

Circuit Court for Charles County
Case No. C-08-CR-21-000034

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1077

September Term, 2023

KEISHON JAVONTAE THOMPSON

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: April 16, 2026

* 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 Maryland Rule 1-104(a)(2)(B).

Keishon Javontae Thompson, appellant, was charged with first-degree murder, second-degree murder, first-degree assault, use of a firearm in the commission of a crime of violence or felony, armed robbery, robbery, possession of a regulated firearm while under the age of 21, carrying a loaded handgun upon the person, and wearing, carrying, and transporting a handgun, all stemming from the murder of J'Shaun Wallace on December 6, 2020. A five-day jury trial took place in the Circuit Court for Charles County from March 20-24, 2023. The jury found appellant guilty of first-degree murder, use of a firearm in the commission of a crime of violence or felony, possession of a regulated firearm while under the age of 21, and two counts of wearing, carrying, and transporting a handgun. Appellant was sentenced to life imprisonment for first-degree murder, plus a consecutive 15 years for the additional counts. This timely appeal followed.

Appellant presents four questions for our review:

1. Did the court err in denying [appellant]'s motion to suppress his statement?
2. Did the court err in admitting into evidence an irrelevant and prejudicial piece of evidence?
3. Did the trial court commit plain error when it allowed the [S]tate to improperly argue highly prejudicial facts that were not in evidence during the rebuttal argument and/or abuse its discretion in denying [appellant]'s Motion to Vacate Judgment based on the same error?
4. Was [appellant] deprived of a fair trial by the State's failure to provide grand jury testimony to the defense?

For the following reasons, we will affirm the judgments of the circuit court.

BACKGROUND

On the night of December 6, 2020, Mr. Wallace and his friend, Mr. Campbell, drove to a strip mall located at 2598 Business Park Court in Charles County, Maryland in order for Mr. Wallace to meet with appellant. Mr. Wallace got out of the car and walked around the corner of the building while Mr. Campbell waited in the car. After some time had passed, Mr. Campbell heard a gunshot, got out of his car and saw Mr. Wallace fall to the ground. Mr. Campbell called the police, and an officer arrived around 8:30 p.m. The paramedics arrived shortly thereafter at 8:35 p.m. and started life-saving interventions. Mr. Wallace did not have a pulse when paramedics arrived and, after 15 minutes of CPR, he was pronounced dead.

The investigation into the death of Mr. Wallace was led by Detective Jeffery Feldman of the Charles County Sheriff’s Office. At the crime scene, police recovered Mr. Wallace’s cellphone and a pair of shoe insoles. Police were able to recover text messages between Mr. Wallace and a number associated with appellant from November 27 to December 6, 2020. The text messages revealed that on December 5, 2020, the day before the shooting, Mr. Wallace and appellant met to initiate a shoe sale. After the sale, appellant texted Mr. Wallace, “link tomorrow if you bring the soles or a different pair of shoes with the soles. If you can’t find them and I’ll still give you the bread. You be on that shit, no soles be hurting my feet[.]” On December 6th appellant and Mr. Wallace exchanged text messages planning to meet at the Business Park Court for the exchange. When Mr. Wallace arrived at the location, appellant indicated that he was “in the back” and told Mr. Wallace

that “[w]hichever side you’ll see me back here[.]” At 8:12 p.m., Mr. Wallace sent the last text message stating “aight brah im boutta slide[.]”

The investigation also recovered GPS data from appellant’s cellphone and security camera footage from nearby businesses. The GPS data from appellant’s phone indicated that between 8:06 p.m. and 8:11 p.m. the phone was behind the Open Arms Clinic (the “Clinic”) at the Business Park Court. During that same time, security camera footage from the Clinic showed a man standing behind the building holding a cellphone. Then at 8:21 p.m., the GPS data indicated that the phone was moving away from the Clinic and toward the Comfort Suites. At that same time, security camera footage from the Comfort Suites showed a man running away from the area. Finally at 8:27 p.m., the GPS data indicated that the phone had moved toward appellant’s home on Enterprise Place.

Appellant was arrested on December 10, 2020, at a hotel in Bel Air, Maryland, where he had been staying while working on a construction job. Appellant was taken to the Harford County Sheriff’s Office, placed in an interview room, and read his *Miranda* rights. When the police began to question him, appellant chose to invoke his right to counsel, and the interrogation immediately stopped. Around 8 p.m. that same day, Detective Feldman and Detective Ryan Johnson placed appellant in their police car to escort him to the Charles County Sheriff’s Office in LaPlata. The trip took about two and a half hours. During the trip several conversations took place between and among appellant, Detective Feldman, and Detective Johnson. All of these conversations were audio recorded. Additional facts will be provided as needed to resolve the issues on appeal.

