is not limited to express questioning; it also includes its ‘functional equivalent.’” *Drury v. State*, 368 Md. 331, 336 (2002) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980)). Often, “what transpires is not a continued ‘grilling’ or even a direct question-and-answer exchange, but something more subtle, requiring a reviewing court to look beyond merely parsing the conversation.” *Phillips v. State*, 425 Md. 210, 218 (2012). The test is whether the police should know their practice “is reasonably likely to evoke an incriminating response from a suspect.” *Drury*, 368 Md. at 336 (quoting *Innis*, 446 U.S. at 301). The officer’s intent is not irrelevant. *Blake v. State*, 381 Md. 218, 233 (2004). “If a police officer acts with a purpose of getting a suspect to talk, it follows that the officer has reason to know that his or her conduct was reasonably likely to elicit an incriminating response.” *Id.* “We focus on the defendant’s perspective rather than on the police officer’s intent.” *Id.* at 233–34.

After the appellant’s unambiguous selective invocation, the detective attempted, both directly and more subtly, to get the appellant to talk about what happened at the 7-

Eleven. The detective asked, “Walking into that 7-Eleven, did you intend this to happen?”

After a brief discussion about the appellant’s extradition, the detective continued to traverse

into off-limits territory, both directly and subtly, regarding what happened at the 7-Eleven:

- “[Extradition] takes a little bit of time . . . I don’t want to leave here without giving you your full opportunity to talk to me.”
- “I can tell just by the way you’re sitting here and some of the stuff going on, that you want to [talk], okay? And, I mean, this is a tragic case all the way around.”
- “We can’t take what happened on October 1st back. We can man up and look it in the eye and admit our faults. Okay?”
- “[Y]ou’re probably not going to see me tomorrow . . . [T]he next time you see me very well could be trial, if that’s where we end up going.”
- “I just want to make sure that you have the knowledge, okay, and you’re comfortable with me walking out that door and not giving your side of the story. Because your side of the story is important, Greg—Gregory. It is. And what you tell me is going into a report.”
- “I don’t want my report to tell your story. And I don’t want anybody else associated with this case . . . co-Defendant-wise . . . to tell the story.”
- “The question about whether you did this or not is not the question. The question is the intent behind it, okay? Did you intend to walk into that 7-Eleven to rob her, or did you intend to walk into that 7-Eleven to rob and kill her? There’s two vastly different things there, okay?”
- “Did you intend to purposely shoot her or were you defending yourself? It’s two totally different things.”

As recounted above, the detective did not scrupulously honor the appellant’s unambiguous invocation of his right to remain silent about what happened at the 7-Eleven.

In response to the repeated violations and prodding by Detective Feldman, the appellant made statements that, when viewed together with his pre-invocation statements, could be

regarded as incriminating: the appellant said that he wanted to see his daughter on the day of the shooting and stated that whoever shot the victim was probably “suffering behind it.”

The detective persisted indirectly to get the appellant to talk about what happened in the 7-Eleven: “You made mistakes in your life, right?” The appellant expressed his desire to talk but feared that what he would say “could possibly cost [him] the rest of [his] life.” Then, the appellant unequivocally told the detective that he “want[ed] the questions to stop.”

3. Because Detective Feldman Continued Interrogating the Appellant After His Second Unequivocal Invocation, the Appellant Did Not “Reinitiate” Discussion by Asking About His Charges.

The parties agree that the appellant unambiguously invoked his right to silence when he stated, “I want the questions to stop.” However, they disagree on whether the detective scrupulously honored this second invocation. The State contends that the detective did honor the second invocation and that the appellant reinitiated the conversation leading to his confession by asking about his charges. In contrast, the appellant argues that the detective did not respect his second invocation and continued interrogating him. Specifically, he claims that his inquiry about his charges was in response to impermissible ongoing interrogation. We agree with the appellant on both points.

As stated earlier, “the police may question a suspect who reinitiates communication, exchanges, or conversations with the police following an invocation of his or her right to remain silent.” *Lovelace*, 214 Md. App. at 539. In *Edwards v. Arizona*, 451 U.S. 477 (1981), the U.S. Supreme Court held that, once a suspect asks to speak with an attorney, all

interrogation must stop until counsel has been made available, “unless the accused himself initiates further communication, exchanges, or conversations with the police.” *Id.* at 484–85. This rule is “designed to prevent police from badgering a [suspect] into waiving his previously asserted *Miranda* rights.”³ *Michigan v. Harvey*, 494 U.S. 344, 350 (1990).

³ We recognize that *Edwards* dealt with the right to counsel rather than the right to silence. In *Lovelace*, we clarified that this distinction matters when *the police* re-interrogate a suspect, but not when *the suspect* reinitiates the conversation himself:

[I]n *Mosley*, the [U.S. Supreme] Court held that police “scrupulously honored” the suspect’s “right to cut off questioning” and thus did not violate Mosley’s right to remain silent, where the police waited for over *two hours* before resuming questioning. In *Edwards*, the Court held that, if a suspect invokes his or her right to counsel, police must cease interrogation until counsel is provided or the suspect reinitiates “further communication, exchanges, or conversations with the police.” The Court in *Maryland v. Shatzer* clarified that *Edwards* was a “judicially crafted rule,” and that the presumption from *Edwards*—the suspect’s waiver of *Miranda* rights after the invocation of the right to counsel is involuntary—is inapplicable when a suspect has experienced a *fourteen-day* break in custody. Based on these two temporal standards, it is clear that **the police’s ability to re-interrogate** a suspect following his or her invocation of the right to counsel **is noticeably more restricted than with an invocation of the right to remain silent.**

* * *

We see no reason to distinguish between the right to counsel and the right to remain silent on the issue presented in the instant case, namely, whether [the defendant’s] right to remain silent was violated when [the defendant] invoked his right to remain silent, reinitiated conversation with police, and the police resumed questioning appellant. . . . Thus we hold that the police may question a suspect who reinitiates communication, exchanges, or conversations with the police following an invocation of his or her right to remain silent.

Lovelace, 214 Md. App. at 537–38, 539 (italics in original) (bold and underline added) (internal citations omitted); *accord Mack v. State*, 765 S.E.2d 896, 902 n.5 (Ga. 2014) (“[W]here the issue is the effectiveness of a *suspect’s purported initiation* of renewed contact, rather than the propriety of interrogation *clearly instigated by police*, we see no

In examining the concept of “initiation” laid out in *Edwards*, the U.S. Supreme Court in *Oregon v. Bradshaw*, 462 U.S. 1039 (1983), distinguished between inquires “relating to routine incidents of the custodial relationship,” such as “a request for a drink of water or a request to use a telephone,” and those “represent[ing] a desire on the part of an accused to open up a more generalized discussion relating directly or indirectly to the investigation.” *Id.* at 1045 (Rehnquist, J., plurality opinion). The former will not generally “initiate” a conversation for purposes under *Edwards*, while the latter generally will. The State bears the burden of showing that a defendant reinitiated further discussion with the police after an invocation of the right to counsel or right to silence. *Blake*, 381 Md. at 232.

If there was an interrogation or its functional equivalent, “courts are disinclined to find that a later supposed ‘initiation’ by the defendant was independent of that action.” Wayne R. LaFave, 2 *Criminal Procedure* § 6.9(f), n.149 (4th ed. Nov. 2024 update) (citing *Blake v. State*, 381 Md. 218 (2004), and *United States v. Gomez*, 927 F.2d 1530 (11th Cir. 1991)). The Supreme Court of Maryland’s decision in *Blake v. State*, 381 Md. 218 (2004), illustrates this point. There, after Blake was arrested and taken to an intake room, he was advised of his rights and invoked his right to counsel. *Id.* at 223. At around 5:25 a.m., he was placed in a holding cell. *Id.* At 6:00 a.m., two detectives went to Blake’s cell, gave him a copy of the arrest warrant and statement of charges, and told him he needed to read the

reason why the definition of ‘initiation’ should be any different in right to silence cases than it is in right to counsel cases.” (emphasis added)). Therefore, we consider *Edwards* and related cases relevant in our analysis of whether a defendant “initiated” communications with police following an invocation of the right to silence.

document carefully and make sure he understood it. *Id.* On the charging document, the penalty corresponding to the first-degree murder charge was listed as “DEATH.” *Id.* at 223–24. As the detectives turned to leave, one of them stated, “I bet you want to talk now, huh!” *Id.* at 224. When a detective returned to his cell approximately a half hour later to give Blake his clothing, Blake asked, “I can still talk to you?” *Id.* The detective left the area, returned a few minutes later, and took Blake back to the intake room, where he was readvised of his rights. *Id.* Blake ultimately agreed to provide a statement without an attorney present. *Id.* The circuit court granted Blake’s motion to suppress his statements, but a divided panel of this Court reversed the judgment. *Id.* at 226, 229.

After granting certiorari, the Supreme Court reversed, holding that Blake’s incriminating statements were inadmissible because they were the product of an unlawful interrogation. *Id.* at 238. The court explained:

Although petitioner’s question to Detective Johns, “I can still talk to you?” might be considered an “initiation” of contact with the officers in the “dictionary sense” of the word as used in *Bradshaw*, it could hardly be said that, under the circumstances, petitioner initiated the contact as that term is contemplated in the legal sense. Petitioner had requested counsel; he had been given a document that told him he was subject to the death penalty, when legally he was not; he was seventeen years of age; he had not consulted with counsel; he was in a cold holding cell with little clothing; an officer had suggested in a confrontational tone that petitioner might want to talk; and the misstatement as to the potential penalty as one of “DEATH” had never been corrected. *There was no break in custody or adequate lapse in time sufficient to vitiate the coercive effect of the impermissi[bl]e interrogation.*

Id. at 238–39 (emphasis added).

