Circuit Court for Baltimore City
Case No. 115338004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1483

September Term, 2017

JAMISON DEBERRY

v.

STATE OF MARYLAND

Wright,*
Kehoe,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: March 20, 20203

*Wright, Alexander, Jr., J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and preparation of this opinion.

A trail of blood through the row house at 4006 Grantley Road in Baltimore, Maryland led police to the kitchen where they found sixty-nine-year-old James Dews dead on the floor from 33 stabbing and cutting wounds. Appellant, Jamison Deberry ("Deberry"), was arrested and charged with the murder. Over six days in May and June 2017, Deberry was tried before a jury sitting in the Circuit Court for Baltimore City on charges of first-degree murder, second-degree murder, voluntary manslaughter, and carrying a dangerous weapon openly with intent to injure. Deberry did not dispute his criminal agency but argued that the killing was justified by self-defense, premised on a theory that Mr. Dews became violent because he was under the influence of dextromethorphan ("DXM"), the active ingredient in over-the-counter cough suppressants.

The jury convicted Deberry of first-degree murder and acquitted him of the other charges. The court sentenced Deberry to life in prison. Deberry presents four questions for our review, which we have rephrased:

> I. Did the circuit err by striking the testimony of the defense expert witness after the close of all the evidence or abuse its discretion by denying Deberry's motion for mistrial?
>
> II. Did the circuit court err by permitting an assistant medical examiner to offer certain opinions?
>
> III. Did the circuit court err by failing to redact portions of Deberry's recorded statement to police?
>
> IV. Did the circuit court err by giving a flight instruction?

As we explain in this opinion, the court's error in failing to redact two portions of Deberry's lengthy statement given to police, which were cumulative of other evidence that was introduced at trial without objection, was harmless. Discerning no further error or abuse of discretion by the circuit court, we affirm Deberry's conviction.

BACKGROUND

A. The State's Case

1. The Stabbing Death of Mr. Dews

Deberry's fiancé, Carla Mason ("Mason"), testified at trial that at the time of the stabbing, Deberry lived with her in an apartment in Northeast Baltimore City, and that she had known him for about a year.[1] She worked as a custodian in West Baltimore and didn't know what Deberry did for a living but believed that he earned money by doing "odd jobs."

On November 5, 2015, Mason drove Deberry to the corner of Martin Luther King Boulevard and Howard Street, where she dropped him off on her way to work. She believed that he was going to a doctor's appointment at Johns Hopkins Hospital and then to visit his sister, who lived near the hospital.

Mason talked to Deberry a "couple of times" during the day. When they spoke around 6 p.m., he said he was at a friend's house. Mason got off work at 7 p.m. and drove home. Deberry called Mason again around 9 p.m. and asked for a ride from an address on Grantley Road in Northwest Baltimore. According to Mason, she got lost and

[1] Mason was charged as an accessory after the fact and testified at trial pursuant to a use and derivative use immunity agreement with the State.

it took her 49 minutes to drive to the address. When she arrived, she did not see Deberry, so she called him, and he redirected her to 4006 Grantley Road. During that phone call, Mason noticed that Deberry's voice was "a little funny" but he was "semi-calm."

Mason arrived at a row house addressed 4006 Grantley Road and observed Deberry standing in the doorway of the house. She parked and walked up to the porch, where she noticed blood. By then, Deberry had gone back inside. There was more blood inside on the living-room floor.[2] From Mason's vantage point, she could see a man lying on the kitchen floor on his back. He was naked, and Mason could not tell if he was breathing. Mason "went in[to] shock." Eventually, she regained her faculties and realized that Deberry was calling her name. She also noticed that Deberry had a wound on his leg that was "bleeding a lot."

Mason told the jury that, at Deberry's direction, she put on a pair of latex gloves that he had in his pocket. She gathered some of Deberry's belongings and put them in a bag. Next, Deberry instructed her to go upstairs and get a television, but she refused, telling him that he was "crazy." Mason placed the bag with Deberry's belongings in her trunk and helped him to the passenger seat of her car. She began driving in the direction of Sinai Hospital. On the way, however, Deberry appeared to stop breathing, so she drove to a fire station for help.

At 10:06 p.m., an "assault call" went out to the Baltimore City Police Department ("BPD") from the fire station. BPD Officer Johnathan Montmorency with the Northwest

[2] As we shall discuss, *infra*, in her initial statement to the police, Mason denied having entered the house.

District responded to the scene. When he arrived, first-responders were already treating Deberry, who was not "alert" or able to speak to police. Officer Montmorency observed a "large laceration cut to [Deberry's] left shin area as well as a laceration . . . inside his right palm area." There was a "significant amount of blood" on Deberry.

Officer Montmorency spoke to Mason. She acted "afraid[,] . . . very shy, timid" and "didn't say much." Mason told Officer Montmorency that she had picked up Deberry "off of Liberty Road."[3] She did not provide an address.

BPD Officer Donald Burns drove Mason around to "find [the] crime scene" because she seemed confused about where she had picked up Deberry. Mason pointed out between six and eight corners that she believed could have been where she picked him up. Eventually, she gave Officer Burns the 4006 Grantley Road address. Officer Burns radioed the address to other officers and drove Mason back to the fire station.

BPD Lieutenant Anthony Proctor testified at trial that he responded to 4006 Grantley Road after another officer observed a "large amount of blood" on the front porch. After forcing entry into the home, Lt. Proctor observed blood in the living room leading into the kitchen. On the kitchen floor was an "older black male, nude except for . . . his socks" suffering from "multiple stab wounds" and showing "no signs of life." There was an "extreme amount of blood." Lt. Proctor did not call for an ambulance because it was apparent that the man, later identified as Mr. Dews, was deceased. Lt.

[3] Grantley Road intersects with Liberty Heights Avenue and 4006 Grantley Road is about four blocks north of Liberty Heights Avenue.

Proctor observed that the blood trail led all the way up the stairs into a second-floor bedroom.

Meanwhile, an ambulance had transported Deberry to Sinai Hospital. He was hospitalized for seven days at Sinai, where he received blood transfusions and underwent exploratory surgery of his left leg. Deberry suffered a stab wound to his left calf area that caused significant blood loss and fractured his fibula, as a well as a "fairly significant laceration" to his right palm. The blood loss sent Deberry into pulseless electrical activity cardiac arrest, which is a partial cardiac arrest and requires cardio-pulmonary resuscitation.

BPD Homicide Detective Tavon McCoy was the primary investigator on the case. He responded to 4006 Grantley Road and subsequently participated in interviewing Mason at the Homicide Division. Mason told the police that she had gone to 4006 Grantley Road to pick up Deberry, but that she had not gone inside. She denied knowing that Mr. Dews had been stabbed.[4]

A search of Mason's car revealed that the front passenger side of the vehicle was stained with blood. In the trunk, there was a white plastic shopping bag containing a

[4] Over a year later, in January 2017, police interviewed Mason again. During the interview, she acknowledged for the first time that she had entered the house at 4006 Grantley Road and explained her actions that day consistent with her above-described trial testimony. Earlier, Mason met with an Assistant State's Attorney to review her anticipated trial testimony, but during the meeting, she "began to relay facts that were inconsistent with her prior taped statement." As a result, the Assistant State's Attorney stopped the meeting and arranged for Mason to be transported to the Homicide Division to be re-interviewed by detectives after being advised of her *Miranda* rights.

white hooded sweatshirt and black sweat pants, both with the tags still on them; a pair of men's jeans that were heavily bloodstained; a bloodstained shirt; a napkin containing 10 pink pills; three blue latex gloves; a partially empty pack of cigarettes; and three cell phones, one of which was subscribed to Mr. Dews. A fourth cell phone, which was linked to Deberry, was found on the couch inside Mr. Dews's house.

2. Deberry's Statement to Police

On November 12, 2015, Deberry was released from Sinai Hospital and transported to BPD headquarters. Shortly after 8 p.m., Deberry was advised of his *Miranda*[5] rights and agreed to speak to the detectives. A redacted version of Deberry's statement, spanning 120 transcript pages, was introduced at trial.[6]

Detective Shawn Reichenberg began by asking Deberry, "[w]hat happened to you, man?" Deberry gave several different variations a story, all of which involved the same basic contours. He explained that Mr. Dews was one of his "sexual client[s]." They knew each other from past sexual encounters but had not seen each other for several months. They ran into each other at a grocery store on November 5, 2015 and agreed to meet up later in the day. During consensual sexual activity, Mr. Dews "zapped out" and, unprovoked, attacked Deberry with a knife. Mr. Dews stabbed Deberry in the palm while the two men were fooling around in Mr. Dews's car outside of Mr. Dews's house. After the two men had gone inside Mr. Dews's house, Mr. Dews stabbed Deberry in the leg

[5] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[6] Numerous redactions were agreed upon by the parties in advance of trial.

while they engaged in sexual activity in a second-floor bedroom. Deberry and Mr. Dews struggled until Deberry gained control of the knife and stabbed Mr. Dews repeatedly in self-defense. In the aftermath of the stabbing, Deberry called Mason and waited for her to drive him to the hospital.