DISCUSSION

I. Did the Court Err In Denying [Appellant]’s Motion To Suppress His Statement?

A. Background

Appellant moved to suppress the statements that he made during the trip with Detective Feldman and Detective Johnson from Harford County to Charles County. At the suppression hearing, which took place on March 15, 2023, the audio recording of the conversations between and among Detective Feldman, Detective Johnson, and appellant was played. Relevant portions of the audio recording are as follows:

DET. JOHNSON: Today’s date is December 10th, 2020 at 8:01 p.m. Detective Johnson and Detective Feldman, we’ll be transporting [appellant] from Harford County Sheriff’s Office to the Charles County Sheriff’s Office District 3 station.

(Indistinct noises as the detective exits the vehicle from 00:26 until 1:52 elapsed time.)

DET. JOHNSON: Put your hands up.

(Indistinct noises from 2:09 elapsed time until 8:02 elapsed time.)

DET. JOHNSON: What kind of company do you work for?

[APPELLANT]: Huh?

DET. JOHNSON: What kind of company do you work for?

[APPELLANT]: Excavating and demolition, construction.

DET. JOHNSON: So you guys, like, demo buildings or you demo roads or, like, what do you do?

[APPELLANT]: So far, as long as I’ve been here, it’s just highway work and some client jobs.

DET. JOHNSON: So you, like, tear the road up?

[APPELLANT]: Not like that, but you know the signs, like, make signs off the road --

DET. JOHNSON: Yeah.

[APPELLANT]: Yeah. Well, whether they're the big ones or the small ones, got to break them up --

DET. JOHNSON: Okay.

[APPELLANT]: -- get rid of the concrete, put dirt.

DET. JOHNSON: Gotcha.

[APPELLANT]: Am I allowed to ask questions about my case?

DET. JOHNSON: That is a discussion to have with Mr. Feldman.

[APPELLANT]: Oh.

DET. JOHNSON: I'm just -- two hours is a long time to sit in a car and not say nothing. So. Just trying to make small talk.

[APPELLANT]: Uh-huh.

(No conversation from 9:30 until 11:34 elapsed time.)

[APPELLANT]: Could you tell me how the process goes? Once when we arrive?

DET. JOHNSON: So when we get back to our office, we have a -- like, an arrest card, we're asking information like your name, your date of birth, your address, your Social. If something were to happen to you, who do you want us to contact, like, Mom, Dad, you know, whatever.

So we got to do that little bit of paperwork and then we'll drive you to the jail. You'll have a -- probably tonight -- if not tonight, tomorrow morning, you'll see a commissioner. And then the commissioner will decide -- you know, if you can get a bond, if you get held without or if you get released -- then if you get held on bond or held without bond, then you'll see

-- if you see the commissioner tonight, you might see the judge tomorrow. It just all depends on timing. And then you'd go for another bond review in front of the judge.

Then if you don't see the judge tomorrow, you'll see the judge Monday.

[APPELLANT]: I didn't think that was still going to be a thing during this COVID...

DET. JOHNSON: So when I say you'll see the judge, it will be a --

DET. FELDMAN: Have you got your 32?

DET. JOHNSON: Yes.

DET. FELDMAN: We're good. Thank you, have a good night.

DET. JOHNSON: So you'll do it over, like, video. You want to give them a call, it's 00.

DET. FELDMAN: Yup.

DET. JOHNSON: It's just kind of like Skype, is what it is. And that's the same thing with the commissioner.

[APPELLANT]: All right.

(Emphasis added).

* * *

DET. JOHNSON: Why do you come all the way up here to work?

[APPELLANT]: This is --

DET. JOHNSON: This is where the work is?

[APPELLANT]: Yup.

DET. FELDMAN: What road are you all working on?

[APPELLANT]: I think it was 82.1.

DET. FELDMAN: What -- on 95?

[APPELLANT]: Yeah.

DET. FELDMAN: Oh, okay. What were yo[u] doing, just tearing the road up?

[APPELLANT]: It was concrete from the signs.

DET. FELDMAN: I gotcha.

[APPELLANT]: Am I allowed to ask questions to you about my case?

DET. FELDMAN: Absolutely. I'll answer what I can.

[APPELLANT]: So was my face in the video?

DET. FELDMAN: What's that?

[APPELLANT]: I said, was my face in the video?

DET. FELDMAN: Was your face on the video? Yes, it was. I mean, you had the hood on, but yeah, your face was on the video. You're standing, basically, right underneath the camera.

[APPELLANT]: All right.

(Indistinct car noises, electronic voice from the mapping system from 35:12 to 36:01 elapsed time.)

[APPELLANT]: Is there such a thing as a suicide watch in jail?

DET. FELDMAN: Well, they're going to have you talk to somebody when you get in there anyway. And you're going to be put in a medical holding right when you go in.

[APPELLANT]: All right. So what do you think I'm good for

(inaudible 36:37 elapsed time.)