The Court relied on *United States v. Gomez*, 927 F.2d 1530 (11th Cir. 1991), which addressed a similar issue. *Blake*, 381 Md. at 240. In that case, Gomez indicated that he

wished to speak with his attorney. 927 F.2d at 1536. Thereafter, a DEA agent told Gomez that he should consider cooperating with the government because he faced a possible life sentence and a minimum of ten years, and that the only chance he had to reduce the sentence was through cooperation with the government. *Id.* Gomez then left the room, asked what he was charged with, received the incorrect information that he had possessed ten kilos, and immediately expressed his desire to cooperate. *Id.* The time between the agent’s statements and Gomez’s “cooperation” was no more than a few minutes. *Id.* Gomez was again informed of his *Miranda* rights and then made incriminating statements. *Id.*

The government argued that the statements were admissible because Gomez initiated the conversation with the agent. *Id.* at 1537. The Ninth Circuit disagreed, explaining that the agents continued to speak with Gomez after he requested counsel, emphasizing the importance of cooperation. *Id.* In addition, Gomez’s “initiation” of a conversation occurred almost immediately after the interrogation. *Id.* The Ninth Circuit further explained:

The fact that Gomez began the conversation with [the interrogating agent] does not cure the infection of the further interrogation. Although *Edwards* permits further interrogation if the accused initiates the conversation, the validity of this waiver logically depends on the accused being free from further interrogation. In other words, the “initiation” must come prior to the further interrogation; initiation only becomes an issue if the agents follow *Edwards* and cease interrogation upon a request for counsel. Once the agents have, as here, violated *Edwards*, no claim that the accused “initiated” more conversation will be heard. Indeed, *Edwards* would be rendered meaningless if agents were permitted to continue interrogation after the request for counsel, and then claim that the consequent response by the accused represented initiation and permitted a waiver of the asserted counsel right.

Id. at 1538–39 (footnote and internal citation omitted).

In *Mack v. State*, 765 S.E.2d 896 (Ga. 2014), the Supreme Court of Georgia relied on several cases from other jurisdictions, including *Blake* and *Gomez, supra*, in arriving at a similar conclusion. There, Mack was arrested in connection with a shooting and advised of his rights on November 1, and, throughout a two-hour interview, a ninety-minute break, and resumption of questioning, Mack maintained his innocence. *Id.* at 898. After he declined to answer questions further, the lead investigator tried, using several different tactics, “to convince Mack to tell him the truth and admit his ‘mistake.’” *Id.* at 899. Mack refused to change his story, and the interview concluded around 5:10 p.m. *Id.*

The next morning, on November 2, a second interview took place, during which the investigator told Mack that he was preparing to leave town and wanted to find out whether, after having had “a chance to sleep on everything last night,” Mack wanted to “get anything straight this morning.” *Id.* After re-advising Mack of his rights, the investigator again pleaded with Mack to tell the truth and reemphasized that he would soon be leaving town. *Id.* Eventually, Mack altered his story slightly to align with the forensic evidence, but he maintained his innocence in the shooting. *Id.* Frustrated that Mack refused to admit to shooting the victim, the investigator ended the interview and escorted Mack out of the interrogation room. *Id.*

Ten minutes later, the third and final interview began. Mack was *Mirandized* once more, and thereafter he admitted to the shooting. *Id.* At the suppression hearing, the investigator testified that Mack had initiated this final interview by informing someone working at the detention center that he wanted to speak with the investigator. *Id.*

The Supreme Court of Georgia held that Mack had unambiguously invoked his right to silence during the first interview when he said, “I’m done. I have no more to say. I’m done. Let’s ride.” *Id.* at 900. The Court held that any statements Mack made during the first interview after invoking his right to remain silent were improperly obtained and must be suppressed. *Id.*

As for the two interviews on November 2, the Court concluded that Mack’s statements in both interviews were improperly obtained. *Id.* at 901. The first interview that day was initiated by the investigator, who summoned Mack to find out whether he wanted to “get anything straight this morning.” *Id.* at 899. The court explained that this resumption of questioning took place just seventeen hours after Mack’s initial invocation of the right to remain silent the previous day, which had been met with only continued questioning and pleas to tell the truth. *Id.* at 901–02. Because the investigator disregarded Mack’s right when initially invoked on November 1, given the relatively short interval between that invocation and the resumption of questioning the next day, the interview initiated by the investigator on the morning of November 2 was improper, and all statements made by Mack therein were inadmissible. *Id.* at 902.

As for the second interview on November 2, during which Mack finally confessed to the murder, the Court explained that whether the statement was admissible depended on whether this interview was “initiated” by Mack. *Id.* The Supreme Court of Georgia held that the State failed to satisfy its burden to establish an effective “initiation” by Mack. *Id.* at 904–05. It explained:

While the undisputed evidence confirms the trial court’s finding, as a matter of historical fact, that Mack initiated the final contact with [the investigator] by summoning him through sheriff’s office personnel, this conduct did not constitute an “initiation” of contact in the legal sense. There was no break in custody, a very short lapse in time, and no change in location or identity of the interrogating officer from the first interview on November 2 to the second. *See Collazo*, 940 F.2d at 421–422 (“[t]he day, subject matter, place of the interrogation, and interrogation team remained the same”). Mack’s request to speak with [the investigator] was made just minutes after the cessation of more than one-and-a-half hours of police questioning, conducted in violation of Mack’s previously invoked right to remain silent, during which [the investigator] repeatedly implored, badgered, and cajoled Mack to tell the truth. *See Blake*, 849 A.2d at 422–423 (no “initiation” in the legal sense where just 28 minutes elapsed between officer’s improper interrogation and defendant’s expression of desire to talk); *Gomez*, 927 F.2d at 1539, n.8 (opining that a few minutes was not sufficient time to “overcome the coercion” of an unlawful interrogation and render possible a defendant’s “initiation” of contact under *Edwards*). That unlawful interview followed the interrogation of the previous day, in which [the investigator] had also blatantly ignored Mack’s invocation of his Fifth Amendment privilege. We thus conclude that Mack’s request to speak with [the investigator] was the product of improper interrogation rather than Mack’s own considered deliberation and, as such, it was not an effective “initiation” under *Edwards* and its progeny.

Id. at 905 (footnote omitted).

In so holding, the Supreme Court of Georgia set forth the following rule:

[A] suspect will be considered to have “initiated” renewed contact with law enforcement authorities, so as to permit further interrogation, *only if the renewed contact by the suspect was not the product of past police interrogation conducted in violation of the suspect’s previously-invoked rights*. In determining the causal connection between the prior unlawful interrogation and the suspect’s renewal of contact, *the entire sequence of events leading up to the suspect’s renewal of contact must be considered*, including but not limited to *the lapse of time between the unlawful interrogation and the renewed contact*, any change in location or in the identity of the officers involved from one interview to the next, and any break in custody between interviews.

Id. at 904 (emphasis added) (citing *Blake*, *supra*, among other cases).

Decisions by courts in other jurisdictions are in accord. *See Collazo v. Estelle*, 940 F.2d 411, 423 (9th Cir. 1991) (a valid “initiation” by defendant must stem from an “*unbadgered* desire” to engage with authorities and cannot be the “*delayed product*” of authorities’ unlawful conduct; analyzing “the substance of the entire transaction—rather than the isolated form of the second encounter” (emphasis in original)); *United States v. Rosenschein*, 369 F. Supp. 3d 1147, 1157 (D.N.M. 2019) (where interrogating agent’s statements “clearly convey[ed] that [the defendant] would be better off if he talked to the agent immediately instead of waiting for a lawyer,” defendant “could not ‘reinitiate’ communication with the agent because the agent never stopped the conversation in the first instance”); *State v. Hickman*, 410 P.3d 1102, 1107 (Ore. 2017) (defendant did not reinitiate discussion where “[t]here was neither a break in time nor a change in circumstance, and defendant’s incriminating statements were prompted by [the detective’s] continued impermissible interrogation”); *Ferguson v. Commonwealth*, 663 S.E.2d 505, 513–14 (Va. Ct. App. 2008) (interrogation never ceased, despite “twenty-minute ‘pause’ in the questioning,” where investigator ignored defendant’s requests for counsel, “cajol[ed] him into making statements, and left him in the company of Chief Marr, a friend of appellant’s mother,” who discussed defendant’s family with him and “promised to ‘help’ appellant in the case”); *State v. Yoh*, 910 A.2d 853, 861 (Vt. 2006) (statement admissible only if defendant’s “decision to initiate the third interview was voluntary, and not the product of the coercion that took place in the tainted second interview”); *State v. Abadie*, 612 So.2d 1, 6 (La. 1993) (“Abadie’s subsequent request to talk to Sergeant Pernia could not start the

police-reinitiated interrogation that was already in progress.”); *People v. Boyer*, 768 P.2d 610, 624–25 (Cal. 1989) (en banc) (defendant did not “initiate” communication, despite fact that he had summoned detective back to interrogation room and confessed, because purported initiation was preceded by multiple violations of previously invoked right to silence and right to counsel); *People v. Kinnard*, 98 A.D.2d 845, 846 (N.Y. App. Div. 1983) (framing the question relevant to the analysis as “whether the police’s earlier infringement of defendant’s right to remain silent . . . , *even though unavailing at the time*, fatally tainted the spontaneity of his subsequent statement, making it instead the product of inducement, provocation or subtle coercion” (emphasis added)).

Applying the above principles, we hold that the court erred in concluding that the State satisfied its burden to establish an effective “initiation” by the appellant when he asked about his charges. Because the interrogation was recorded and the audio recording was admitted at the suppression hearing, there was no dispute of fact regarding “who said what when.” *Mack*, 765 S.E.2d at 904. Accordingly, our review of the court’s application of the law to the undisputed facts is *de novo*.