Key details changed throughout Deberry's statement. Initially, Deberry said that Mr. Dews began stabbing him while they were "chilling [and] smoking weed" inside Mr. Dews's house. Moments later, Deberry said that Mr. Dews began stabbing him in the car while they were parked outside Mr. Dews's house. He later clarified that that was where Mr. Dews stabbed him in the hand. Deberry then claimed that he blacked out in the car and, when he woke up, he was upstairs in Mr. Dews's house with no memory of how he got inside; although, he acknowledged that he must have walked because Mr. Dews could not have carried him.

Deberry also gave various versions of what happened in the aftermath of the stabbing. Initially, he told detectives that he went downstairs and collapsed on a couch in Mr. Dews's living room, and then called Mason. While this was happening, Mr. Dews was "coming down the steps." Mr. Dews staggered into the kitchen, where he collapsed. Later, Deberry changed the story and said that he and Mr. Dews continued to "tussl[e]" while Deberry was trying to go downstairs. Consequently, they fell down the steps together. When they were at the bottom of the steps, Mr. Dews said, "we both going to die here." That was when Deberry went to the couch and called Mason. Meanwhile, Mr. Dews staggered into the kitchen where he collapsed.

Deberry also was inconsistent as to where Mr. Dews got the knife that he used to stab Deberry and whether it was the same knife used by Deberry to stab Mr. Dews in return. Initially, he said that while he and Mr. Dews were watching pornography upstairs in a bedroom, Mr. Dews began stabbing him and that Deberry had "a knife on [him]" and "stabbed [Mr. Dews] back." Later, he explained that Mr. Dews must have pulled the knife out from under a pillow on the bed because the two men had been naked when Mr. Dews started stabbing him. Later still, Deberry said that he managed to wrestle the knife away from Mr. Dews and "get to defending myself." He couldn't remember where he stabbed Mr. Dews.

Finally, Deberry initially told the detectives that Mason had not come inside the house at 4006 Grantley Road, but rather "got [him] on the front porch." This was consistent with what Mason had told the police during her interview on November 5, 2015. A moment later, however, after Deberry learned that Mason had told the police that she had not gone inside and did not know that Mr. Dews was injured inside the house, he changed his story. He told the police that Mason came inside and saw Mr. Dews lying lifeless on the kitchen floor. Once inside, she helped Deberry collect his belongings and put them in her trunk. He also told Mason when he talked to her on the phone that he had been attacked by Mr. Dews and had defended himself. He said: "it's blood everywhere, baby" and that he thought he was dying.

3. Scientific Evidence

DNA evidence introduced at trial showed that a mixture of DNA consistent with Deberry's DNA and Mr. Dews's DNA was found under Mr. Dews's fingernails and on

the blade of a knife found at the scene. A broken knife found at the scene with "red/brown staining" was tested, but "failed to yield a detectable DNA profile." A third knife "similar to a steak knife" was tested and "yielded inconclusive results."

Assistant Medical Examiner Zabiullah Ali, M.D., who performed an autopsy on Mr. Dews, also testified for the State at trial. He opined that Mr. Dews died from "sharp force injuries in the manner that was homicide." Dr. Ali identified 33 "separate and distinct" stab and cutting wounds to Mr. Dews's body. He explained that a stab wound is "deeper than it's long" and a cutting wound, also known as a "slash wound," is "longer than it's deep." Mr. Dews had seven stab wounds and six cutting wounds to his head and neck. A stab wound to the right side of Mr. Dews's neck had severed his carotid artery and was a "rapidly fatal wound" because it would have caused death from blood loss within minutes. The tip of a single-edged knife was lodged in the right side of Mr. Dews's skull. Dr. Ali opined that it would have required a "lot of force" to embed the knife in Mr. Dews's skull. Mr. Dews had an additional nine stab and cutting wounds to his torso, including a rapidly fatal stab wound to the left side of his chest that perforated his left lung. The remaining stab and cutting wounds were to Mr. Dews's arms and hands. Several of the wounds were consistent with having been inflicted with a serrated knife, while others were consistent with a single-edged knife.

Dr. Ali opined that wounds on the victim's right index finger and forearms and stab and cutting wounds to a victim's hands and the backs of the forearms were consistent with "defensive wounds," *i.e.*, wounds inflicted while a victim attempts to use his or her arms to fend off an attack.

B. Deberry's Case

In the defense's case, Deberry called one witness: Lawrence Guzzardi, M.D., who was accepted by the court as an expert in toxicology over the State's objection. We shall discuss Dr. Guzzardi's testimony in more detail, *infra*, but it suffices to say that he opined that the level of DXM in Mr. Dews's blood was highly elevated and that, at high levels, DXM is a "dissociative agent" causing effects "somewhat akin to schizophrenia." Defense counsel, over the State's objection, moved for Dr. Guzzardi's expert report to be admitted into evidence. The court initially granted that request, but during Dr. Guzzardi's testimony, the court reconsidered and advised the parties that it would rule after it had time to read the report.

C. State's Rebuttal Case

In rebuttal, the State called Rebecca Phipps, Ph.D., a forensic toxicologist with the Maryland Office of the Chief Medical Examiner. As we discuss more fully below, Dr. Phipps opined that the level of DXM in Mr. Dews's heart blood sample was consistent with a "therapeutic" level.

After the close of all the evidence, the court raised a concern with counsel as to the factual basis for Dr. Guzzardi's opinion under Rule 5-702. During the ensuing discussion, the prosecutor moved to strike Dr. Guzzardi's testimony in its entirety and the court granted that motion. The court also granted defense counsel's subsequent motion to strike Dr. Phipps's rebuttal testimony but denied defense counsel's motion for mistrial.

D. Verdict

The jurors deliberated for less than two hours before returning a verdict of guilty on the charge of first-degree murder and not-guilty on the charge of carrying a dangerous weapon openly with intent to injure. On September 8, 2017, the court sentenced Deberry to life in prison. This timely appeal followed. We shall include additional facts as pertinent to our discussion of the issues.

DISCUSSION

I.

Defense Expert Witness

A. Contentions

Deberry contends the circuit court erred in ruling that Dr. Guzzardi lacked an adequate factual basis for his opinion under Rule 5-702 because he had not relied upon Deberry's statement to the police in forming his opinion. He maintains that Dr. Guzzardi was not obligated to rely upon Deberry's statement and could reach his opinion by relying only on the toxicology report and his own experience that DXM "at the level in Mr. Dews'[s] blood would cause someone to act bizarrely." The error in striking Dr. Guzzardi's opinion testimony was not harmless, according to Deberry, because an explanation for Mr. Dews's alleged erratic behavior was the lynchpin of his defense. He asserts, moreover, that the court departed from its role of impartiality by raising *sua sponte* concerns about the factual basis for the expert's testimony after the close of all the evidence.

The State responds that the court did not abuse its broad discretion by striking Dr. Guzzardi's testimony because Dr. Guzzardi lacked an "adequate supply of data" as required by Rule 5-702(3). To illustrate this point, the State directs us to Dr. Guzzardi's testimony that he "didn't rely too much on the transcript [of Deberry's statement to police] in terms of any specific behaviors" exhibited by Mr. Dews on November 5, 2015. Moreover, the State argues, Dr. Guzzardi lacked an adequate supply of data *and* failed to use a reliable methodology in arriving at his opinion that a post-mortem blood concentration of DXM could be predicative of dissociative behaviors in a living person.

B. Dr. Guzzardi's Testimony

Dr. Guzzardi is an "emergency physician and a medical toxicologist" who is board certified in medical toxicology. He spent much of his career practicing emergency medicine. He explained that there are two types of toxicologists: medical toxicologists and forensic toxicologists. Medical toxicologists, like Dr. Guzzardi, are medical doctors who treat live patients. Forensic toxicologists, in contrast, need not be medical doctors. Forensic toxicologists perform drug testing, laboratory work, and post-mortem toxicological testing and analysis. Over objection, Dr. Guzzardi was accepted by the court as an expert for the defense in the field of toxicology, generally, though he acknowledged that he had no expertise in the sub-specialty of post-mortem toxicology.

On direct examination, Dr. Guzzardi testified that DXM is a "synthetic opiate" used to suppress coughing. It causes less sedation and less euphoria than other opiates. A "normal therapeutic dose" of DXM for an adult male is 30 milligrams, which is roughly the dose contained in two tablespoons of Robitussin. According to Dr. Guzzardi,

one study he reviewed showed that when that dose was given to "12 healthy young men" the peak level of DXM in their blood "after two-and-a-half hours" was "1.8 nanograms per milliliter[.]" In a second study, a therapeutic dose of DXM was given to 24 healthy adults and the "average peak level [of DXM was] 1.4 nanograms per milliliter at 1.8 hours." Dr. Guzzardi said that he reviewed Mr. Dews's autopsy report and found that "the postmortem [DXM] level . . . was very remarkable." According to the report, the level of DXM found in Mr. Dews's heart blood sample at the time of autopsy was "equivalent to 200 nanograms per milliliter[.]" Dr. Guzzardi opined that, at a level of 200 ng/mL, DXM could cause "dissociative symptoms" "somewhat akin to schizophrenia." It could "cause someone to act bizarrely."