DET. FELDMAN: Well, I explained to you what your charges were, right?

[APPELLANT]: Well --

DET. FELDMAN: Did you understand all those charges?

[APPELLANT]: I didn't hear them, all of them.

DET. FELDMAN: You didn't hear them?

[APPELLANT]: One that -- when we did the -- like, the first four, I think you said.

DET. FELDMAN: Yeah, they're -- give me a second, I'll be able to read to you right -- what they are. I'm logging into a system to look at them right now.

But you got a long way before you got (inaudible 37:02 elapsed time.) We still have -- you know, you still have the right to a quick process, you know what I mean?

[APPELLANT]: That ain't going to do nothing.

DET. FELDMAN: What?

[APPELLANT]: I said that's not going to do anything for me.

DET. FELDMAN: What do you mean by that?

[APPELLANT]: It's not going to help me.

DET. FELDMAN: Sure it is. Why don't you think it will help you?

[APPELLANT]: Well, you just said my face is in the video, so I don't -- then it's done.

DET. FELDMAN: Like I said, there's two sides to every story. At some point, and that might -- that may be the court process, you'll get to tell what your side is. Right? That's when the -- that's where the court process helps you.

[APPELLANT]: I've been in -- nothing I say is going to make it better for me. Death penalty is not possible?

DET. FELDMAN: I can't hear you.

[APPELLANT]: I said the death penalty is not possible?

DET. FELDMAN: Maryland doesn't have the death penalty.

[APPELLANT]: Oh.

(Indistinct car noises, electronic voice from the mapping system from 39:22 to 40:00 elapsed time.)

[APPELLANT]: Was there anything else you know about that -- that medical warrant you served?

DET. FELDMAN: (Inaudible 40:12 elapsed time.)

[APPELLANT]: I said is there anything else you know about that medical warrant you served?

DET. FELDMAN: They'll just -- they'll -- they'll call you in -- in a -- a nurse will come in and talk to you, ask you some questions. And get you set up as part of the intake process. Every person that goes into the jail sees them. All right?

(Emphasis added).

* * *

(Indistinct car noises, electronic voice from the mapping system from 45:35 to 52:06 elapsed time.)

DET. JOHNSON: So I have to ask, why are you worried about the death penalty?

[APPELLANT]: I was the last -- (inaudible 52:15 elapsed time.) I believe there's no point, though, living this -- I'm 18, by the time I get out, I would be, what, over 50, maybe. No point in this.

DET. FELDMAN: It's too early to talk about (inaudible 52:29 elapsed time.) **Before -- what I'm getting at is, do you want to harm yourself?**

[APPELLANT]: I'm -- you just said that I'm on video, so I understand, ain't no point in living no more.

DET. FELDMAN: Why is that?

[APPELLANT]: There's no point in it, I'm 18.

DET. JOHNSON: Listen, man, you're young --

[APPELLANT]: Yeah, and by the time I get out --

DET. JOHNSON: Did I -- do I think you made a mistake? Yes, I think you made a mistake. But is this something that you can't bounce back from? Absolutely not. You can absolutely bounce back from it.

[APPELLANT]: How many years is murder?

DET. JOHNSON: Murder can be anywhere from zero to a lot. There's a lot that goes into making that decision as far as -- I mean, you're talking something that's way down the road. Way, way down the road.

[APPELLANT]: Not in my situation.

DET. JOHNSON: I'm sorry?

[APPELLANT]: Not in my situation. I wouldn't even be able to get a -- get a job, have kids or any of that no more. I may have

(inaudible 54:07 elapsed time.)

[DET.] FELDMAN: You don't know what's going to happen. You have no idea. I have no idea.

[DET.] JOHNSON: So I don't want to make things confusing for you, I'm not asking about your case. If you want to talk about it, we can re-read that card to you and we can talk about it. I'm strictly asking do you intend on trying to harm yourself? I'm looking out for you at this point, because there's paperwork that I may have to do if that's the case. But that doesn't change the outcome of tonight.

I just -- I don't want to see you hurt yourself over something like this. Which -- we're in the very infancy stages -- we don't even know what tomorrow is going to bring. This is a marathon for you. So --

[APPELLANT]: My life is over, man.

DET. JOHNSON: Don't think of it like that, like -- there's all kinds of court hearings and jail processes and who knows what's going to happen. For all we know, we go down here and go see a commissioner, the commissioner will maybe let you out and give you a bond and Mom bails you out.

[APPELLANT]: My mom can't bail me out. And even if she could, she wouldn't do that.

DET. JOHNSON: So -- so you need to be able to talk to suicide watchers, is what you're telling me?

[APPELLANT]: I can't -- I can't stay in jail for the rest of my life. I'm sorry for what I did, but my life is over.

(Emphasis added).

* * *

[APPELLANT]: What they planning to do to people on suicide watch?