There is no dispute that the appellant’s second invocation was unambiguous. At that point, the interrogation should have stopped, but it did not. Instead, Detective Feldman asked the appellant:

[DET. FELDMAN]: You want the questions to stop? Okay. *You’re comfortable with me walking out the door with what you’ve told me?*

[APPELLANT]: (No audible response.)

[DET. FELDMAN]: All right. I appreciate your time. I can give you a card if you want one, that way if you want to get in touch with me—do you have

a lawyer? No? When you get one, if you want to talk, that's how your lawyer gets in touch with me. Okay? When you get to the Detention Center in Charles County, if you want to talk to me, put the request in with the corrections officers, they'll get ahold of me and I'll come down and talk to you. Okay? I have questions for you, but I don't want to do anything that you don't want to do.

(emphasis added).

When considered in isolation, the detective's questions and comments after the second invocation seem harmless. However, when viewed in the context of the entire interview—during which the detective previously told the appellant, “[Y]ou're probably not going to see me tomorrow, . . . the next time you see me very well could be trial,” and “I just want to make sure that . . . you're comfortable with me walking out that door and not giving your side of the story”—the detective's remarks following the second invocation are better understood as adding pressure on the appellant. They served to remind the appellant that this was his last chance to share his “side of the story.” It was soon after these remarks that the appellant asked the question that the State contends constituted a reinitiation of discussion about the investigation: “I don't—just—what am I being charged with?” *See Mack*, 765 S.E.2d at 904 (courts should consider “entire sequence of events leading up to the [defendant's] renewal of contact,” including whether there was “lapse of time between the unlawful interrogation and the renewed contact”).

When the detective said that the charges included second-degree murder, the appellant asked, “How much does second degree (inaudible)?” Apparently, the appellant was inquiring about the maximum potential penalty for second-degree murder. The interrogation continued; instead of simply stating that he did not know, the detective made

a comment that he knew was reasonably likely to elicit an incriminating response from the appellant. The detective noted that the appellant was not facing a first-degree murder charge and suggested that the shooting of the victim inside the 7-Eleven was not intentional:

I don't know off the top of my head what it is, okay? But what I can tell you is we have a First Degree Murder statute in Maryland, right? *You didn't get charged with First Degree Murder, which is the worst. So apparently some people think that maybe this was a little bit more than just a stone-cold shooting. Right?* Because they didn't charge you with First Degree Murder, they charged you with Second.

(emphasis added).

The detective's persistent prodding and repeated violations of the appellant's invocation to remain silent—first regarding what happened at the 7-Eleven, and later about everything—eventually took root. As a result, the appellant ended up discussing in detail the circumstances leading up to the day of the shooting. After further questioning from the detective, he confessed to shooting the victim inside the 7-Eleven.

In its ruling, the court concluded that the appellant voluntarily waived his right to remain silent after he reinitiated conversation in response to the detective repeatedly asking him for “permission” to discuss what happened at the 7-Eleven. However, as we have explained, the appellant could not “reinitiate” communication because the detective never stopped the impermissible interrogation in the first instance. The fact that the appellant discussed what happened at the 7-Eleven after the detective requested “permission” did not cure the initial violations committed by the detective. *See, e.g., Rosenschein*, 369 F. Supp. 3d at 1158 (explaining that “the fact that Rosenschein later waived his right to counsel and

spoke to the agent does not change or cure the initial violation of his right to counsel” because “any subsequent waiver that has come at the authorities’ behest, and not at the suspect’s own instigation, is itself the product of the ‘inherently compelling pressures’ and not the purely voluntary choice of the suspect” (quoting *Arizona v. Roberson*, 486 U.S. 675, 681 (1988))).

Under these circumstances, the appellant’s inquiry about his charges did not constitute a reinitiation in the legal sense. The inculpatory statements were a result of the detective’s badgering—directly and indirectly—regarding the appellant’s involvement in the robbery and shooting at the 7-Eleven, in violation of the appellant’s first and second invocations. They were a “delayed product” of the detective’s unlawful conduct. *Collazo*, 940 F.2d at 423. For the reasons stated, the court erred in denying the motion to suppress.

4. Admitting the Appellant’s Statements Was Not Harmless Error.

The State has the affirmative burden to show that an error is harmless. *See Denicolis v. State*, 378 Md. 646, 658–59 (2003). It did not brief this issue, apparently acknowledging that any error was not harmless. Rightly so: the confession was the strongest evidence connecting the appellant to the shooting at the 7-Eleven. *See Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (“A confession is like no other evidence. Indeed, ‘the defendant’s own confession is probably the most probative and damaging evidence that can be admitted against him’” (quoting *Bruton v. United States*, 391 U.S. 123, 139 (1968) (White, J., dissenting))). Accordingly, we must reverse the judgments of the circuit court and remand the case for further proceedings consistent with this opinion.

5. Statements Subject to Suppression

In light of our analysis above, we outline the statements that should have been suppressed. As mentioned, Detective Feldman advised the appellant of his *Miranda* rights, the appellant indicated that he understood these rights, and the appellant made certain statements. The statements the appellant made from the time he acknowledged his *Miranda* rights until he selectively invoked are not subject to suppression.⁴

The appellant’s first invocation—“I don’t want to say anything right here right now about the 7-Eleven. If you all have other questions you want to ask me, I’ll answer other questions, but I don’t want to say nothing about the 7-Eleven.”—should have been suppressed. *See Miranda*, 384 U.S. at 468 n.37 (“[I]t is impermissible to penalize an individual for exercising his Fifth Amendment privilege when he is under police custodial interrogation. The prosecution may not, therefore, use at trial the fact that he stood mute *or claimed his privilege* in the face of accusation.” (emphasis added)).

The appellant’s question and the short exchange about extradition between the first and second invocations are not subject to suppression, as they did not violate the selective

⁴ To the extent that the appellant was silent in response to certain questions during that time, such evidence is not admissible for any purpose. *Grier v. State*, 351 Md. 241, 258 (1998) (in Maryland, “[e]vidence of post-arrest silence, after *Miranda* warnings are given, is inadmissible for any purpose” because admitting such evidence would be both “fundamentally unfair and a deprivation of due process” and such evidence carries “little or no probative value” because the defendant “may be acting merely upon his right to remain silent”).

invocation to remain silent about what happened at the 7-Eleven. However, all other statements made by the appellant after the first invocation should have been suppressed.⁵

II.

CELL-SITE ANALYSIS AND MAPPING

Our reversal of the circuit court’s denial of the appellant’s motion to suppress statements resolves this appeal. However, we shall address the appellant’s second question presented as it is likely to rearise on remand.

The appellant contends that the circuit court erred in denying his motion *in limine* to exclude cell-site analysis and mapping generated by the TraX software program, a proprietary program developed by a company called ZetX. Specifically, he argues that the methodology for using the proprietary program algorithm was not shown to be reliable, and thus, there was an insufficient factual basis for the expert’s testimony. He argues that the error in admitting this evidence was not harmless.

The State contends that the court properly denied the motion. It argues that the relevant *Daubert/Rochkind* factors supported the admission of the cell-site analysis and mapping. It further argues that, to the extent the court erred in admitting the evidence, the error was harmless.

⁵ By stating that certain statements are not subject to suppression, we are not saying that the statements are automatically admissible. Whether such statements are admissible under the rules of evidence is not before us.

A.

Proceedings Below

Before trial, the State served notice of its intention to call Detective Worley as an expert in historical cell site analysis. The State produced a PowerPoint presentation that included a map depicting the coverage area of the cell phone tower sector being utilized for calls attributed to the appellant’s cell phone. Detective Worley’s opinion, based on the mapping, was that the appellant’s phone was in the general area of the 7-Eleven and his residence at times relevant to the shooting.

The appellant moved to exclude the cell-site evidence and the mapping created by Detective Worley using TraX, which formed the basis of her opinion regarding the appellant’s general location. The appellant argued that the program was not shown to be reliable and, therefore, did not constitute a sufficient basis for the proffered expert testimony. The court held a *Daubert/Rochkind* hearing⁶ on the fourth day of trial, during which Detective Worley testified as follows.

1. TraX Program

TraX is a software program designed for mapping and analyzing call detail records. The user uploads the call detail records obtained from the cell phone service provider into

⁶ The term “*Daubert* hearing” refers to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), in which the United States Supreme Court held that trial judges must determine that expert scientific testimony is both relevant and reliable to be admissible, which is done by referencing a set of considerations now known as the *Daubert* factors. *See id.* at 592–95. As discussed further below, the Supreme Court of Maryland expressly adopted the *Daubert* test for reliability of expert testimony in *Rochkind v. Stevenson*, 471 Md. 1 (2020).

the TraX program. TraX’s algorithm creates a file that is linked to the Google Earth mapping program and generates a map that depicts a “horizontal plane,” which represents the coverage area for a specific cell tower.

ZetX conducts “drive tests” to “map out and find out what the coverage area of the tower is.” The company conducts drive tests “through different areas throughout the United States and makes sure that the documents and information they receive [are] the same as that what they are getting from the provider[.]” ZetX takes “information from their drive test, as well as the information provided from the cell phone providers,” to use in its program.

Since 2018, the Charles County Police Department has used the TraX program in investigations involving homicides, missing persons, financial crimes, and burglaries. At the time of trial, Detective Worley had received more than 237 hours of cell phone-based law enforcement training, forty of which were devoted specifically to the TraX program used during the investigation in this case. She has also trained other officers regarding cell phone technology and assisted other agencies with cell phone investigations. In the previous six years, she had analyzed cell phone records in more than 100 criminal investigations and was using the TraX program weekly.

Detective Worley did not know whether the program had been peer-reviewed. She also did not know when ZetX conducted its drive tests, nor had she performed any herself. However, she considered the program reliable based on her experience using it. She testified that she had located missing persons using the program and had corroborated the

mapping output in those investigations with tag readers, video surveillance, and other evidence collected at the scenes. She was aware that mapping generated from TraX had been accepted in courts around the country.