Dr. Guzzardi testified that he had read Deberry's statement to police, and he opined that Mr. Dews's behavior was consistent with a person under the influence of DXM. He could not, however, identify any specific behavior from which he drew that conclusion: "I mean, there were lots of parts of the individual's behaviors. I don't know which part you're referring to. So, I mean, if you ask me a specific question about it[.]"

When defense counsel moved to admit Dr. Guzzardi's expert report into evidence, the prosecutor objected, characterizing it as irrelevant, immaterial, and prejudicial. The court overruled the objection and admitted the report. In his expert report, Dr. Guzzardi summarized the facts as follows:

> [Mr. Dews] was found dead . . . the victim of an alleged homicide. [Deberry], the alleged assailant, has asserted that Mr. Dew[s] acted irrationally and in a threatening manner, precipitating events leading to Mr. Dew[s]'s death. Toxicology performed . . . revealed the presence of . . . .2mg/L (200 ng/ml) [of DXM in the heart blood sample].

He opined that that level of DXM was "very high and sufficient to cause a state of extreme dissociation with paranoia." Considering the level of DXM in Mr. Dews's blood, Dr. Guzzardi "suspect[ed] that Mr. Dew[s] was both an acute and chronic abuser of [DXM] given his clinical symptoms as stated by [Deberry]." The report went on to discuss anecdotal reports of the effects of DXM abuse and to discuss the effects of ketamine, a drug that Dr. Guzzardi opined produced similar effects as DXM. He also explained how DXM is metabolized and that between 5-10% "of the Caucasian population[7] are considered poor metabolizers of DXM." In summary, Dr. Guzzardi opined that Mr. Dews "was under the influence of a very large amount of [DXM] at the time of his death" and that that "level of [DXM] caused symptoms of psychosis with paranoid features." Further, Mr. Dews was "likely a chronic abuser of [DXM] and a poor metabolizer of [DXM]."[8]

As defense counsel began questioning Dr. Guzzardi about the substance of his expert report, the trial judge reconsidered his decision to admit it. Specifically, the judge expressed concerns about Dr. Guzzardi's discussion of anecdotal cases of users of DXM

[7] Mr. Dews was African-American. The expert report did not include any statistics for the African-American population.

[8] A study relied upon by the State's rebuttal expert also discussed poor metabolizers of DXM, noting that this was one of the reasons that interpretation of post-mortem blood concentrations is so difficult, *i.e.*, that higher concentrations can reflect a poor metabolizer who took a therapeutic dose, not an overdose. There was no testimony as to whether a poor metabolizer of DXM experiences heightened symptoms upon taking a normal therapeutic dose or whether they simply have higher blood concentrations of the drug.

because the report did not include any information about the doses taken by those users. The court also noted that the DXM users discussed in the report were significantly younger than Mr. Dews and one was a woman, which called into question whether the effects upon them would be comparable. Because of those concerns, the trial judge directed the court clerk to mark the expert report for identification only and advised the parties that he would rule on admissibility after he had had time to review the report more thoroughly.

Defense counsel next asked Dr. Guzzardi whether he was "aware of studies that have examined patients who have, or people, who have had a level of around 200 nanograms of [DXM]." He replied, "[t]here's been many studies of the elevated levels of [DXM] and there's also been studies of drugs similar to [DXM] because these drugs are all similar." He then began talking about other drugs, resulting in an objection and a bench conference. After the court implored defense counsel to focus the witness on DXM, defense counsel asked Dr. Guzzardi to express in nanograms what a "high level[]" of DXM would be. Dr. Guzzardi replied that a high level was not expressed that way, but rather in "quantities taken." He explained that after ingesting three to five times the therapeutic dose of 30 mg (150 mg), a user would feel "a little high." A user would need to take 20 to 50 times the therapeutic dose (600 to 1,500 mg) to experience the "levels similar to what [he was] talking about in this case[.]" He then pivoted and opined that a level of 200 ng/mL could "induce schizophrenia symptoms" such as "distortions of reality" and paranoia. Dr. Guzzardi acknowledged, however, that post-mortem levels may involve some "redistribution" of the drug, meaning that the post-mortem

concentration of a drug in the blood might be higher than the concentration in that same living person, just prior to death.[9] Nevertheless, he opined "to a reasonable degree of medical certainty," that the level of DXM in the blood sample taken from Mr. Dews's heart blood would have caused Mr. Dews to exhibit dissociative symptoms.

On cross-examination, the State questioned Dr. Guzzardi's "methodology" and asked what documents he reviewed relative to the case and how each had informed his opinions. Specifically, the State asked what aspects of Deberry's statement to police had informed Dr. Guzzardi's opinion that Mr. Dews was an "acute and chronic abuser of [DXM]."[10] He replied:

> The statements of [Deberry] in this case . . . were not particularly relevant to the issue of what was found in the blood of the deceased.
>
> However, it did help me formulate an opinion as to what were the likely characteristics prior to his death of the deceased.

Asked to point to a specific page of the statement that he relied upon in arriving at his opinion that Mr. Dews abused DXM, Dr. Guzzardi replied that he could not, but he added that he had "correlate[d]" the autopsy finding of an elevated level of DXM with Deberry's report that Mr. Dews behaved abnormally during an otherwise consensual sexual encounter, and that the toxicology "help[ed] to put Mr. Dews' actions in

[9] He opined that, even considering post-mortem redistribution, Mr. Dews's blood concentration prior to death would have been at least 100 ng/mL. He was not asked if, at that level, he would expect the user to experience dissociative symptoms.

[10] Dr. Guzzardi never offered this opinion in his trial testimony, but, as mentioned, he did offer it in his expert report.

perspective." When asked again to elaborate as to "where in the transcript" he had focused, Dr. Guzzardi replied:

> I really didn't rely too much on the transcript in terms of any specific behaviors. For one thing it's hearsay. I listened. I read it and I listened to it. But . . . it was clear that this started off in any way that you want to look at this as a consensual sexual encounter, albeit possibly for compensation or probably for compensation. And resulted in –
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> * * *
>
> – a terrible tragedy. And so – and – and in which both people became agitated and in which there was a struggle of some sort. And so that was what I was trying to – I looked at this. Now I'm not a fact witness. I'm not testifying –
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> * * *
>
> So I'm just testifying to what [] I read in the autopsy –

The prosecutor also asked Dr. Guzzardi how different doses of DXM are "metabolized in a human." Dr. Guzzardi responded that that was a "much more difficult question and . . . [was] not knowable by [him]."

Dr. Guzzardi was asked about a 1998 study authored by P.P. Singer, *et al.*, published in the Canadian Society of Forensic Science Journal, titled "Interpretation of Postmortem Dextromethorphan Concentrations – a Review of Case Data and the Literature" [hereinafter "*Singer*"]. *Singer* concluded that therapeutic, *i.e.* non-abusive, use of DXM would produce postmortem blood concentrations up to 0.4 mg/L (400 ng/mL), twice the concentration detected in Mr. Dews's heart blood. Dr. Guzzardi stated that he disagreed with that conclusion.

After Dr. Guzzardi testified, the State called as a rebuttal witness Dr. Phipps, a certified forensic toxicologist whose practice is "a hundred percent in post-mortem toxicology." Dr. Phipps opined that Mr. Dews's postmortem concentration was within

the normal therapeutic range. She agreed with *Singer* that "up to about a [0.4 mg/L] is a reasonable concentration to interpret as a post-mortem therapeutic concentration." She opined that it was not "a reliable or accurate" methodology to extrapolate from a "single [postmortem] blood concentration" to predict the behavior of the deceased person prior to death because, unlike alcohol, the effects of DXM varied widely between individuals. Further, she explained that the studies relied upon in Dr. Guzzardi's report involved living individuals "[a]nd it's really important to look at post-mortem studies when you're trying to interpret a post-mortem concentration. It's like comparing apples and oranges."

B. Trial Court Ruling

At the close of all the evidence, the court adjourned for the day. The next morning, the trial judge returned to the issue of Dr. Guzzardi's expert report, noting that he had reviewed the report and redacted some portions of it that referred to substances other than DXM. Reading the report "raised in [the trial judge's] mind a concern" that he wanted the parties to address. The judge explained that he recalled that Dr. Guzzardi "didn't base it on the transcript." The judge asked the parties, "if [Dr. Guzzardi] didn't base [his opinion] on [Deberry's] statement, then what is the basis for his opinion, because *all he then has is [DXM] being in [Mr. Dews's] bloodstream*." (Emphasis added.) Noting that Dr. Guzzardi (and Dr. Phipps) opined that different people metabolize DXM at different rates, the judge questioned how Dr. Guzzardi could "have reached an opinion without relying on [Deberry]'s version of what happened[.]"