DET. FELDMAN: Say that again?

[APPELLANT]: I said, what do they do to people on suicide watch?

DET. FELDMAN: They (inaudible 1:04:28 elapsed time) you're not going to have it today. All they do is watch you, make sure (inaudible 1:04:34 elapsed time.)

Sure, you'll have a psychiatrist come in and talk to you.

[APPELLANT]: What do you mean I'm not going to have anything?

DET. FELDMAN: Like, you're not going to be able to have anything to hurt yourself with. It doesn't matter what the crime is, the goal is not for

you to end up hurting yourself or you losing your life. So they're going to do what they can to make sure that doesn't happen. . . .

(Emphasis added).

At the conclusion of the hearing, the circuit court denied appellant's motion to suppress, reasoning:

The question becomes, is this an interrogation? In other words, is it a conversation done for law enforcement purposes, or likely to elicit an incriminating response, or likely to lead the defendant down a road to where he would give an incriminating response?

And I will just be honest with you, I don't see any of that present. The most direct question asked of him, and you know, Mr. Allen, if you want to discuss this particular one right away, we can.

The most direct question asked of him was by Detective Johnson, which was basically, "Where do you work?" or, "Why do you work up here?"

Now, in the context of this particular investigation where the officers are serving a warrant at his work location in Harford County, and under the facts of this case it doesn't seem to be something that would be important to the case.

* * *

But just in the context of this case, it is to me, that statement or that exchange, one, it is not even one of the statements challenged. And two, if it were, I don't think it is an interrogation.

And I will also note that it struck me from the, I keep wanting to say tape, but it is just a disc, the audio 10 recording, that Detective Feldman, or excuse me, Detective Johnson asked what kind of company and, you know, what you're doing?

And [appellant] says, "Am I allowed to ask questions about my case?"

And Detective Johnson basically tells him, "No, you've got to, it is up to Mr. Feldman."

So it doesn't, it doesn't, you know, just looking at those circumstances, it doesn't seem that Detective Johnson was participating or searching for information related to this case.

[Appellant] really is the person who initiates on this list of things. For instance, "Is my face in the video?" That is [appellant].

"Is there a such thing as suicide watch?" He introduces the specter of suicide.

And by the way, he is very young. And I think the Sheriff's Office, and the Sheriff's Office in Charles County runs the detention center.

And Detective Johnson mentioned that if, that he would have, I think it was Detective Johnson, he would have to notify the jail to put someone on suicide watch. And certainly, they have an interest in protecting and looking out for the safety of inmates.

But in any event, [appellant] asked the question, "Is my face in the video? Is there such a thing as suicide watch? Does Maryland have the death penalty? How many years is murder?"

And I feel like there was one more. I think those were the questions, actually, I think those were the questions.

And I think the police are allowed to respond to his questions. And those questions are really not solicited.

Additionally, there are some other statements he makes. Well, let me back up. Once confronted with these statements, especially about suicide watches, I think Detective Johnson has an obligation to try to understand what he is talking about, or try to calm him down, or try to get him to understand, or get him to a place where he understands that suicide probably isn't the best option, and that there is a long way to go.

And I think at some point, Detective Feldman even says, "This could go anywhere. There's a long way to go." So, in short, the questions asked are not a result of an interrogation, they are just the questions asked.

Some of the statements, "I made a dumb decision; my life is over; I won't be able to get a job or have kids; you already said I'm on the video."

You know, these, again to me . . . let me make sure I just get them all. “Nothing I say will make it better.” And, “I cannot stay in jail forever; sorry for what I did; my life is over; no point to serve the sentence; I’m not going to ever see the light of day, or, I’m not going to see the light of day.”

Again, these are voluntary statements. I don’t want to say he blurted them out, but he basically just offered them up to the officers. **And, you know, from my review of the tape, multiple times now, this is a situation where the officers are not seeking information related to the crime.**

At one point it guess it came close and the officer said, “Well, I can re-read your *Miranda* if you want to talk about this case.” But again, everything turned back to the other things that were pressing, does he want to harm himself? So, and I think it was appropriate.

So, I am going to deny the Defense motion as it relates to suppression of the statements. . . .

(Emphasis added).

B. Standard of Review

Our Court’s review of a motion to suppress is “limited to the record developed at the suppression hearing.” *State v. Johnson*, 458 Md. 519, 532 (2018) (citation omitted). We review the evidence in the light most favorable to the prevailing party, here, the State. *Id.* “We accept the suppression court’s factual findings unless they are shown to be clearly erroneous.” *Id.* (citation omitted). Legal questions are reviewed *de novo*. *Id.*

C. Arguments of the Parties

Appellant argues that the trial court erred in denying the motion to suppress his statements because the Detectives violated the Fifth Amendment and *Miranda* when they engaged in a functional equivalent of an interrogation after appellant made a clear request for counsel. Specifically, appellant asserts that Detective Johnson initiated a conversation

with appellant when he asked why appellant was working in Harford County. Appellant contends that because of Detective Johnson’s initial questions, appellant started asking questions about his case and suicide watch. According to appellant, the Detectives’ follow up questions were aimed at eliciting incriminating statements, and appellant only engaged because he thought he had to answer their questions. Appellant concludes that “[t]he actions of the officers had the obvious effect of communicating to [appellant] that his earlier invocation of the right to counsel did not matter, because there was talk of re-reading the *Miranda* card.”