Detective Worley was also familiar with another mapping technique, “wedge mapping,” which she testified has a “higher error rate” than the horizontal plane method used by ZetX because it provides less “coverage area.”

2. Detective’s Mapping Analysis and Opinion

Detective Worley discussed the PowerPoint presentation generated in this case using TraX. She explained that she uploaded the appellant’s cell phone records into the program, and the program created a file that is “essentially a link to Google Earth.” The TraX program generated a series of maps depicting a horizontal plane colored red, representing the coverage area of the cell tower to which the appellant’s cell phone connected. The horizontal plane represents the general area where the phone was making or receiving calls at a particular time. The map also contained pinpoints depicting the appellant’s residence, the 7-Eleven, and the nearest cell tower. When she uploaded the cell phone records into the program and the mapping analysis was generated, she assumed the software’s analysis was accurate. The mapping analysis in this case was reviewed by another detective, who compared each map with the call detail records to ensure the locations matched those depicted on the maps and that the PowerPoint presentation was accurate.

Detective Worley opined that the appellant’s cell phone was “estimated” to be in that “red coverage area,” which included the 7-Eleven and his residence, before and after

the robbery-shooting. She indicated that there was a “small possibility” that the appellant’s cell phone was outside the red coverage area and acknowledged that there was “no way” to determine “exactly” where the phone was located within that area.

3. Court’s Denial of Motion to Exclude

At the conclusion of the detective’s testimony, defense counsel argued that the software algorithm used by the detective was not reliable and had not been peer-reviewed, that the detective did not know exactly how the algorithm functioned, and that she had not conducted any drive tests herself.

The court denied the motion to exclude. It explained:

[W]hat was key is the detective testified that in her experience, her training and experience, the software is reliable.

Now, that doesn’t mean anything that she says it is reliable, but why does she say it? She says that they have . . . been able to corroborate the information that the software has given. For example, she gave the example of locating missing people.

And I think just as important, she said that we are able to corroborate it with tag readers. Tag readers, there wasn’t a follow up question on tag readers, but I know what a tag reader is, and probably everyone here knows. You drive by the reader and it says, “This car was here.” So, there has been corroboration there.

* * *

I think what is key in the facts of this case is, *is it reliable to demonstrate what?*

So for instance, if the officer says that this technology is being used to demonstrate that this phone was on a particular street at a particular time, then that is too much of a stretch.

* * *

[W]e have to . . . look at what the expert is coming here to say. . . . *[T]he hurdle for the State is much higher if the expert is coming to say, “This phone was on this street at this time.”*

* * *

[T]his map uses what the witness called a horizontal plane . . . rendered by the software to describe *a general area where the phone is likely to be*.

(Emphasis added.)

Turning to the evaluation of factors under *Daubert/Rochkind*, the court explained:

I think it [is] obvious that the theory has been and can be tested. It is a little nuanced in terms of what, if the theory has been subject to peer review and publication. My guess is it has, but the testimony wasn't that it has, so I can't give an opinion on that. I can say that the theory has been accepted in the law enforcement or the relevant scientific community, which for another reason, I am always aware or very conscious about what the relevant scientific community is.

* * *

[T]he officer doesn't give a known rate or a potential rate of error. And the case [law] doesn't require it, but it [is] a factor to consider. But interestingly enough, the officer testifies that this particular mapping is more accurate than wedge mapping.

The jury was called in, and the detective testified about the TraX program as recounted above. The mapping generated using TraX was admitted into evidence, and Detective Worley testified that the appellant's cell phone was estimated to be in the coverage area that included the 7-Eleven and the appellant's residence. She indicated that the cell phone could have been outside of that area, however, and that it was impossible to determine exactly where the cell phone was located at the time of the shooting.

B.

Overview of Relevant Law

To be admissible, expert testimony must satisfy the requirements of Maryland Rule 5-702, which provides:

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.

The third requirement requires an adequate supply of data and a reliable methodology. *Rochkind v. Stevenson*, 471 Md. 1, 22 (2020).

Generally, evidence regarding cellular phone technology must be presented by an expert witness. *See, e.g., State v. Payne*, 440 Md. 680, 701–02 (2014) (holding that the circuit court erred in admitting police officer’s lay testimony regarding location of co-defendants based on cell phone and cell tower records). Here, the parties do not dispute that Detective Worley would have needed to be qualified as an expert to interpret the cell-site information at issue.

The issue raised by the appellant concerns the reliability prong of Rule 5-702’s third requirement. Reliability depends on several factors, none of which is dispositive or exclusive.⁷ *Rochkind*, 471 Md. at 35–36. The reliability analysis is “a flexible one.” *Id.* at

⁷ The factors in assessing reliability of an expert’s testimony are: (1) whether a theory or technique can be (and has been) tested; (2) whether a theory or technique has been subjected to peer review and publication; (3) whether a particular scientific technique has a known or potential rate of error; (4) the existence and maintenance of standards and controls; (5) whether a theory or technique is generally accepted; (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have

36. The focus must be on principles and methodology as well as “the relationship between the methodology applied and conclusion reached.” *Id.*

Appellate courts review a trial court’s decision concerning the admissibility of expert testimony under Maryland Rule 5-702 for abuse of discretion. *See id.* at 10. Under this standard, an appellate court does not reverse “simply because the . . . court would not have made the same ruling.” *Devincentz v. State*, 460 Md. 518, 550 (2018) (citation omitted). “Rather, the trial court’s decision must be ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Id.* (citation omitted).

In *United States v. Hill*, 818 F.3d 289 (7th Cir. 2016), the Government introduced expert testimony from a law enforcement agent who had used cell-site location information (“CSLI”) to trace the defendant’s whereabouts shortly after the robbery. *Id.* at 297–98. The Government used the testimony to argue that the defendant was in the general vicinity of the crime scene several minutes after the robbery and that he then drove to his house. *Id.* at 298. The agent emphasized during his testimony that the fact that the defendant’s cell phone connected to a given cell site did not mean that the defendant was right at that tower

conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying; (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion; (8) whether the expert has adequately accounted for obvious alternative explanations; (9) whether the expert is being as careful as he or she would be in his or her regular professional work outside his or her paid litigation consulting; and (10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give. *Rochkind*, 471 Md. at 35–36 (adopting and supplementing the factors from *Daubert*).

or at any particular spot near that tower. *Id.* The defense argued that the agent’s historical cell-site analysis was inadmissible under Federal Rule 702, the federal analogue to Maryland Rule 5-702. *Id.* at 295. The district court denied the motion, and, after the jury convicted him, the defendant appealed. *Id.* at 293.

On appeal, the Seventh Circuit affirmed the trial court’s decision to admit the testimony. *Id.* at 299. The Seventh Circuit explained that when a law enforcement agent purports to testify that the defendant was in a particular place at a certain time based on CSLI, this is problematic because the opinion exceeds the scope of what this methodology reliably supports. *Id.*; *see also United States v. Medley, infra* (citing *Hill*, 818 F.3d at 298). It explained, however, that such problems do not arise when an officer testifies generally as to the phone’s location:

Historical cell-site analysis can show with sufficient reliability that a phone was in a general area, especially in a well-populated one. It shows the cell sites with which the person’s cell phone connected, and the science is well understood. . . . A mathematical error rate has not been calculated, but the technique has been subjected to publication and peer criticism, if not peer review. . . . The advantages, drawbacks, confounds, and limitations of historical cell-site analysis are well known by experts in the law enforcement and academic communities.

Hill, F.3d at 298 (citations omitted).

The Seventh Circuit ultimately held that the agent’s methodology was reliable because he acknowledged the inherent limitations of the technology so as not to mislead the jury: “In his trial testimony, Agent Raschke emphasized that [the defendant’s] cell phone’s use of a cell site did not mean that [the defendant] was right at that tower or at any particular spot near that tower. *This disclaimer saves his testimony.*” *Id.* (emphasis added).

Based on the agent’s testimony, the Seventh Circuit concluded that the jury could reasonably and reliably infer that the defendant was within a five-mile radius of the cell tower located eleven miles east of the crime scene. *Id.* Because the testimony was relevant and probative, it was “therefore somewhat helpful to the trier of fact—even if not *that* helpful.” *Id.* (emphasis in original).

The Seventh Circuit concluded with a word of cautionary advice about the sort of testimony that might fail to survive scrutiny under Rule 702:

Our concern is that the jury may overestimate the quality of the information provided by this analysis. We therefore caution the government not to present historical cell-site evidence *without clearly indicating the level of precision—or imprecision—with which that particular evidence pinpoints a person’s location at a given time*. The admission of historical cell-site evidence that overpromises on the technique’s precision—or fails to account adequately for its potential flaws—may well be an abuse of discretion.

Id. at 299 (emphasis added).

In *United States v. Medley*, 312 F. Supp. 3d 493 (D. Md. 2018), the U.S. District Court for the District of Maryland denied in part and granted in part a defendant’s motion to exclude historical cell-site analysis evidence. *Id.* at 503. Notably, the defendant did not challenge the expert’s ability to use cell phone records “to identify the *general location* of a cell phone based on the cell tower(s) to which it connected at a particular time and date.” *Id.* at 502 (emphasis added). Rather, he challenged the specificity with which the expert—a special agent with the FBI—could place the defendant’s cell phone in relation to key locations in the case, including the scene of the crime and addresses where the defendant was known to associate himself. *Id.*

At the *Daubert* hearing, the special agent whom the Government intended to call as an expert at trial testified that he had obtained various phone records from the defendant's cell phone provider, entered the data from the records into a computer mapping program, which populated the map with the locations of the relevant cell towers contacted by the phone, and then inputted the latitude and longitude of key locations in the case (e.g., the crime scene) to produce a map that combined all of this information and indicated the cell towers and sectors used by the defendant's cell phone at key times before and after the crime. *Id.* at 502–03.