Defense counsel disagreed with the court's characterization of Dr. Guzzardi's testimony but emphasized that Dr. Guzzardi had testified that Deberry's description of

Mr. Dews's behavior "was consistent with" someone who was under the influence of [DXM]. He argued that the "primary source of [Dr. Guzzardi's] opinion" was the toxicology report, but that he also had evaluated Mr. Dews's behavior, as reported by Deberry, in arriving at his opinions.

The prosecutor moved to strike Dr. Guzzardi's testimony "under Rule 5-702 because it is confusing. It's baseless. It is highly prejudicial. It [] has no aid or assistance to the jury. And ultimately the only thing that one can take away from the doctor's opinion is that you have th[is] potential for disassociated experiences." He asked that Dr. Guzzardi's testimony and his report be stricken.

The court ruled as follows:

> [W]hat I've got to find under the 5-702 is a sufficient factual basis that exists to support the opinion. And my concern is, I don't think that he gave a factual basis, other than just to say the statements that [Deberry] said showed that there was – somebody was acting irrationally and in a manner which was – he referred to it as psychotic or something of that – schizophrenic – but he never actually said this is what he did and I – and here in the statement is what I actually looked at and said, "oh, that action is something that looks like is the action of someone who is in a state that could have been induced by the ingestion of too much [DXM]."

Defense counsel interjected at that point, saying that Dr. Guzzardi relied upon Mr. Dews's behavior (as described by Deberry) "as a whole as exhibiting [dissociative] properties[.]" The court disagreed that that amounted to a factual basis:

> But he's still got to [] give me a sufficient factual basis. He can't just say it's in this book. He's got to say, "here it is." I mean, I guess to get to them, even though he gave his testimony already, but to get to them, he really should be saying to me, "Judge, this is where it is. This is where it is and the basis."

> . . . . I'm at a loss as to what the factual basis was for him reaching the conclusion that he reached.

The court granted the State's motion to strike Dr. Guzzardi's testimony in full and excluded his expert report. Defense counsel moved to strike Dr. Phipps's rebuttal testimony and moved for a mistrial. The court denied the motion for mistrial and granted the motion to strike Dr. Phipps's testimony.

Prior to instructing the jury, the court advised the jurors that it had "made a decision that the testimony of the expert witness for the Defense and the report are stricken." Because of that decision, the court explained, it also struck Dr. Phipps's testimony.

D. Analysis

1. Rule 5-702

The circuit court has broad discretion to exclude expert testimony under Rule 5-702, either on a determination that a witness is not qualified "by knowledge, skill, experience, training, or education," because expert testimony is not appropriate on a particular subject, or because the expert lacks a "sufficient factual basis to support [his or her opinions]." Md. Rule 5-702. An expert opinion unsupported by an adequate basis has no probative force. *Levitas v. Christian*, 454 Md. 233, 246 (2017) (citation omitted). As the Court of Appeals explained in *Evans v. State*: "[An] expert's opinion is of no greater value than the soundness of the reasons given for it will warrant. If no adequate basis for the opinion is shown, the opinion should not be admitted *or, if already admitted, should be stricken*." 322 Md. 24, 35 (1991) (emphasis added) (citation omitted). *See*

also Franch v. Ankney, 341 Md. 350, 364 (1996) ("Trial judges are not barred from striking expert opinions that are based on an unsound or deficient premise simply because those opinions are vital to a party's case.")

On appellate review, a court's "action in admitting or excluding [expert] testimony will seldom constitute a ground for reversal." *Clemons v. State*, 392 Md. 339, 359 (2006) (citations omitted). Nevertheless, a court's discretion is not boundless and reversal is appropriate where the court commits clear error, *see Blackwell v. Wyeth*, 408 Md. 575, 618 (2009), acts arbitrarily, or relies on the wrong legal standard. *Levitas*, 454 Md. at 244.

As an initial matter, Deberry asserts that the court abandoned its neutral role by raising its concerns about Dr. Guzzardi's testimony *sua sponte* after the close of the evidence. He relies on *Payton v. State*, 235 Md. App. 524, *aff'd* 461 Md. 540 (2018). In that case, after the close of the prosecution's case in a murder trial, the defendant moved for judgment of acquittal. *Payton*, 235 Md. App. at 528. Prior to ruling on the motion, the court advised the parties that it did not believe that the State had met its burden because of a perceived gap in expert testimony given by a certified latent fingerprint examiner. *Id.* at 528-29. The court *sua sponte* reopened the State's case and permitted it to recall the expert witness to fix the evidentiary gap. *Id.* In so doing, the court emphasized that it was considering the grave nature of the charges against the defendant and the public interest in resolution of the charges. *Id.* at 529.

After the expert gave additional testimony, the State rested its case for a second time and the defendant's renewed motion for judgment of acquittal was denied. *State v.*

Payton, 461 Md. 540, 551 (2018). On appeal from his conviction for first-degree murder and related crimes, this Court reversed, holding that the trial judge's actions amounted to an abandonment of its role as a neutral arbiter. *Payton*, 235 Md. App. at 531. In November 2018, while the instant appeal was pending, the Court of Appeals affirmed that decision, holding that the trial court abused its discretion by reopening the State's case based upon an impermissible consideration of the nature of the charges against the appellant; by assuming a prosecutorial role when it instructed the State how to "fix a perceived defect in its case"; and by doing so to "avoid granting [a motion for judgment of] acquittal." *Payton*, 461 Md. at 569-70.

During oral argument in this Court, Deberry's counsel brought to our attention another case that she argued supported her threshold challenge to the circuit court's decision to strike Dr. Guzzardi's testimony. In *Kelly v. State*, 392 Md. 511 (2006), the defendant was charged with two counts of attempted first-degree murder and related charges. The State presented twelve witnesses. *Kelly*, 392 Md. at 519. After the State rested and the defendant's motion for judgment of acquittal was denied, defense counsel advised the court that she intended to call two police officers as witnesses for the defense. *Id.* After one officer was located in the courthouse, the trial judge required defense counsel to proffer the questions she intended to ask him and then, *sua sponte*, determined that his testimony would be inadmissible and excused him without allowing him to testify. *Id.* at 525-26. On appeal following his conviction, the defendant argued that the court erred by refusing to allow the witness to testify. *Id.* at 516-17. The case reached the Court of Appeals, where defendant's argument prevailed. *Id.* at 543.

The Court reasoned that in excluding the police officer's testimony *sua sponte* because it was, in the court's view, hearsay, the trial judge "went beyond being an impartial officer" because that testimony might have come in without objection. *Id*. at 540. The Court elaborated:

> When the trial court makes a ruling as to the admissibility of evidence on its own without a prior objection by any of the parties, the court leaves its role as an arbiter and assumes another role as a party to the proceeding, placing into question the defendant's right to a fair trial.

Id. at 541. The Court emphasized that it was not suggesting that criminal defendants are "allowed to present properly objected to testimony that violates the rules of evidence or procedure." *Id.* at 543. The Court explained, however, that a trial court's exclusion of evidence must "take place at the appropriate time and in the appropriate manner." *Id.*

The decisions in *Payton* and *Kelly* are easily distinguishable. In the underlying case, the court raised a concern about the factual basis for Dr. Guzzardi's expert opinion while it was ruling upon the admissibility of his expert report, a matter the court had reserved during the expert's testimony. Dr. Guzzardi's testimony had been contentious, with the prosecutor objecting to his qualification as an expert, engaging in extensive *voir dire*, and lodging a multitude of objections going to the substance of his opinions. The prosecutor objected to the admission of Dr. Guzzardi's report on the bases that it was irrelevant, immaterial, and prejudicial. He argued at one point that the medical toxicology studies that Dr. Guzzardi relied upon did not supply a factual basis for his conclusions that the post-mortem concentration of DXM was elevated. While Dr.

Guzzardi was testifying, the trial court was not persuaded by these arguments, but after reviewing the expert report and digesting his testimony, the court revisited the issue.

Unlike the circumstances in *Payton*, in which the court believed a party had not met its burden and, *sua sponte*, offered the party an opportunity to rectify it, here, the court voiced its concern while ruling on a party's motion. Likewise, in *Kelly*, the court *sua sponte* excluded a witness based upon a proffer of the questions defense counsel intended to ask because the court anticipated that the testimony would amount to hearsay; but in the underlying case, the court granted a motion made by the prosecutor to exclude testimony pursuant to Rule 5-702(3). This procedure did not amount to an abandonment of the court's neutral role. Rather, it was an exercise of the court's duty to serve as the "evidentiary sentry."[11] *Page v. State*, 222 Md. App. 648, 661 (2015).