The State responds that the trial court correctly denied the motion, because the police did not engage in the functional equivalent of an interrogation after appellant invoked his right to counsel. Citing *Prioleau v. State*, 411 Md. 629 (2009), the State contends that the police are allowed to engage in “small talk” after a suspect has asked for counsel. According to the State, the standard for determining if a police officer’s question is an interrogation is to identify whether the question is ““directed to the issue of whether a suspect who is in custody has engaged in and/or has knowledge of criminal activity.”” *Id.* at 639. The State argues that the Detectives engaged in small talk with appellant because their questions were “not designed to elicit incriminating statements.” The State also asserts that appellant initiated the conversations about his case and the Detectives were only responding to appellant’s questions and concerns. Specifically, the State claims that Detective Feldman’s questions and comments regarding suicide and the death penalty were to assess appellant’s well-being.

D. Analysis

Miranda protects a suspect’s Fifth Amendment right against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 476 (1966). It does not protect all statements a suspect makes in the presence of the police. *Id.* There must be a custodial interrogation of the suspect. *Id.* *Miranda* does not protect a suspect’s voluntary statements. *Id.* at 478. “Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence.” *Id.*

In *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980), the U.S. Supreme Court stated that

the term “interrogation” under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

In other words, custodial interrogation involves “either express questioning or its functional equivalent.” *Id.* at 300-01.

In *Rodriguez v. State*, 191 Md. App. 196, 219 (2010), this Court elaborated on the meaning of “express questioning:”

“[E]xpress questioning” under *Innis* refers to the commonly understood concept of interrogation, namely, a law enforcement officer asking a question of a suspect in custody about the suspect’s involvement in a crime or where, under the totality of the circumstances, the officer knew or should have known that the question was reasonably likely to elicit an incriminating response.

(Footnote omitted).

At the beginning of the trip from Harford County to Charles County, Detective Johnson asked appellant, “What kind of company do you work for?” and “Why do you come all the way up here to work?” Detective Johnson explained to appellant that the purpose of his question was “to make small talk.” Detective Feldman also asked appellant, “What were yo[u] doing, just tearing the road up?” In our view, these questions do not constitute “express questioning” under *Innis* because they are not “asking a question of a suspect in custody about the suspect’s involvement in a crime.” *Id.* at 219; *accord*, *Prioleau*, 411 Md. at 639 (stating that actual interrogation constitutes questions “directed to the issue of whether a suspect who is in custody has engaged in and/or has knowledge of criminal activity”). Nor, under the totality of the circumstances, did Detective Johnson or Detective Feldman know or should have known that those questions were reasonably likely to elicit an incriminating response. Indeed, appellant has not identified any incriminating responses to those questions that should have been suppressed.

Regarding the remaining conversation between the Detectives and appellant, this Court’s opinion in *Rodriguez* is instructive. Like appellant, Mr. Rodriguez was transported to the sheriff’s office after his arrest, and during that ride a conversation occurred between Mr. Rodriguez and the officer transporting him. 191 Md. App. at 205-06. During the suppression hearing, the officer testified that Mr. Rodriguez “went from moments of complete outrage[] to that he seemed like he was going to pass out.” *Id.* at 209. The officer testified that she asked Mr. Rodriguez if he was okay, and he responded, “I can’t do this anymore, I have to stop this.” *Id.* The officer then asked Mr. Rodriguez, “Have you ever

been arrested before because, you know, that’s something to consider if you haven’t been arrested before,” and he said “Yes, for taking a car. I can’t keep doing this. I’m already in trouble. I’m going to jail. I did it.” *Id.* The officer testified that the purpose of her questions was not to elicit incriminating information, but to assess Mr. Rodriguez’s well-being. *Id.* at 210. On appeal, Mr. Rodriguez argued that the court erred by denying the motion to suppress his statements because the questioning during transport was the functional equivalent of a custodial interrogation. *Id.* at 215.