From these maps, the special agent was able to “express an opinion as to the *general location* of the defendant's cell phone within the same cell sector” as the scene of the crime, near the time the offense was committed. *Id.* at 503 (emphasis in original). The special agent “was careful to clarify that he c[ould] not place the exact location of the cell phone within the 120° pie-shaped geographical sector served by the cell tower to which it connected.” *Id.* The special agent could not determine whether the defendant's cell phone was located at the address of the crime scene, but “the historical cell tower records allow[ed] him to opine that the location of the phone was ‘consistent with’ the location of the crime scene.” *Id.*

Relying on *Hill*, the court was satisfied that the methodology the agent used was sufficiently reliable and that he had reliably applied the methodology, and, accordingly, it “permit[ted] him to testify to the *general location* of the defendant's cell phone within the particular cell tower sector where the [crime] occurred, close in time to that crime.” *Id.*

(emphasis added). Significantly, the court permitted the Government to elicit that opinion from the expert only after the expert had fully explained “the inherent limitations of the accuracy of his location evidence,” i.e., that “the phone can only be placed in the general area of the cell tower sector that it connected to . . . , and that it cannot be placed any more specifically within that sector.” *Id.*

More recently, in *United States v. Jones*, No. 3:21-cr-89-BJB, 2022 WL 17884450 (W.D. Ky. Dec. 23, 2022),⁸ the U.S. District Court for the Western District of Kentucky concluded that the police officer’s testimony about cell-site analysis—this time, using detailed maps produced by TraX—was not admissible to show that a defendant was in “specific areas” “down to the block.” *Id.* at *2. As a visual aid to his testimony, the officer planned to depict these locations using an animated illustration of the defendant’s phone’s purported location on a Google Earth Pro map. *Id.*

⁸ Maryland Rule 1-104(b) governs opinions issued by courts in other jurisdictions. This statute provides, in relevant part, that unreported opinions issued by a court in a jurisdiction other than Maryland “may be cited as persuasive authority if the jurisdiction in which the opinion was issued would permit it to be cited as persuasive authority or as precedent.” Md. Rule 1-104(b); see *Critzos v. Marquis*, 256 Md. App. 684, 695 n.4 (2023) (“It is the policy of this Court to allow the citation of unreported opinions from federal courts and courts of other states as long as the jurisdiction where it was issued would allow its citation for persuasive value in its courts.”). “Federal Rule of Appellate Procedure 32.1(a) provides that ‘[a] court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been: (i) designated as ‘unpublished,’ ‘not for publication,’ ‘non-precedential,’ ‘not precedent,’ or the like; and issued on or after January 1, 2007.’” *Id.* (quoting Fed. R. App. P. 32.1(a)). Accordingly, this Court may consider unpublished federal opinions issued on or after January 1, 2007, for their persuasive value. *Id.*

On the defendant’s motion, the court excluded the officer’s use of and testimony about the TraX-produced map. *Id.* It explained that the maps and the officer’s proposed testimony purported to identify where the defendant’s phone was—“within a precisely marked area that ruled in or out specific blocks and streets”—near in time to the crimes. *Id.* at *7. “This meant its proponent had to ensure that the witness was prepared to tell the jury how CSLI works and explain not only of the technique’s potential pitfalls, but also the relative imprecision of the information he gleaned.” *Id.* (citing *Hill*, 818 F.3d at 299) (citation modified).

The court explained that the officer was unable to make this showing. *Id.* The officer “was involved in the maps’ creation—but in a very limited capacity: he collected the phone-company records and uploaded them, in spreadsheet format, to the software that spat out the maps.” *Id.* at *2. “The witness did not develop, study, or apparently even understand the algorithms or methodology that concluded a phone must’ve been on one side of a street, and not the other, when it transmitted a call or text message.” *Id.* “Nor could he discuss the reliability, errors, or limitations of the software.” *Id.* Specifically, he could not describe how TraX produces estimated location ranges for particular cell sites, nor did he conduct a drive test in that case to corroborate the connection ranges associated with an associated tower. He also could not demonstrate that he understood the algorithm’s basis for placing a phone within a particular geographic perimeter when it connected with a nearby tower. *Id.* at *7. The officer could not explain why one side of the street was shaded on the TraX-

generated maps and the other was not. *Id.* at *8. Nor could he testify about how or why the shaded areas reflected any degree of uncertainty or qualification. *Id.*

Notably, the court observed that CSLI would be admitted to show that potential perpetrators were not in the area of a crime, but it expressed doubt that such evidence was admissible to show that a caller was located in a specific sector associated with a single cell tower. *Id.* at *8 (citing *United States v. Reynolds*, 626 F. App’x 610, 617–18 (6th Cir. 2015)). It further recognized that, although CSLI can show with sufficient reliability that a phone was in a general area, testimony to that effect is admissible only if the expert makes clear “the relative imprecision of the information he gleaned.” *Id.* at *7 (quoting *Hill*, 818 F.3d at 299).

Ultimately, the court permitted the officer to testify, based on the defendant’s cell phone records, about the general location of the defendant’s cell phone. *Id.* It explained that the cell phone records reported the street addresses of cell towers the defendant’s phone interacted with at specific times. *Id.* at *1. Based on these records, the officer could reliably “rule out” areas where his cell phone would not have been during the time periods surrounding the robberies. *Id.* The officer “could also testify that the transmission of various calls or text messages was at least consistent with the phone’s presence in a particular part of town.” *Id.* The court emphasized that the officer also discussed the limitations on his use of the call-report records. *Id.* at *9; accord *United States v. Kemp*, No. 4:15-cr-00025-TWP-VTW, 2017 WL 2719328, at *4 (S.D. Ind. 2017) (“[B]ecause Officer Moledor emphasized that the mapping technology used to analyze the Defendants’

historical cellphone data provides only a radio frequency footprint, but ‘does not give the exact location of the phone,’ the Court finds Officer Moledor’s methods reliable and the proffered evidence admissible under *Daubert* standards.”).

C.

Analysis

The appellant argues that because no witness explained how the TraX algorithm functioned, there was insufficient evidence to conclude that it was a reliable methodology. He contends, therefore, that the court erred in admitting Detective Worley’s testimony and the mapping generated from TraX. The appellant makes three sub-contentions.

1. Detective Worley Need Not Understand the Nuances of an Algorithm for the Methodology to Be Reliable Under Rule 5-702.

First, the appellant argues that the mapping generated by TraX is admissible only if the developer of the program testifies about the software’s inner workings. He cites the following cases to support this proposition: *United States v. White*, No. 1:16-CR-212, 2023 WL 3161953, at *2 n.3 (M.D. Pa. Apr. 27, 2023); *United States v. Reynolds*, No. 1:20-cr-24, 2021 WL 3750156, at *2 (W.D. Mich. Aug. 25, 2021), *aff’d* 86 F.4th 322 (2023); *Durr v. State*, 478 P.3d 871, at *3 (Nev. 2021) (unpublished); *State v. Villanueva*, 15 Wash. App. 2d 1054, 2020 WL 7396544 (Wash. App. Dec. 17, 2020) (unpublished).⁹ While it is true

⁹ See Md. Rule 1-104(b), *supra* n.8. Under the Nevada Rules of Appellate Procedure 36(c)(3), “[a] party may cite for its persuasive value, if any, an unpublished disposition issued by the Supreme Court on or after January 1, 2016, or by the Court of Appeals on or after August 15, 2024.” Under Washington General Rule 14.1(a), “unpublished opinions of the [Washington] Court of Appeals filed on or after March 1, 2013, may be cited as

that the software developer or a ZetX employee testified as an expert about the workings of the algorithm in these cases, none of these cases held that the State *must* call a software developer or other employee before the court admits TraX-produced maps.

Indeed, courts have admitted expert testimony from a law enforcement officer regarding mapping produced by TraX or a similar program, even though the officer was unable to testify about the workings of the algorithm. *See, e.g., Walker v. State*, 308 So.3d 193, 198 (Fla. App. 4 Dist. 2020) (holding that trial court did not abuse its discretion in admitting the detective’s testimony where the detective did not know the TraX algorithm used to create the mapping output and explaining that an expert is not required “to have an in-depth knowledge of all the algorithms underlying their technological tools—such as hardware and software—to reliably testify about the outputs of those tools” (quoting *United States v. Morgan*, 292 F. Supp. 3d 475, 485 (D.D.C. 2018))); *accord Williams v. State*, 606 S.W.3d 48, 57 (Tex. Ct. App. 2020) (court did not abuse its discretion in admitting the detective’s testimony where the detective did not know the underlying algorithm).

Second, the appellant argues that the mapping evidence should be excluded because Detective Worley lacked familiarity with the algorithm’s nuances and could not explain how the map was created. Instead, the appellant asserts, the detective just assumed the software was mapping accurately and failed to corroborate the program’s results by

nonbinding authorities . . . and may be accorded such persuasive value as the court deems appropriate.”

performing independent testing, such as a drive test, to verify the boundaries depicted on the map. Relying on *Jones*, the appellant maintains that Detective Worley, like the officer who testified in that case, “‘was not actually responsible for calculating or otherwise divining the areas where [s]he said the Defendant’s phone must’ve been when it transmitted a call or a text through a nearby tower,’ and consequently could not ‘discuss the reliability, errors, or limitations of the software.’” (quoting *Jones*, 2022 WL 17884450, at *2).