Turning to the merits, the Court of Appeals's decision in *Rochkind v. Stevenson*, 454 Md. 277 (2017), is instructive. Stevenson sued Rochkind, the owner of a rowhome in Baltimore City where Stevenson lived for 15 months when she was a toddler, for negligence and violations of the Consumer Protection Act. *Id.* at 281-82. Her claims stemmed from allegations that Stevenson ingested lead-based paint dust and chips while living in the rowhome, causing her to have an elevated blood lead level that, in turn, caused her to have IQ deficits and, significantly, to develop Attention Deficit

[11] We observe that the trial judge was placed in the extremely difficult position of having to rule upon the admissibility of Dr. Guzzardi's expert report and on numerous substantive objections to the opinions he was offering in the midst of a jury trial. Had these issues been briefed in pre-trial motions, the court could have held an evidentiary hearing, if necessary, to determine the admissibility of Dr. Guzzardi's opinion.

Hyperactivity Disorder ("ADHD"). *Id.* Stevenson designated Dr. Hall-Carrington, a pediatrician, as her expert witness on causation. *Id.* at 282. Rochkind moved *in limine*, under *Frye-Reed* and Md. Rule 5-702, to preclude Dr. Hall-Carrington from opining that Stevenson developed ADHD because of her exposure to lead. *Id.* at 282-83. The trial court denied the motions, concluding that a *Frye-Reed* hearing was not warranted because Dr. Hall-Carrington's ADHD opinion was not based upon novel scientific methods, and that the opinion was admissible under Rule 5-702 because it was based upon "reliable sources." *Id*. at 283. Ultimately, the jury returned a verdict in favor of Stevenson and awarded her more than $1 million in economic and non-economic damages. *Id.* After this Court affirmed, the Court of Appeals granted certiorari to consider whether the trial court erred by admitting Dr. Hall-Carrington's ADHD opinion under Rule 5-702. *Id.* at 284.

The Court explained that the "sufficient factual basis" prong of Rule 5-702 includes two subfactors: "[1] an adequate supply of data and [2] a reliable methodology." *Id*. at 286 (citation omitted). To satisfy those subfactors, an expert's opinion must "be based on facts sufficient to 'indicate the use of reliable principles and methodology in support of the expert's conclusions.'" *Id*. (citation omitted)). Under the first subfactor, "[t]he data supporting an expert's testimony 'may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions.'" *Id*. (citation omitted). To satisfy the second subfactor, the expert must "provide a sound reasoning process for inducing its conclusion from the factual data and

must have an adequate theory or rational explanation of how the factual data led to the expert's conclusion." *Id*. at 287 (citation omitted). In other words, "for an opinion to assist a trier of fact, the trier of fact must be able to evaluate the reasoning underlying that opinion." *Id.* (citation omitted).

Applying those principles to the facts before it, the Court of Appeals held that Dr. Hall-Carrington lacked an adequate factual basis for her expert opinion that there was a causal link between ADHD and lead poisoning. *Id.* at 290. In so holding, the Court was guided by the Supreme Court's decision in *General Electric Co. v. Joiner* that held that a district court is not required to admit expert testimony that is "connected to existing data only by the *ipse dixit* of the expert," and may exclude such testimony if it concludes "that there is simply too great an analytical gap between the data and the opinion proffered." *Id.* at 288-89 (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)).

In *Rochkind*, the Court reasoned that there was such an "analytical gap" between the epidemiological studies relied upon by Dr. Hall-Carrington finding a causal link between elevated blood lead levels and attention deficits and hyperactivity, and her conclusion that lead exposure causes ADHD. *Id.* at 291-92. The Court opined:

> The jump from attention deficits and hyperactivity to a clinical ADHD diagnosis may seem reasonable, but we have explained that "just because a conclusion is reasonable does not mean that a court must permit an expert to make it." Because of the added weight a jury might give to testimony from a designated expert, the trial court "ought to insist that a proffered expert bring to the jury more than the lawyers can offer in argument." In equating attention deficits and hyperactivity with a clinical ADHD diagnosis, Dr. Hall-Carrington painted an inaccurate picture of the scientific research regarding lead poisoning—she overstated the known effects of lead exposure. Her testimony suffers from the same "analytical gap" described in *Joiner*.

Id. at 291 (internal citations omitted). The Court held that by failing to "check for an 'analytical gap' between the expert's data and her conclusion," the circuit court clearly erred in admitting Dr. Hall-Carrington's testimony. *Id*. at 295.

In this case, Dr. Guzzardi opined that, "given the level of [DXM] in [Mr. Dews's] heart [blood at autopsy], [he] would have exhibited dissociative symptoms [prior to his death]." The trial judge questioned the factual basis for this opinion because Dr. Guzzardi made clear that he relied upon Deberry's description of Mr. Dews's behavior in only the vaguest sense. Absent reliance on any specific facts set out in Deberry's statement to the police, the court reasoned that "all [Dr. Guzzardi] then has is [DXM] being in [Mr. Dews's] bloodstream." That remark underscored the judge's recognition that the toxicology report, standing alone, did not supply a factual basis for Dr. Guzzardi's opinion that Mr. Dews was in a dissociative state on November 5, 2015. The court did not err in this regard.

When the effects and metabolism of a drug are well-known, the presence of an elevated concentration of that drug in a post-mortem toxicology screening may provide a factual basis for an expert to opine that an individual was under the influence of the drug at the time of his or her death, independent of other evidence about their behavior prior to death. *See, e.g.*, *Ford v. State,* 462 Md. 3, 24 (2018) (assistant medical examiner opining that the victim in a murder trial "would be intoxicated" based upon the presence of certain concentrations of ethanol in his heart blood and his eye fluid); *Baltimore County v. State ex rel. Keenan*, 232 Md. 350, 355 (1963) (assistant medical examiner qualified by

education and experience in toxicology permitted to testify that a post-mortem blood alcohol content of 0.13% evidenced that the decedent consumed a minimum of seven to eight 12-ounce bottles of beer over two to two-and-a-half hours based upon a "well known formula used to make such determinations"). In the underlying case, however, Dr. Guzzardi's expert report and his testimony made clear that DXM is not metabolized consistently among individuals and its metabolites are subject to post-mortem redistribution, further complicating analysis of its presence in a post-mortem toxicology screening. Moreover, Dr. Guzzardi relied upon studies testing peak concentrations of DXM after a normal, therapeutic dose was taken by *living persons* to reach his conclusion that Mr. Dews's *post-mortem* concentration of DXM was "highly elevated." Yet, when asked at what concentration DXM produced dissociative effects, Dr. Guzzardi answered that he could testify only to the dose needed to produce those effects. Since the dose of DXM taken by Mr. Dews was unknown, and Dr. Guzzardi could not opine as to what level of DXM was necessary to produce dissociative effects, he could not "'provide a sound reasoning process for inducing [his] conclusion" that the concentration of DXM present in Mr. Dews's heart blood at autopsy" was high enough to have caused dissociative symptoms prior to his death. *Rochkind*, 454 Md. at 287 (quoting *Ford*, 433 Md. at 481 (citation and internal quotation marks omitted)). Accordingly, Dr. Guzzardi's testimony lacked a reliable methodology from which he could extrapolate behavior prior to death from a post-mortem blood concentration. The trial judge correctly perceived that, to the extent that Dr. Guzzardi relied solely upon the toxicology report for his opinion that Mr. Dews was suffering from the effects of DXM overdose on November 5,

2015, there was a significant analytical gap between the data relied upon and the opinion proffered. *See Joiner*, 522 U.S. at 146.

To bridge the analytical gap, Dr. Guzzardi could have pointed to facts drawn from Deberry's statement to the police that demonstrated that Mr. Dews was exhibiting behaviors consistent with an "out-of-body experience" or "akin to schizophrenia." Dr. Guzzardi's testimony revealed, however, that he relied only upon the broad outlines of Deberry's statement to the police, concluding that his description of Mr. Dews's alleged unprovoked knife attack on Deberry was "consistent" with a person in a dissociative state. Of course, unprovoked violence, standing alone, is not unique to DXM overdose or to dissociative states. Dr. Guzzardi did not identify any other aspects of Deberry's statement that informed his opinion that Mr. Dews was in a dissociative state when he was alleged to have attacked Deberry.

The court ruled correctly that Dr. Guzzardi did not rely upon any specific facts drawn from Deberry's statement to the police that evidenced hallmark symptoms of DXM abuse, and he could not otherwise provide support for his conclusion that Mr. Dews's post-mortem blood concentration of DXM was so "highly elevated" that it reflected a premortem dose that would have produced dissociative symptoms. We hold, therefore, that the court did not abuse its discretion or clearly err by striking Dr. Guzzardi's testimony because his expert opinion failed to rise above "mere speculation or conjecture," *Rochkind*, 454 Md. at 286, and thus lacked probative force.