When considering the totality of the circumstances, this Court determined that Mr. Rodriguez had not been subjected to an interrogation during the transport. *Id.* at 222. We held that the officer’s questions stemmed from Mr. Rodriguez’s behavior and that the officer wanted to determine if Mr. Rodriguez needed to be taken to a hospital. *Id.* at 221. Regarding the officer’s question asking Mr. Rodriguez if he had been arrested before, we could not conclude that the officer should have known that such question was “‘reasonably likely to elicit an incriminating response.’” *Id.* at 222. Mr. Rodriguez’s statements, “‘I can’t keep doing this. I’m already in trouble. I’m going to jail. I did it.’” were spontaneous and not a result of an interrogation. *Id.* Therefore, the officer’s questions did not violate *Miranda*. *Id.*

In the instant case, it was appellant who twice initiated the conversation about his case when he asked, “Am I allowed to ask questions about my case[.]” It was appellant who first brought up the surveillance footage, asking Detective Feldman, “So was my face in the video[.]” After Detective Feldman responded that appellant’s face was in the video,

appellant asked about suicide watch and the death penalty. Appellant stated, “You just said my face is in the video, so I don’t -- then it’s done.”

A few minutes later, the following exchange took place between the Detectives and appellant:

DET. JOHNSON: So I have to ask, why are you worried about the death penalty?

[APPELLANT]: I was the last -- (inaudible 52:15 elapsed time.) I believe there’s no point, though, living this -- I’m 18, by the time I get out, I would be, what, over 50, maybe. No point in this.

DET. FELDMAN: It’s too early to talk about (inaudible 52:29 elapsed time.) Before -- what I’m getting at is, do you want to harm yourself?

[APPELLANT]: I’m -- you just said that I’m on video, so I understand, ain’t no point in living no more.

When Detective Johnson asked appellant, “why are you worried about the death penalty,” it was not to elicit an incriminating response but to ascertain if appellant was planning to harm himself. Detective Johnson later explained to appellant:

I don’t want to make things confusing for you, **I’m not asking about your case. If you want to talk about it, we can re-read that card to you and we can talk about it. I’m strictly asking do you intend on trying to harm yourself?** I’m looking out for you at this point, because there’s paperwork that I may have to do if that’s the case. . . . **I just -- I don’t want to see you hurt yourself over something like this. . . .**

(Emphasis added).

Later in the conversation, Detective Feldman echoed Detective Johnson’s statement of the purpose for his questions. He said, “Like, you’re not going to be able to have anything to hurt yourself with. It doesn’t matter what the crime is, the goal is not for you

to end up hurting yourself or you losing your life.”

It is clear to this Court that none of the Detectives’ questions asked appellant about his involvement in a crime. As in *Rodriguez*, the purpose of the Detectives’ questions was to ascertain appellant’s physical well-being. See *Rodriguez*, 191 Md. App. at 219. Also, because the Detectives’ questions focused on appellant’s well-being, we cannot conclude that under the totality of the circumstances, the Detectives knew or should have known that their questions were reasonably likely to elicit an incriminating response. Finally, the trial court found that appellant’s incriminating statements were voluntary. We agree, both as a matter of fact and law, because most of the conversation between the Detectives and appellant was freely initiated by appellant’s questions, and appellant’s incriminating statements were made during the conversation that followed these questions. Therefore, we hold that appellant’s inculpatory statements did not result from “express questioning” in violation of the Fifth Amendment or *Miranda*. Accordingly, the trial court did not err by denying appellant’s motion to suppress.

II. Did the Court Err in Admitting Into Evidence an Irrelevant and Prejudicial Piece of Evidence?

A. Background

During the search of appellant’s home, police located a speed loader. A speed loader is a device that allows the quick loading of bullets into a gun’s magazine. Appellant filed a Motion in Limine to exclude the admission of the speed loader into evidence, and the court held a hearing on the first day of trial. Appellant argued that, because the police never

found a handgun, the admission of a speed loader was “not relevant and overly prejudicial and it can be used to confuse the jury.” The prosecutor responded:

[PROSECUTOR]: So you haven’t, you haven’t seen the video yet, but there’s a video of, our position is of the Defendant pulling a firearm out and shooting it and the victim was killed by that gunshot wound.

[TRIAL COURT]: Mm—hmm.

[PROSECUTOR]: Accordingly, a firearm is certainly relevant and also parts to a firearm.

They executed a search warrant at his house after the homicide and they recovered this speed loader. A speed loader is -- or they took a photo of this speed loader. A speed loader is a device wherein you can put bullets into a magazine in a, in a fast manner, that’s what it’s for.

Also recovered was an airsoft -- or what was photographed was an airsoft gun. This isn’t an airsoft gun case and a speed loader does not go to an airsoft gun.

So he had in his possession, in his room after this homicide, a speed loader, loader, so it is certainly relevant.

The trial court ruled on the motion the next day. The court denied the motion, ruling that the probative value outweighed the danger of unfair prejudice. The trial court reasoned:

[TRIAL COURT]: All right, so yesterday was a Motion in Limine as it relates to a speed loader for a magazine.

I think I have to weigh whether or not the probative value outweighs the danger of unfair prejudice.