The appellant overlooks an important distinction. As discussed, the *Jones* court did not permit the officer to testify, based on the maps generated from the TraX program, that the defendant was in specific locations at certain times. 2022 WL 17884450, at *2. The passage from *Jones* cited by the appellant was part of that court’s reasoning for excluding TraX-produced maps that “purport[ed] to ‘rule in’—down to the block—the specific areas where the Defendant’s phone could and could not have been[.]” *Id.* As the appellant correctly observes, the court was concerned with the detective’s attempt to testify as to the defendant’s purported exact location, which is precisely why it excluded such testimony and the maps on which the testimony rested. In other words, the detective’s lack of knowledge about TraX’s proprietary algorithm was fatal to the Government’s attempt to introduce a “*detailed* map purporting to ‘rule in’—down to the block—the *specific* areas where the Defendant’s phone could and could not have been when it made the calls and messages at issue.” *Id.* (emphasis added).

The appellant ignores, however, that the court *did* permit the officer to testify “that the transmission of various calls or text messages was at least *consistent with the phone’s*

*presence in a particular part of town.” Id. at *1 (emphasis added).* The officer’s lack of proprietary knowledge was not fatal to his ability to opine on the general location of the defendant’s phone during the relevant periods, based on cell phone records. Although the court permitted such testimony based on cell phone records, the court did not foreclose the possibility that a less detailed map generated by TraX would have been admissible, or that a law enforcement officer would be permitted to testify from such a map.

In this case, Detective Worley testified only as to the general location of the appellant’s cell phone during the relevant time. In addition, unlike the detailed map in *Jones*, the mapping analysis in this case did not detail specific areas where the appellant’s phone could have been. Detective Worley specifically acknowledged that she could not pinpoint the phone’s location to the 7-Eleven. Detective Worley’s understanding of the program was reliable enough to show the general location of the appellant’s cell phone during the relevant period.

2. *Daubert/Rochkind* Factors Weigh in Favor of Reliability.

Finally, the appellant argues that the *Daubert/Rochkind* factors do not support the reliability of the TraX program. He contends that (1) the court’s finding that it is “obvious that the theory has been and can be tested” was clearly erroneous; (2) the detective’s testimony regarding potential error rate was limited to comparing it to wedge mapping; (3) the evidence did not establish that the program was generally accepted by the relevant

community; and (4) the evidence did not establish that the TraX program was peer-reviewed.¹⁰

We conclude that the record established that the relevant factors tended to show the program’s reliability.

a. Testability

The testability factor asks whether the theory or technique proposed by the expert has been tested. *Rochkind*, 471 Md. at 35. Detective Worley testified that ZetX conducts drive tests around the country to verify the coverage areas of various towers. This was competent evidence that the technique “can be (and has been) tested.” *Id.* at 35; *see Reynolds*, 2021 WL 3750156, at *3 (testimony about ZetX employees conducting drive-tests established that TraX can be tested, which factor tends to show reliability). We detect no clear error in the court’s finding that it is “obvious that the theory has been and can be tested.” *See Grimm v. State*, 232 Md. App. 382, 408 (2017) (“[O]ur standard of appellate review requires us to view ‘the trial court’s findings of fact, the evidence, and the inferences

¹⁰ In his reply brief, the appellant cites an unpublished trial court order entered by the District Court of Colorado, Larimer County, in *People v. Jones*, No. 2022CR196, 2022 WL 4486182 (Colo. Dist. Ct., Larimer Cnty. Sept. 21, 2022). We shall not consider it. *See* Md. Rule 1-104(b), *supra* n.9. The Colorado Court of Appeals has a “Policy Concerning Citation of Unpublished Opinions,” which addresses the use of unpublished opinions in briefs filed with, and in arguments presented to, the Court of Appeals. *See Patterson v. James*, 454 P.3d 345, 353 (Colo. App. 2018). The policy provides that “[o]pinions not selected for official publication may be cited to the Colorado Court of Appeals only to explain the case history, identify the law of the case, or assert the doctrines of issue preclusion or claim preclusion.” *Court of Appeals Policies, Policy Concerning Citation of Opinions Not Selected for Official Publication*, Colorado Judicial Branch, [<https://perma.cc/YL49-LE3Z>] (last visited Oct. 25, 2025). The trial court order cited by the appellant does not fall within the scope of the policy.

that may be drawn therefrom in the light most favorable to the [prevailing] party.’’ (citation omitted)).

b. Error Rate

This factor asks whether the scientific technique the potential expert proposes to use, and on which they base their opinion, has a known or potential rate of error. *Rochkind*, 471 Md. at 35. Although there was no specific evidence regarding TraX’s supposed error rate, Detective Worley provided other indicia of its reliability. Not only did the detective note that the program has a lower error rate than wedge mapping, but she also used it to locate missing persons. Moreover, the Sheriff’s Office had corroborated the program’s reliability using evidence from crime scenes, surveillance video, and tag readers. *See Walker*, 308 So.3d at 198 (although the detective did not know the error rate, his testimony included other indicia of reliability based on his prior experience with TraX). The detective’s testimony regarding the program’s reliability, based on her experience using it in investigations, favored admitting the TraX maps and the testimony relying on them.

c. General Acceptance

This factor considers “whether a theory or technique is generally accepted.” *Rochkind*, 471 Md. at 35. General acceptance of a theory is “largely dependent on what the relevant community is.” *Abruquah v. State*, 483 Md. 637, 691 (2023). The appellant argues that the general acceptance factor does not support reliability. He contends that there was no evidence of studies, validation, or other indicators of scientific acceptance, and the fact

that the Charles County Sheriff’s Office uses the software does not mean that it has reached general acceptance.

This factor “looks to general acceptance, not uniform acceptance within the scientific community.” *Reynolds*, 2021 WL 3750156, at *5 (citing *United States v. Gissantaner*, 990 F.3d 457, 466 (6th Cir. 2021)). A “reliability assessment does not require, although it does permit, explicit identification of a relevant scientific community and an express determination of a particular degree of acceptance within that community.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594 (1993) (citation omitted). “Widespread acceptance can be an important factor in ruling particular evidence admissible, and a known technique which has been able to attract only minimal support within the community may properly be viewed with skepticism.” *Id.* (cleaned up) (internal citation omitted).

Detective Worley testified that she was aware that mapping generated from TraX had been accepted in courts around the country. While there was no evidence of exactly how widespread use of TraX is beyond the Charles County Sheriff’s Office, the factor supports reliability, albeit not compellingly. *See Reynolds*, 2021 WL 3750156, at *5 (acknowledging the absence of “concrete supporting evidence” of TraX’s widespread use, but concluding that the “factor supports reliability, but does not compellingly show reliability”).

d. Peer Review

This factor considers whether the theory or technique has been subjected to peer review and publication. “Publication (which is but one element of peer review) is not a *sine qua non* of admissibility; it does not necessarily correlate with reliability, and in some instances well-grounded but innovative theories will not have been published[.]” *Daubert*, 509 U.S. at 593 (internal citations omitted). “Some propositions, moreover, are too particular, too new, or of too limited interest to be published.” *Id.* “The fact of publication (or lack thereof) in a peer reviewed journal thus will be a relevant, though not dispositive, consideration in assessing the scientific validity of a particular technique or methodology on which an opinion is premised.” *Id.* at 594.

Although there was no evidence in this case of peer review of the TraX program, this absence does not negate other factors supporting admissibility. *See Rochkind*, 471 Md. at 37 (explaining that “no single factor is dispositive in the analysis”); *Morgan*, 292 F. Supp. at 484 (“[T]he *Daubert* inquiry is flexible, and a [c]ourt should not automatically exclude evidence because it is too new, or of too limited outside interest, to generate extensive independent research or peer-reviewed publications.”); *Reynolds*, 2021 WL 3750156, at *5 (noting admissibility of TraX is “close call” given lack of peer review and meaningful data on error rate, but concluding that defendant’s arguments challenging TraX’s methodology were matters to be explored on cross-examination).

Balancing all the relevant factors, we conclude that the court did not abuse its discretion in admitting Detective Worley’s expert testimony and the TraX-generated maps from which she testified.

III.

LIFE WITHOUT THE POSSIBILITY OF PAROLE

The appellant argues that the circuit court erred in refusing to strike the Notice of Intention to Seek Sentence of Imprisonment for Life Without Possibility of Parole (“Notice”) that Detective Feldman hand-delivered to the appellant pursuant to § 2-203 of the Maryland Code Annotated, Criminal Law Article (“CR”). In relevant part, the statute provides:

A defendant found guilty of murder in the first degree may be sentenced to imprisonment for life without the possibility of parole only if . . . at least 30 days before trial, **the State gave written notice to the defendant** of the State’s intention to seek a sentence of imprisonment for life without the possibility of parole[.]

(Emphasis added.)

A.

Proceedings Below

On October 23, 2020, the State indicted the appellant in case number C-08-CR-20-000526 in connection with the fatal shooting at the 7-Eleven. On November 30, 2020, the Office of the Public Defender (“OPD”) entered its appearance in that case.

On June 25, 2021, the State filed a superseding indictment in case number C-08-CR-21-000296 (“Case No. 296”), which amended one count. On July 2, the prosecutor, at OPD’s request, emailed a copy of the superseding indictment in the new case to OPD.

The trial date was initially scheduled for August 9, 2021. The prosecutor directed Detective Feldman to deliver the Notice to the appellant to comply with the statute’s timing requirement. On July 7, 2021, before OPD entered its appearance in Case No. 296, the detective visited the appellant at the Charles County Detention Center and hand-delivered the Notice to him. During the visit, which the detective audio-recorded, the detective explained the Notice to the appellant and asked him if he had any questions. The appellant did not have any questions and did not make any incriminating statements. The detective did not contact OPD before the visit, and OPD was not present during the meeting.

On July 15, 2021, OPD entered its appearance in Case No. 296. On July 19, the State provided OPD with a copy of the Notice in discovery.

The appellant filed a Motion to Preclude the State from Seeking Life Without Parole as a Sanction for Prosecutorial Misconduct (“Motion for Sanctions”). The court held a hearing in September 2021.