2. Denial of a Mistrial

Deberry contends that, even if the court did not err by striking Dr. Guzzardi's testimony, the court abused its discretion by denying the motion for mistrial because the timing of the grant of the motion to strike caused "overwhelming prejudice" to Deberry. The State maintains that Deberry is not entitled to any remedy, much less the extreme remedy of a mistrial.

The decision to grant a mistrial is vested in the trial court's sound discretion. *See Winston v. State*, 235 Md. App. 540, 570, *cert. denied* 458 Md. 593 (2018). This Court, therefore, will reverse the denial of a mistrial only if the appellant demonstrates a clear abuse of discretion, and we "certainly will not reverse simply because [we] might have ruled differently." *Id.*

In asserting that he was entitled to a mistrial, Deberry's reliance on *State v. Crutchfield*, 318 Md. 200 (1989) is mistaken. In that case, a defendant's pretrial motion to suppress two statements that she made to a police officer–one at the scene of the crime and the second while being transported to the police station–was denied. *Id.* at 202-04. Her renewed motion to suppress made at trial also was denied and the police officer to whom she made the statements testified to their substance. *Id.* at 204-05. After the officer testified, however, the court reconsidered its earlier ruling denying the renewed motion to suppress. *Id.* at 205. The court concluded that the statements had been made during a custodial interrogation and that the defendant had not been advised of her *Miranda* rights. *Id.* On that basis, the court *sua sponte* declared a mistrial because it

reasoned that the prejudice to the defendant caused by the erroneous admission of the evidence was irreparable.[12] *Id.*

In *Crutchfield*, the court determined that evidence adduced by the State that was extremely prejudicial to the defendant had been admitted in error, and the court granted a mistrial because it concluded that striking the testimony and giving a curative instruction would not be sufficient. *Id.* By contrast, in the case at bar, the court struck the testimony of an expert offered by the defendant, not the State, because the testimony lacked an adequate factual basis. Deberry obtained the relief to which he was entitled when the trial court granted his motion to strike the State's rebuttal witness. Deberry was certainly not entitled to the extreme remedy of a mistrial under these circumstances. *See Winston*, 235 Md. App. at 569. Accordingly, we hold that the trial court did not abuse its discretion by denying the motion for mistrial.

II.

Assistant Medical Examiner's Opinions

A. Toxicology Opinion

In addition to testifying about the wounds Mr. Dews suffered, Assistant Medical Examiner, Dr. Zabiullah Ali, opined about Mr. Dews's toxicology report. He explained that the report reflected that a blood sample had been taken from Mr. Dews's heart. As discussed earlier, his heart blood sample was positive for DXM in a concentration of 0.2

[12] The only issue on appeal was whether the grant of the mistrial was manifestly necessary, making retrial of the defendant permissible. The Court of Appeals held that it was.

mg/L (200 ng/mL). When asked over objection, "[w]hat, if any, significance" a concentration of that level would have, Dr. Ali responded that it was "[his] opinion that's a normal concentration." The prosecutor then asked, again over objection, if Dr. Ali knew the "normal range" for DXM. He replied that a concentration of DXM "up to [0].4 [milligrams]" was within the range of normal. Defense counsel moved to strike that testimony, but the court denied his motion.

Deberry contends the trial court abused its discretion by permitting Dr. Ali to testify that the concentration of DXM present in Mr. Dews's heart blood sample was within the normal range, and by denying his motion to strike that testimony. He asserts that Dr. Ali was not qualified by "knowledge, skill, experience, training, or education" to offer that opinion pursuant to Md. Rule 5-702(1) because he is not a toxicologist. He urges that this error was not harmless because, considering the court's subsequent decision to strike Dr. Guzzardi's testimony, this was the only evidence before the jury relative to the significance, if any, of the toxicology results.[13]

The State responds that Dr. Ali was abundantly qualified to render his opinion that the concentration of DXM was within the normal range based upon his experience reviewing thousands of toxicology reports in his capacity as an assistant medical examiner. In that capacity, Dr. Ali must determine the manner of death and be able to distinguish between normal concentrations of drugs like DXM and dangerous or deadly levels. We agree.

[13] Appellant did not renew his motion to strike Dr. Ali's testimony after the court granted the State's motion to strike Dr. Guzzardi's testimony.

Dr. Ali testified that he had been an assistant medical examiner since 2002 and had performed 5,000 autopsies. Toxicology testing was routine in "all cases" and he reviewed toxicology reports prior to rendering his opinions. As discussed, the court has broad discretion to determine whether to admit expert testimony under Rule 5-702, and the decision to admit or exclude that testimony will rarely be a ground for reversal. Deberry does not challenge the factual basis for Dr. Ali's opinion; he challenges only Dr. Ali's qualifications to offer that opinion. We hold that the court did not abuse its broad discretion by ruling that Dr. Ali's experience reviewing 5,000 toxicology reports qualified him to offer the opinion that the level of DXM in Mr. Dews's blood was normal.

B. Cause of Deberry's Hand Wound Opinion

Dr. Ali testified that he had reviewed some of Deberry's medical records. The records reflected that Deberry had sustained "an injury to the palm of the right hand and to the left leg." The records specified that the wound to the palm was a "cut" and the wound to the leg was a "stab." He then described the "concept of slippage with regards to the handling of sharp implements," explaining: "[s]lippage is when you have a knife in your hand and you stab and the knife comes to a sudden stop in hitting a bone, you know, your hand may slip over the handle, and you can have a cut to your hand." Dr. Ali opined, over objection, that the cut to Deberry's right palm would be "consistent" with a slippage wound. He could not offer any opinion about the cause of the wound to Deberry's leg, however.

On cross-examination, Dr. Ali acknowledged that he had not examined Deberry's wounds nor had he viewed pictures of the wounds. Thus, he did not know the length or depth of the wound to Deberry's hand. Dr. Ali elaborated that his opinion that the hand wound was "consistent with . . . slippage" was not intended rule out other possible causes of the injury and that it would not "surprise [him] if there was a different explanation."

Deberry asserts that Dr. Ali lacked a sufficient factual basis to offer an opinion that his hand wound was consistent with slippage because he had based his opinion on a small excerpt of Deberry's medical record that described the hand injury, but that did not include a photograph or even a detailed description of the wound.

We agree with the State's response that the court did not abuse its discretion by permitting Dr. Ali to offer the limited opinion that a cut to Deberry's right palm was "consistent" with a slippage wound sustained when a knife stopped abruptly, such as when Deberry stabbed Mr. Dews in the head, embedding the tip of the knife in his skull. We note that Dr. Ali had already testified that the tip of a knife broke off in Mr. Dews's skull. This, coupled with evidence about the location (the palm) and type of wound (a cut as opposed to a stab), supplied an adequate factual basis for Dr. Ali's opinion that the wound was consistent with Deberry's hand having slid over the knife blade when the knife stopped suddenly upon hitting bone. We cannot conclude that in applying Maryland Rule 5-702, the circuit court abused its discretion in permitting Dr. Ali's opinion where there was a sufficient factual basis to support his testimony.

III.

Redactions to Deberry's Statement to Police

Deberry contends the circuit court erred by admitting into evidence his recorded statement to the police without redacting two portions of that statement. At the beginning of the interview, the detectives asked clarifying questions and otherwise let Deberry give his version of events. It did not take long before the detectives began challenging his version of events.

A. Excerpt One

In Excerpt One,[14] Detective McCoy intimated that Deberry's version of events did not match up with what he had learned from the autopsy:

> DETECTIVE MCCOY: Listen, I went to the medical examiner, okay, to do this autopsy and you stabbed him first. Matter of fact, he didn't stab you at all.
>
> [DEBERRY]: That's not true.
>
> DETECTIVE MCCOY: Because you know how you hurt your hand? When you stabbed him in the head and the knife broke and the knife slipped down your hand and it slit straight like that.
>
> [DEBERRY]: No, I put my hand up like this.

[14] In addition to the DVD recording, two transcripts of Deberry's statement to the police appear in the record: one marked State's Exhibit 128A and one marked State's Exhibit 134. The latter exhibit was marked for identification only and is the unredacted transcript. The former exhibit is redacted consistent with the parties' agreement and the court's rulings. The transcripts differ slightly (aside from the redactions) because they were made by different people. Because the trial judge was reviewing State's Exhibit 134 when he ruled upon the requested redactions, we quote from that transcript above. We otherwise rely upon State's Exhibit 128A when discussing Deberry's statement to the police.

DETECTIVE MCCOY: That's not – look, that's not a puncture.

DETECTIVE R[E]ICHENBERG: No, that's not a defensive wound.

DETECTIVE MCCOY: That's not a puncture in your hand.

[DEBERRY]: Right.

DETECTIVE MCCOY: It's a slit.

[DEBERRY]: Right.