I think it does because it tends to show ownership, which I’m being told the weapon here was a handgun and there was no handgun found, correct?

[PROSECUTOR]: Correct.

B. Standard of Review

We review a trial court’s decision to admit evidence under a two-step analysis. *Smith v. State*, 218 Md. App. 689, 704 (2014). First, we review *de novo* whether the

evidence is legally relevant. *Id.* Maryland Rule 5-401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” A trial court has no discretion to admit non-relevant evidence. *Smith*, 218 Md. App. at 704. Next, we review whether the trial court admitted unfairly prejudicial evidence for an abuse of discretion. *Id.* Under Md. Rule 5-403, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

C. Arguments of the Parties

Appellant argues that the trial court erred when admitting the speed loader into evidence because it was “highly prejudicial, and served no purpose ‘other than to inflame the passions of the jury.’” Appellant compares his case to *Smith v. State*, where according to appellant, our Court “held that evidence of gun ownership, without a tangible connection to the charged offense, was minimally relevant and unfairly prejudicial, and therefore inadmissible under Rule 5-403[.]” As in *Smith*, appellant claims that there is no tangible connection between the speed loader and the shooting. Appellant elaborates that “[t]here was no evidence to suggest the speed loader was used in the shooting” and that the jury could not draw a permissible inference just from appellant’s ownership of a speed loader.

Appellant also argues that the danger of unfair prejudice outweighed any conceivable probative value. According to appellant, this was not harmless error because

the evidence was used to “further[] the State’s narrative of [appellant] as a dangerous man who possessed firearm parts and must have possessed the firearm that was used in this case.”

The State responds that the trial court did not err when admitting the speed loader into evidence because “it tended to show firearm possession in a case in which (a) [Mr. Wallace] was shot by a firearm, (b) no firearm was recovered from [appellant]’s home, and (c) [appellant] did not concede that he possessed a firearm.” The State argues that *Smith* is distinguishable from appellant’s case for several reasons. According to the State, when our Court held that the admission of the firearms was “highly prejudicial,” we were referring to “military-style weapons,” such as assault and sniper rifles. The State asserts that the weapon used in the *Smith* shooting was a “.38 gun” and that it was clear that the “military-style” firearms that were admitted into evidence were not used in the shooting. Finally, the State points out that, unlike in the instant case, the trial court in *Smith* never analyzed whether the probative value was substantially outweighed by the danger of unfair prejudice.

D. Analysis

Our Court in *Smith* explained in detail the two-step analysis:

Two characteristics of relevant evidence are “materiality and probative value.” *Williams v. State*, 342 Md. 724, 737 (1996). Evidence is material if it bears on a fact of consequence to an issue in the case. *Id.* at 736–37. Probative value relates to the strength of the connection between the evidence and the issue, to the tendency of the evidence “to establish the proposition that it is offered to prove.” *Id.* at 737.

It is not enough, though, for evidence to be relevant. Under Maryland Rule 5-403, the trial court should exclude relevant evidence if the probative value of the evidence “is substantially outweighed by the danger of unfair prejudice.” *See Carter v. State*, 374 Md. 693, 705 (2003). “Evidence is prejudicial when it tends to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission.” *Hannah v. State*, 420 Md. 339, 347 (2011). We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors’ evaluation of the issues in the case. In order to admit evidence of a “highly incendiary nature,” the evidence must greatly aid the “jury’s understanding of why the defendant was the person who committed the particular crime charged.” *Gutierrez v. State*, 423 Md. 476, 495, 499 (2011) (declining to admit evidence describing the defendant’s gang as more violent than other gangs). A court should *not*, however, admit evidence possessing weak probative value if the evidence might produce a jury inference that the defendant “had a propensity to commit crimes” or “was a person of general criminal character.” *Williams*, 342 Md. at 738 (excluding defendant’s crow bar and mace from evidence when the investigation of the scene of the burglary revealed no indication of a break in, forced entry, or any other link to the crimes with which the defendant was charged). We exclude prejudicial evidence to avoid the possibility “that a jury will convict the defendant ‘because of something other than what he did in that case . . . because of his criminal propensity.’” *Snyder v. State*, 210 Md. App. 370, 395 (2013).

218 Md. App. at 704-05 (cleaned up).

In our view, the speed loader was relevant to the issue of whether appellant possessed a handgun, because the weapon used in the murder was a handgun, no handgun was found, and appellant did not concede that he possessed a handgun. Also, the trial court did not abuse its discretion when it found that the probative value was not substantially outweighed by the danger of unfair prejudice. *See* Md. Rule 5-403. The speed loader was not introduced into evidence to show that appellant had a propensity to commit the crime but was used to show that he likely possessed a handgun.