There was no dispute that the Notice was hand-delivered to the appellant at least thirty days before the initial trial date. Instead, the appellant argued that it was improper for the prosecutor to direct the detective to visit him and hand-deliver the Notice without first contacting his counsel, who had represented him in the matter since November 30, 2020. The appellant explained that the prosecutor could have served the Notice by filing it

with MDEC or by handing it to counsel in open court, either of which would have constituted proper notice under the statute. Instead, the appellant claimed, the prosecutor sent the detective, hoping the appellant would make an incriminating statement without counsel present, in violation of the appellant’s Sixth Amendment right. Accordingly, the appellant asked the court to preclude the State from seeking a sentence of life imprisonment without the possibility of parole as a sanction for the prosecutor’s allegedly inappropriate conduct.

At the motions hearing, defense counsel asked the court to determine whether the State engaged in “misconduct” and, if so, the appropriate sanction. Counsel explained that, although OPD had not yet entered its appearance in Case No. 296 when the detective personally delivered the Notice, the prosecutor knew counsel represented the appellant.

The court distilled the issue to whether notice was properly given pursuant to the statute. It denied the appellant’s motion, explaining that the manner of providing the notice was proper:

[CR § 2-203] does seem to indicate that service can be provided on the defendant. And [it] clearly states the defendant. It doesn’t state defendant and/or defendant’s counsel, or defendant’s counsel. It simply states the defendant. So in compliant [*sic*] with the strict requirements of the law, I find that the State did comply with the requirements of delivering a notice to the defendant. Which could have been done by mailing. But given the time frame they did in fact serve it personally. Which would be appropriate under the [s]tatute.

The court did not find that the State engaged in misconduct, noting that the detective’s visit “was simply a ministerial act of delivering a document.” It suggested,

however, “that as a courtesy when you know another attorney’s in the case you should let the attorney know what’s going on.”

B.

Analysis

The appellant argues that the circuit court erred in denying the Motion for Sanctions. He maintains that the State improperly directed the detective to deliver the Notice to a represented defendant personally. The State responds that the court properly denied the motion, and there was no prohibition against delivering the appellant the Notice in the manner it did.

The appellant frames the standard of review as *de novo*. While the interpretation of a statute is purely a matter of law that we review *de novo*, the court’s decision arose from the Motion for Sanctions for prosecutorial misconduct. “The trial court’s power to impose sanctions is discretionary, and its decision is reviewed on appeal for abuse.” *State v. Deleon*, 143 Md. App. 645, 669 (2002); *see Walls v. State*, 228 Md. App. 646, 691 (2016) (concluding that trial court did not abuse its discretion in denying the defendant’s motion for sanctions for prosecutorial misconduct). “With respect to prosecutorial misconduct generally, actual prejudice must be shown” before the sanction can be properly imposed. *Deleon*, 143 Md. App. at 667. “Even deliberate or intentional misconduct may not serve as grounds for dismissal absent a finding of prejudice to the defendant.” *Id.* Thus, the issue is whether the court abused its discretion in denying the Motion for Sanctions.

The appellant relies primarily on *Gorge v. State*, 386 Md. 600 (2005), and *Adams v. State*, 192 Md. App. 469 (2010), to support the argument that the court erred in denying the Motion for Sanctions. In *Gorge*, defense counsel acknowledged that she had received “oral notice” of the State’s intent to seek life imprisonment without the possibility of parole, but neither the court nor the parties could locate a written notice. 386 Md. at 609. The trial court sentenced the defendant to life without the possibility of parole, and he appealed. *Id.* at 610.

Ultimately, the Supreme Court of Maryland vacated the sentence after concluding that CR § 2-203 requires “timely *written* notice” and provides for “no exception for oral notice.” *Id.* at 613, 614 (emphasis added). It held that “the court may not impose a sentence of life without the possibility of parole unless the record satisfactorily reveals that the statutory conditions were satisfied, including giving written notice to the defendant at least 30 days before the trial.” *Id.* at 604. To avoid problems in the future, the Court “suggest[ed]” the following:

[T]he State *should* prepare and send a written notice with a signed certificate of mailing or service, file it with the court, and retain a copy of it in the State’s own file. Alternatively, the State *could* present the defendant with the written notice in open court, (at least 30 days before trial), and state on the record that the notice has been handed to the defendant. If either of those methods are used, there will be no question regarding whether the State provided the written notice as required by the statute.

Id. at 620 (emphasis added).

In *Adams v. State*, 192 Md. App. 469 (2010), a prosecutor directed a detective to personally deliver notice of the State’s intention to seek life imprisonment without the

possibility of parole to an incarcerated, represented defendant without first contacting counsel. *Id.* at 475. During the visit, the defendant made incriminating statements. *See id.* at 477. On appeal, we held that the statements were obtained in violation of the defendant’s Sixth Amendment right to counsel and should have been suppressed. *Id.* at 496.

We noted that sending a detective to the detention center where the defendant was being held was not necessary to satisfy the notice requirement of CR § 2-203; rather, service upon counsel of record in accordance with Maryland Rule 1-321(a) would suffice.¹¹ *Id.* at 493. In addition, the State could have complied with the notice requirement by utilizing either of the two alternatives suggested in *Gorge, supra. Id.*

In a footnote, we noted that Rule 4.2 of the Maryland Lawyers’ Rules of Professional Conduct (“MRPC”) advises attorneys that “a lawyer shall not communicate about the subject of the representation with a person who the lawyer knows is represented in the

¹¹ Maryland Rule 1-321(a) provides:

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

matter by another lawyer unless the lawyer has the consent of the other lawyer or is authorized by law or court order to do so.” *Adams*, 192 Md. App. at 492 n.3. We also referenced MRPC Rule 3.8, which addresses “Special Responsibilities of a Prosecutor.” *Id.* We remarked that, although prosecutors must comply with the rules of professional conduct and make reasonable efforts to assure that the conduct of their agents is “compatible with the professional obligations of the lawyer,” MRPC Rule 5.3, “the violation of a state’s ethical rules is not determinative of whether a right guaranteed by the Constitution has been violated.” *Id.*; *but see Maine v. Moulton*, 474 U.S. 159, 171 (1985) (“We have . . . made clear that, at the very least, the prosecutor and police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel.”).

We conclude that the court did not abuse its discretion in denying the Motion for Sanctions. The appellant interprets *Gorge* and *Adams* to mean that the State *must* give counsel notice under the statute if a defendant is represented. However, neither of these cases held that such notice is invalid if hand-delivered to a represented defendant as opposed to his counsel. The State did precisely what the statute required: it “gave” the “written notice” to the appellant.

For the first time on appeal, the appellant focuses on Maryland Rule 1-321(a) and argues that it requires the State to give notice to counsel when a defendant is represented. He contends that the State’s failure to comply with this Rule requires that the Notice be stricken. Because this argument was not raised below, it is not preserved. Md. Rule 8-

131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”); *see DiCicco v. Balt. Cnty.*, 232 Md. App. 218, 224–25 (2017). Regardless, giving a defendant notice under statute can be achieved in the manner prescribed under Rule 1-321(a), *see Adams, supra*, but the plain language of CR § 2-203 does not require it.

Moreover, there was no claim by the appellant that he was prejudiced in being served by the detective. It was undisputed that he did not make an incriminating statement when the detective handed him the Notice.¹² For the reasons stated, the court did not err in denying the appellant’s Motion for Sanctions.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CHARLES COUNTY REVERSED;
CASE REMANDED FOR FURTHER
PROCEEDINGS NOT INCONSISTENT
WITH THIS OPINION. COSTS TO BE PAID
BY THE COUNTY.**

¹² “The prosecutor’s ethical violations, if any, can and should be handled through the grievance process.” *Deleon*, 143 Md. App. at 669. “Sanctions are based on the character of the evidence, not the character of the prosecutor.” *Id.* at 662 n.4. Remedies such as attorney disciplinary proceedings “allow the court to focus on the behavior of the prosecutor instead of granting a windfall to an unprejudiced defendant.” *Id.*

Circuit Court for Charles County
Case No. C-08-CR-21-000296

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 959

September Term, 2022

GREGORY DESHAWN COLLINS, JR.

v.

STATE OF MARYLAND

Tang,
Albright,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Concurring and Dissenting Opinion by Eyler, J.

Filed: November 21, 2025

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

I respectfully concur in part and dissent in part in the majority’s well-written opinion. I concur in the resolution of Issues II and III. I disagree with the majority’s analysis of Issue I, however, and conclude that the motion court did not err in denying the suppression motion. Accordingly, I would affirm the judgments of the circuit court.

As the majority explained, if a suspect who is being interrogated after properly waiving his *Miranda* rights invokes his right to silence, and does so unambiguously and unequivocally, the interrogation must end. *Williams v. State*, 219 Md. App. 295, 325-26 (2014), *aff’d*, 445 Md. 452 (2015). A request by the person being questioned to exercise his *Miranda* right to silence must be “scrupulously honored” by the police. *Michigan v. Mosley*, 423 U.S. 96, 103 (1975) (quoting *Miranda v. Arizona*, 384 U.S. 436, 479 (1966)).

The *Miranda* right to silence may be invoked selectively. *Id.* at 103-04 (explaining that the right to terminate discussion gives the suspect the ability to control, among other things, “the subjects discussed”). *See also Michaels v. Davis*, 51 F.4th 904, 921 (9th Cir. 2022) (“[J]ust as a suspect in custody may refuse to answer all questions, he may selectively exercise his *Miranda* right[] to silence[.]”); *United States v. Hamidullin*, 114 F. Supp. 3d 388, 396 (E.D. Va. 2015) (“[A] defendant may selectively waive his *Miranda* rights by agreeing to answer some questions, but not others.”). Like a full invocation of the right to silence, a selective invocation must be unambiguous and unequivocal. *Michaels*, 51 F.4th at 922. And when there is a selective invocation of the right to silence, the interrogation

must end “with respect to the subject matter or mode of reply as to which the suspect invoked the right.” *Id.*

Finally, “[t]here is ... no *Miranda* violation where the person being questioned voluntarily reinitiates the interview with the police.” *Williams*, 219 Md. App. at 316 n.7 (citing *Miranda*, 384 U.S. at 478). *See also Lovelace v. State*, 214 Md. App. 512, 539 (2013) (“[T]he police may question a suspect who reinitiates communication, exchanges, or conversations with the police following an invocation of his or her right to remain silent.”).