DETECTIVE MCCOY: It's a slit –

DETECTIVE R[E]ICHENBERG: It's not a defensive wound.

DETECTIVE MCCOY: – which is consistent with you hitting him in the head and that knife stopping and the blood on your hand from you stabbing him everywhere else cause your hand to slip down that knife, okay. That's what happened. So, what you need to do right now –

[DEBERRY]: That's not what happened.

DETECTIVE MCCOY: **No, that is what happened. What you do right now Jamison is tell us exactly what happened because here's the deal, he didn't do anything to you first. So you need to tell us exactly what happened because there's no way he stabbed you in your hand and that wound is consistent with coming like this which tells us that whoever – that hand is doing this (demonstrating).**

(Emphasis added.)

Defense counsel asked the court to redact that entire exchange, arguing that the detectives were "basically . . . testifying to a theory of what happened, and . . . that's [not] proper for the jury to hear." The court granted, in part, and denied, in part, the requested redaction, ruling that the bolded portion of Excerpt One would be redacted, but the remainder would not be.

Deberry contends that Excerpt One should have been redacted in its entirety because "the detectives' beliefs as to how [he] sustained the wound to his hand, which were in effect an assertion that they did not believe [Deberry's] explanation of what happened, were irrelevant and unduly prejudicial."

The State responds that Deberry's agreement with the detectives' assertion that the wound to his hand was not a "puncture" made Excerpt One relevant and admissible to discredit his theory of self-defense. Alternatively, it contends that the detectives' theory of how Deberry sustained his hand wound was cumulative of Dr. Ali's testimony. In any event, the State urges that any error in the admission of this "brief portion[]" of Deberry's lengthy statement was harmless beyond a reasonable doubt.

Deberry is correct that, ordinarily, an interrogating officer's expression of disbelief in the veracity of a defendant's version of events or the officer's theories as to how a crime was perpetrated are inadmissible and, upon a proper request, subject to redaction. *See, e.g.*, *Crawford v. State*, 285 Md. 431, 433, 447 (1979) (holding that the court improperly admitted into evidence the defendant's unredacted statement to the police, placing before the jury "the obvious disbelief of the police in the accused's version of what happened" and depriving him of a fair trial); *Walter v. State*, 239 Md. App. 168, 184 (2018) (holding that the trial court erred by not redacting the defendant's recorded statement to omit the detective's commentary questioning the defendant's "veracity" and expressing an opinion about "his guilt or untruthfulness" because those aspects of the statement were irrelevant and inadmissible). Viewing Deberry's statement to the police as a whole, however, any error in the admission of Excerpt One was harmless because it

was cumulative of abundant commentary by the detectives that came in without objection. *See Dove v. State*, 415 Md. 727, 743-44 (2010) ("In considering whether an error was harmless, we also consider whether the evidence presented in error was cumulative evidence."); *Robeson v. State*, 285 Md. 498, 507 (1979) ("The law in this State is settled that where a witness later gives testimony, [w]ithout objection, which is to the same effect as earlier testimony to which an objection was overruled, any error in the earlier ruling is harmless.").

Throughout Deberry's statement to the police, the detectives made clear repeatedly that they disbelieved Deberry's general version of events and, specifically, that they disbelieved Deberry's claim that Mr. Dews stabbed him first. Much of this commentary came in during trial without objection. For example, at the end of the interview, after the detectives challenged Deberry as to why he remained in Mr. Dews's house if he was in fear for his life, Detective McCoy said: "Man, look. You're lying. It's just that plain and simple." Additionally, Deberry did not seek to redact at least 10 other instances in which Detectives McCoy and Reichenberg made clear through their questioning that they disbelieved Deberry. They pressed Deberry on: how he sustained so few injuries if Mr. Dews was the first aggressor; whether Deberry stabbed Mr. Dews because he was sexually frustrated when Mr. Dews performed oral sex on him; how Deberry could explain the autopsy finding that two different knives were used to stab Mr. Dews when Deberry described just one knife being used; how Deberry could have sustained a defensive wound to his right palm from his position sitting in the front passenger seat of Mr. Dews's car; how Mr. Dews inflicted a "slicing" wound with a

"downward angle" and "[n]ot a puncture wound" to Deberry's palm; why Deberry would have accompanied Mr. Dews inside the house after Mr. Dews had stabbed Deberry outside in the car; why Deberry didn't run away after the first attack; how Deberry's clothes became soaked in blood if he was naked when Mr. Dews attacked him in the bedroom; why Deberry would permit Mr. Dews to perform oral sex on him after Mr. Dews already had "snap[ped] and stab[bed Deberry in the car];" and why Deberry didn't try to escape after he wrestled the knife away from Mr. Dews.

The interview is replete with commentary by the detectives reflecting their incredulity about the ever-shifting timeline of events offered by Deberry and his claim that Mr. Dews stabbed him for the first time in the car outside the house and then began stabbing him again much later, after the two men engaged in consensual sexual activity in the second-floor bedroom. The unchallenged portion of Deberry's statement also contains additional commentary from the detectives about the nature of Deberry's hand wound. Because the cumulative effect of the wide range of evidence admitted without objection clearly outweighs the prejudicial nature of the evidence that was erroneously admitted, we conclude that there is no reasonable possibility that the jury's decision would have been different had the unredacted portion of the colloquy contained in Excerpt One been excluded.[15] *See Dove v. State*, 415 Md. 727, 743-44 (2010) (quoting

[15] Evidence is cumulative when, beyond a reasonable doubt, we are convinced that "there was sufficient evidence, independent of the [evidence] complained of, to support the appellant['s] conviction [ ]." In other words, cumulative evidence tends to prove the same point as other evidence presented during the trial or sentencing hearing.

Ross v. State, 276 Md. 664, 674 (1976)). Accordingly, we hold that any error by the court in declining to redact Excerpt One in its entirety was harmless because it was cumulative of the other commentary throughout the lengthy statement that came in without objection.[16]

B. Excerpt Two

Excerpt Two involved an exchange between Detective Reichenberg and Deberry concerning Deberry's failure to disclose that he had stabbed Mr. Dews during the week he was in the hospital immediately following the murder:

> DETECTIVE R[E]ICHENBERG: You need to get in front of whatever happened in that house right now before you only appear as some cold, calculated, menacing, not giving a shit about anybody individual. You've went and spent one week and you know, you're telling me that you know and you're telling Detective McCoy, that you walked out of the house leaving an "elderly man," in your words, on the floor of his house somewhere bleeding from multiple stab wounds and you walk out of the door and at no time ever do you call 911 – hold on – do you tell a nurse, a doctor, a uniformed officer that's been sitting outside of your room for a week, Detective McCoy and I when we came up and saw you the other day and found out when you were getting released. Remember when we walked into your room?
>
> [DEBERRY]: Yeah.

Dove v. State, 415 Md. 727, 743–44 (2010) (internal citation omitted).

[16] In his brief before this Court, Deberry argues for the first time that the detectives' commentary as to how he sustained the wound to his hand "invaded the province of the jury" and was inadmissible because the detectives were not qualified as experts to offer an opinion as to how the wounds were sustained. Defense counsel did not make these arguments before the trial court and we decline to consider them on appeal. *See* Md. Rule 8-131(a) (ordinarily, an appellate court "will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court").

> DETECTIVE R[E]ICHENBERG: We said we're going to talk to you when you get released.
>
> [DEBERRY]: Yeah.
>
> DETECTIVE R[E]ICHENBERG: You never said anything to anybody about any of that. Hold on.
>
> [DEBERRY]: Uh-huh.
>
> DETECTIVE R[E]ICHENBERG: And then you come here and you say you're the victim? You've got one scrape on your hand from sliding down a knife and one wound on your leg.

Defense counsel argued that Excerpt Two included "improper commentary on his remaining silent." The court responded that Deberry wasn't remaining silent, he was "being questioned, he was talking." Defense counsel replied, "[r]ight, but they're saying you didn't tell anyone else or anything." The court denied the requested redaction, emphasizing that Deberry "was in the hospital" and "wasn't in custody" when he was alleged to have been silent.

On appeal, Deberry contends that "[t]he detective's references to [Deberry]'s failure to tell hospital personnel, the officer stationed outside of his hospital room, or the detectives themselves his version of events clearly ran afoul of the prohibition against the introduction of evidence of silence." He maintains that the error in admitting this evidence was not harmless because it undermined the credibility of Deberry's defense.

The State responds that evidence of Deberry's prearrest silence was admissible to impeach the veracity of his self-defense theory for reasons analogous to those outlined in *Jenkins v. Anderson*, 447 U.S. 231 (1980). The State maintains, in the alternative, that

any error in admitting in admitting Excerpt Two was harmless beyond a reasonable doubt.