Smith is distinguishable from the instant case. First, in *Smith*, the victim was killed

by a .38 handgun; the guns that that the State introduced into evidence were “military style” and were unrelated to the murder or the murder weapon. *Smith*, 218 Md. App. at 705. Neither the State nor the trial court articulated how the “military style” guns were relevant to the shooting. *Id.* In the instant case, the trial court did articulate how the speed loader was relevant—“it tends to show ownership” of a handgun. Second, the trial court in *Smith* never weighed whether the probative value was substantially outweighed by unfair prejudice. *Id.* Here, the trial court conducted the balancing test and found that the probative value was not substantially outweighed by the danger of unfair prejudice. We see no error or abuse of discretion in the trial court’s admission of the speed loader.

III. Did the Trial Court Commit Plain Error

A. Background

During her rebuttal closing argument the prosecutor stated:

And there actually is a witness to this murder, there is a witness. You never, almost never get this in a murder case. The victim IDs him, he IDs him when he meets him behind there and hands him the insoles that he’s been talking about since November. The victim, J’Shaun Wallace, IDs him.

As a matter of fact, the last thing he ever did on this earth was to ID him.

Ladies and gentlemen, find him guilty.

Defense counsel did not object to these statements during trial, but appellant addressed them later in a *pro se* pleading that asked the court to vacate the judgment. At the sentencing hearing, defense counsel characterized the claim as a “sort of post-conviction claim.” Defense counsel asserted that the prosecutor’s statements argued facts that were not in evidence, because Mr. Wallace never identified appellant as the shooter.

The prosecutor responded:

During the trial, I said he identified him because they were texting back and forth about the insoles. And he shows up, an[d] on video, the victim hands [appellant] the insoles, thereby identifying, this is the person he was talking to and identifies him.

So, that is being taken completely out of context. There was nothing wrong, whatsoever, with that comment.

The circuit court ruled:

I don't think the statement was ever meant to suggest that there was an actual identification that took place after a gun went off. I think the statement was this type of figurative language that you see often in a closing.

B. Analysis

As appellant concedes, this claim was not preserved for our review, but he urges this Court to recognize his claim under plain error review. Plain error review is rare and should be reserved “for errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.” *Pietruszewski v. State*, 245 Md. App. 292, 323 (2020) (quoting *Yates v. State*, 429 Md. 112, 130-31 (2012)). We hold that appellant's claim does not meet the high threshold for plain error review for the simple reason that there was no error. We afford counsel wide discretion in their closing arguments and “[r]eversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused.” *Degren v. State*, 352 Md. 400, 432 (1999) (citation omitted). As the trial court correctly pointed out, the prosecutor's comment during her rebuttal closing argument was a figurative way of saying that the evidence of the text messages between appellant and the

victim about the insoles, coupled with the video of the victim handing appellant the insoles shortly before the shooting, supports the rational inference that the victim “identifie[d]” appellant as the shooter. Also, because there was no error, the trial court’s denial of appellant’s motion to vacate judgment was neither error nor abuse of discretion.

IV. Was [Appellant] Deprived of a Fair Trial by the State’s Failure to Provide Grand Jury Testimony to the Defense?

Appellant requested the grand jury transcripts from his case, but the trial court denied his request as moot because there were no transcripts available from that proceeding. The court stated:

I do not read the [Rule 4-642], or the law to require a grand jury to be recorded, I think it is the opposite. It allows for a grand jury to be recorded. If recorded, I believe this gentleman and everyone else who is a defendant would get a copy of the transcripts.

This one wasn’t recorded, I don’t see a request. And if there was a request and it was denied, I don’t remember a hearing. And I don’t see a request, I don’t remember hearing, saying it was denied improperly, or an objection about it, or a discussion about it.

And on top of that, the witness that testified before the grand jury did not testify at trial. I am not sure how any witness could have been confronted with statements made by the grand jury, because it would have been statements by someone else.

Now, it could be that statements made at a grand jury ultimately could lead to discoverable issues and things like that. But I don’t think the rule requires what [appellant] says.

(Emphasis added).

Appellant argues, without citing to any legal authority, that “failure to record the grand jury proceedings deprived him of his due process right to cross-examine the witnesses against him.” We know of no legal requirement that grand jury proceedings be

recorded. Further, no recording of the grand jury was made in the instant case, and thus there can be no error in failing to provide the non-existent transcripts.

Even if grand jury transcripts are required, appellant was not entitled to them. In *Robinson v. State*, 354 Md. 287, 310-11 (1999), the Supreme Court of Maryland explained that “a defendant may not be entitled to pre-trial disclosure of a witness’ grand jury testimony, but the defendant may be entitled to the witness’ grand jury testimony for cross-examination purposes, after the witness testifies at trial or at a suppression hearing.” Here, the witness who testified at the grand jury proceedings did not testify against appellant at trial. In sum, regardless of whether there is an obligation to record the grand jury proceedings, appellant was not entitled to the transcripts under existing case law. Accordingly, there was no error.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**