It is undisputed that the appellant properly was given and waived his *Miranda* rights at the outset of the interrogation. Thereafter, Detective Feldman opened the interrogation by saying, “I’m investigating the shooting of a lady at the 7-Eleven, okay?” He did not mention the date on which the shooting happened, although it was implicit in many of the appellant’s answers that he knew that date was October 1, 2020. The overall tenor of the questions that followed was that the detective knew from evidence collected by the police that the appellant had committed the shooting but was seeking to determine why.

Detective Feldman and the appellant engaged in questions and answers taking up about thirteen pages of transcript. The detective was laying out the evidence against the appellant, when the appellant said, “I don’t want to say anything right here right now about the 7-Eleven. If you all have other questions you want to ask me, I’ll answer other

questions, but I don't want to say nothing about the 7-Eleven." This was an express selective invocation of the appellant's right to silence.

In my view, given Detective Feldman's statement at the outset, that he was investigating the shooting of a lady at the 7-Eleven, and that he had just been asking questions based on physical evidence he was representing the police had found inside the 7-Eleven, the appellant's selective invocation only was unambiguous and unequivocal as to what happened inside the 7-Eleven at the time of the shooting. Beyond that scope, it was undefined and unlimited, and therefore ambiguous.

Immediately after the appellant's selective invocation, Detective Feldman said, "Can I -- can I ask you one question about the 7-Eleven?" The appellant said nothing. The detective continued, "Walking into that 7-Eleven, did you intend this to happen?" The appellant replied, "I'm not going to say that I did walk into that 7-Eleven." I agree that what was in the appellant's mind as he walked inside the 7-Eleven was within the scope of the invocation. However, the appellant did not answer the question and indeed pushed back, clarifying that, not only would he not answer the question, he would not acknowledge walking into the 7-Eleven at all. Thus, that one failure to "scrupulously follow" the appellant's selective invocation of his right to silence produced nothing incriminating. As I explain, if the trial court should have granted the motion to suppress at all, this would be the only instance, and suppression of the appellant's non-incriminating non-answer would have made no difference in the outcome of the case.

Detective Feldman then asked the appellant “Okay. Do you have any questions for me?” At that point, the appellant asked whether the detective knew when he would be extradited. There followed a discussion between the two on that topic in which nothing was asked or said about the 7-Eleven. Detective Feldman said he didn’t want to leave without giving the appellant a full opportunity to talk to him and mentioned that his report would include whatever other witnesses, such as a co-defendant, might tell about what happened. The appellant asked: “Do I have a co-[d]efendant on this?” The detective answered that he “might,” depending on who had helped him get away, and the appellant followed up by asking whether the detective knew of someone who had helped him get away. This discussion did not include anything about the 7-Eleven. Thus, this conversation did not violate the selective invocation.

Then, without any question being posed, the appellant said “there’s a couple things that I do want to say.” He commented that he knew that his statements could be used against him and there followed a brief discussion about, yes, his words could be used against him but not everything he might say necessarily would be incriminating. The appellant said that “October 1st” (which in 2020 was the day of the shooting) was his birthday, that he had just wanted to see his daughter that day, and, in a hypothetical sense, the person who committed the crime would feel badly about it. Detective Feldman, recognizing that the appellant was skirting around the selective invocation, told the appellant he would have to make a difficult choice: Did he want to answer questions or did he want the questions to stop? The appellant said, “I want the questions to stop.”

The conversation leading up to that full invocation did not violate the selective invocation.

At that point, Detective Feldman started wrapping up, as he later testified at the suppression hearing. As he gathered and started packing his things, he commented that the appellant had to be comfortable with his walking out the door. He did not ask any questions. Before he left, the appellant asked what he was being charged with. Detective Feldman described the charges against the appellant. Then, spontaneously, the appellant began to talk at length about his personal situation and in particular the problems he was experiencing with his ex-girlfriend and daughter, beginning two years prior, when his daughter was born. He talked about how much he loved his ex-girlfriend and that he had gotten her pregnant to keep her from leaving him. Nevertheless, after their daughter was born, she broke up with him and took up with another man. In the winter of 2020, he lost his job and became homeless, living on the streets and sleeping in vacant buildings, for which he was arrested numerous times and was on probation. He left and went to Chicago, returning to Maryland on August 19, 2020.

As the appellant described it, from then on, he made repeated attempts to see his daughter. He was successful twice, on August 22 and September 19. In early September, he had planned to turn himself in for his violations of probation and then return to Chicago. His mother turned him in, however, and (as he explained) the police involvement prevented him from going to Chicago. He kept on calling his ex-girlfriend, who continued to rebuff his pleas. At one point, she said that, to see his daughter, he would need to give her money,

which he did not have, and told him he knew how to get money without getting a job. The appellant told Detective Feldman, “I knew what that girl was telling me” and “I ain’t want to do it. I wasn’t doing it. I wasn’t going to do it.” But then his ex-girlfriend’s boyfriend added him to his Instagram account so he could see both of them in the boyfriend’s posts. He saw the boyfriend refer to his (the appellant’s) daughter as being part of his family, as if the boyfriend were her father, much to the appellant’s distress; and he saw the boyfriend’s post of a photograph of the appellant’s daughter at her birthday party, which he had not been permitted to attend. The ex-girlfriend refused to answer his calls. The appellant told Detective Feldman that the next time they spoke was after the police had talked to her and had told her he “was a suspect for murder.” She called him, asking him please to say he did not do it, and if he did do it the reason was not so he could see his daughter.

During this entire recitation of events, the only time Detective Feldman asked a question was when he misheard the appellant in describing the situation that then developed, a reference to the shooting, as being a “horrible situation.” The appellant clarified that he had said “that whole situation” not a “horrible situation.”

It is clear that almost immediately after making a full invocation of his right to silence, the appellant reinitiated the conversation with Detective Feldman, first by asking what he was being charged with and then by launching into a lengthy narrative of the events leading up to the October 1 shooting, including conversations he had had with his ex-girlfriend after the shooting, when the police were looking for him. This repudiation of his full invocation was not prompted by anything Detective Feldman said or did. A reasonable

officer in the detective's position would understand that the appellant had voluntarily revoked his full invocation of his right to silence.

After the appellant's detailed account of what led up to the events at the 7-Eleven, Detective Feldman said he could understand how the appellant would have wanted to do something, based on how he was feeling, and, echoing his words, asked if it was "safe to say" that "this whole situation that occurred in 7-Eleven occurred because you were trying to help you and your daughter's relationship? So that you would see her?" The appellant responded that all he wanted was to see his daughter.

There followed a long and wide-ranging discussion in which Detective Feldman was trying to ascertain the parameters of what the appellant was willing to discuss, given his repudiation of his full invocation. The detective asked the appellant for "permission" for them to talk about what happened at the 7-Eleven. That was followed by a protracted exchange that covered many topics, some of which the appellant seemed to be weighing in deciding what to do. They discussed what he would say to the family of the woman who was killed if he had the opportunity. He hesitated about telling them he was sorry because he thought that would not accomplish much for them. He asked whether any action was going to be taken against his mother, as he had heard that the police were seeking a warrant for her arrest. The detective responded that that only would happen if she had assisted him in getting away, to which the appellant responded that she actually had done the opposite, by throwing him out of her house.

When Detective Feldman asked, “So what do you want to do?”, the appellant wondered aloud about whether his family members would be supportive of him no matter what he said, and concluded that his mother would. He told the detective that he had planned to return to Maryland that very day, to turn himself in, and that his sister was going to drive him there. After that, during a discussion of the amount of time it takes to travel by bus from Chicago to Atlanta, the appellant volunteered that the family of the woman who was killed, “they don’t deserve to be going through what they’ve gone through.” He commented that his mother had “tried to put in an application” for an overnight job at that 7-Eleven, and wondered, without any interjection by the detective, how he would feel if his mother had been the victim of a robbery while working there. Detective Feldman followed up on that hypothetical, and the appellant said, if the tables were turned, he would want the detective to find the person who did it. After a comment by the detective that the appellant was not the kind of person he had expected to encounter in the interview - - someone without any remorse - - the appellant launched into a long confession, starting by saying that he was drunk when he committed the crime. The confession, which is detailed, was not made in answer to any question or remark by the detective.

In my opinion, the appellant’s confession was not the product of a violation of an invocation of his right to silence. After the appellant fully invoked his right to silence and then immediately reinitiated the conversation with Detective Feldman, it was unclear whether his prior selective invocation still stood. Detective Feldman tried to ascertain that, and the appellant mulled it over, out loud, with some questions being posed by the detective

that did not violate the selective invocation if indeed the appellant still was exercising it. Although some of the detective's questions played on the appellant's emotions, the detective did not insist that the appellant give information about what happened inside the 7-Eleven and did not pose any such question after the full invocation was revoked. The appellant fully considered how he wanted to proceed, and without being questioned about what happened inside the 7-Eleven, proceeded to confess to the crimes he committed in that store on October 1.

Under the circumstances, the appellant's confession was not elicited in violation of his *Miranda* right to silence. As stated above, at most, one violation of the selective invocation occurred, early in the interview. If the answer the appellant gave had been ruled inadmissible, that would have made no difference in the outcome of the case. For these reasons, I would hold that the motion court did not err in its suppression ruling and that the judgments against the appellant should not be vacated.