The law is clear that the Fifth Amendment, as applied to the states, prohibits the use of a defendant's *post-arrest* silence as substantive evidence or to impeach the credibility of his testimony at a criminal trial. *See Doyle v. Ohio*, 426 U.S. 610, 617-18 (1976) ("every post-arrest silence is insolubly ambiguous because of what the State is required to advise the person arrested"); *Reynolds v. State*, 461 Md. 159, 183 (2018) ("The Supreme Court and our precedent is clear, evidence of a criminal defendant's post-*Miranda* silence cannot be introduced at trial").[17] In contrast, in *Jenkins*, the Supreme Court held that a defendant's *prearrest* silence may, under certain circumstances, be admissible against him or her without violating the federal constitution. 447 U.S. at 240.

In *Jenkins*, the Supreme Court held that when a defendant "voluntarily [takes] the witness stand in his own defense," he may be impeached with evidence of his prearrest silence without violating the Fifth Amendment. *Id*. at 235. It emphasized that by making the choice to "cast aside his cloak of silence" at trial, a defendant places his credibility at issue and is subject to impeachment. *Id*. at 238. The Court made clear, however, that its holding that the use of prearrest silence to impeach a testifying defendant did not violate the federal constitution was not intended to "force any state court to allow impeachment through the use of prearrest silence." *Id*. at 240. Rather, "[e]ach jurisdiction remain[ed]

[17] In *Reynolds*, the Court held that while the use of post-*Miranda* silence is impermissible, if the defendant invokes *Miranda* but then later makes statements to the police, those statements may be used to impeach the defendant if he testifies at trial inconsistent with them. 461 Md. at 188.

free to formulate evidentiary rules defining the situations in which silence is viewed as more probative than prejudicial." *Id*.

In 1998, the Court of Appeals decided two cases bearing upon the use of prearrest silence: *Key-El v. State*, 349 Md. 811 (1998), *overruled in part by Weitzel v. State*, 384 Md. 451, 456 (2004), and *Grier v. State*, 351 Md. 241 (1998). In *Key-El*, the Court held that a defendant's silence, in the face of an accusation by his wife that he had beaten her, amounted to a "tacit admission" and was admissible at his subsequent criminal trial for battery. 349 Md. at 813. A "tacit admission occurs when [a defendant] remains silent in the face of accusations that, if untrue, would naturally rouse the accused to speak in his or her defense." *Id*. at 817 (quoting *Henry v. State*, 324 Md. 204, 241 (1991)).[18]

In the second case, *Grier*, two police officers on patrol encountered the defendant and another man (Mack) struggling in the street. 351 Md. at 245. The two men stopped struggling and the defendant walked away quickly, carrying a camera case. *Id.* Mack remained behind. *Id.* He had a deep cut on one hand and was "hysterical." *Id*. He told police that the defendant had attacked him and stolen his backpack. *Id.* One officer followed the defendant, remaining about 20 feet behind him. *Id*. He observed the defendant walk into a dead-end alley and throw an object onto a porch. *Id.* When the defendant exited the alley, the police took him to the ground and arrested him. *Id.*

[18] Six years later, the Court overruled *Key-El*, in part, in *Weitzel*, 384 Md. 451 (2004), reasoning that "when [a defendant's] 'pre-arrest silence' is in the presence of a police officer," it is "too ambiguous to be probative" and "is not admissible as substantive evidence of guilt under Maryland evidence law." 384 Md. at 456, 461.

At trial, during the police officer's testimony, he was asked if the defendant offered an "explanation" as to "why this was taking place," *i.e.*, why he had been struggling with Mack. *Id*. at 248. The officer replied that the defendant had not offered an explanation. *Id.* The defendant did not testify at trial and was convicted of attempted armed robbery. *Id.* On appeal, he argued that the court erred by permitting the officer to testify as to his "post-arrest silence as substantive evidence of guilt." *Id*. at 249. The State conceded that if the question elicited evidence of the defendant's post-arrest silence, such evidence was inadmissible. *Id.* at 251-52. It argued, however, that the question actually had elicited admissible evidence of the defendant's prearrest silence. *Id.* at 252.

The Court of Appeals rejected that contention. It explained that the only prearrest period when the defendant was silent, based upon the officer's testimony, occurred while the defendant was walking away from the police officer and being followed. *Id.* The defendant's "failure to come forward and tell the officers his version of events" does not amount to "pre-arrest silence such that it is admissible as substantive evidence of guilt." *Id*. at 253. The Court emphasized that the "[f]ailure to come forward to the police may result from numerous factors, including a belief that one has committed no crime, general suspicion of the police, or fear of retaliation." *Id*. at 254. The Court reasoned that such evidence has little to no probative value and any value it has is not outweighed by the danger of unfair prejudice. *Id.* at 253-54.

The *Grier* Court distinguished *Key-El*, which then remained good law, noting that the defendant's prearrest silence was not in the face of an accusation and thus, was not a "tacit admission." *Id.* at 253. It reasoned that the *Jenkins* decision also did not "compel a

different result." *Id*. at 255. After summarizing the facts in *Jenkins*, the Court explained that that decision held that a defendant's prearrest silence may be admissible for "the purpose of impeachment to call into question the veracity of the defendant's testimony that he had acted in self-defense." *Id*. The defendant in *Jenkins* had "placed his credibility at issue" by electing to testify. *Id*. The evidence of his prearrest silence had probative value because it was "inconsisten[t] with [his] testimony that he acted in self-defense." *Id*.

By contrast, in *Grier*, the defendant elected not to testify and, as such, evidence that he failed to come forward to the police with his version of events lacked any probative value and was not offered for impeachment purposes, but as substantive evidence of his guilt. *Id.* at 257. The Court held "that, with the exception of circumstances constituting a 'tacit admission,' ordinarily a defendant's failure to approach the police with his or her account prior to arrest lacks probative value, and *is inadmissible in the State's case-in-chief*." *Id*. (emphasis added). In a footnote, the Court made clear that it was explicitly declining to decide if a "defendant's failure to come forward with his account may be used to impeach the defendant's testimony at trial." *Id*. at 257 n.5.

In the case at bar, Detective Reichenberg's comments put before the jury the fact that Deberry did not "come forward and tell the officers his version of events" during his hospitalization, *see id.*, and was thus inadmissible in the State's case-in-chief under the authority of *Grier*. We reject the State's contention that evidence of Deberry's silence, brought out through police commentary during his statement to the police, was

admissible to impeach his version of events, as explained in that same statement to the police, when the State elected to admit the statement its case.[19] *See, e.g.*, *Combs v. Coyle*, 205 F.3d 269, 285 (6th Cir. 2000) ("If . . . prearrest silence may be used as substantive evidence of guilt regardless of whether or not the defendant testifies at trial, then the defendant is cast into [a] trilemma . . . . Because in the case of substantive use a defendant cannot avoid the introduction of his past silence by refusing to testify, the defendant is under substantial pressure to waive the privilege against self-incrimination either upon first contact with police or later at trial in order to explain the prior silence.").

The error in admitting Excerpt Two was harmless, however, because Deberry did not request redaction of two other instances when commentary by the detectives put his prearrest silence squarely before the jury. In the first instance, in response to Deberry's

[19] The State's reliance upon *Jenkins* is misplaced. In that case, the defendant testified at trial that he acted in self-defense when he stabbed the victim and the prosecution impeached his testimony on cross-examination through questions asking why he had not come forward with his claim of self-defense in the aftermath of the crime or in the weeks prior to his arrest. In contrast, in the case at bar, the State put Deberry's claim of self-defense before the jury by playing his recorded statement to the police in its case-in-chief. Deberry could not have introduced his recorded statement in his case because it is hearsay. *See* Md. Rule 5-801(c) (defining hearsay). It only was admissible in the State's case under the hearsay exception for a statement of a party opponent. *See* Md. Rule 5-803(a)(1) (permitting introduction of "[a] statement that is offered against a party and is: (1) The party's own statement, in either an individual or representative capacity"). Thus, had the State elected not to play the statement or otherwise elicit its substance through Detective McCoy's testimony, Deberry could have chosen to abandon his self-defense theory *or* to testify. *See, e.g.*, *State v. Martin*, 329 Md. 351, 357 (1993) (explaining that to generate a self-defense instruction, a defendant must adduce some evidence that he reasonably believed he was in imminent danger of death or serious bodily harm and that he "in fact believed him or herself to be in such danger"). Deberry could only be impeached with evidence of his prearrest silence if he chose to testify in his own defense.

statement that after he was stabbed, he collapsed on the couch and called Mason, Detective Reichenberg said: "And you never thought to call 9-1-1 or the police and say, this man attacked me and I had to defend myself?" The second instance occurred just a minute later. Detective Reichenberg asked Deberry, "Have you ever told anyone about this man laying on his – in his – on his floor in his house before you just told us today?" Deberry replied in the negative, prompting the detective to query: "And you don't – you don't think that's strange?" After establishing that the stabbing had occurred on Thursday, November 5, 2015, and that it was then Thursday, November 12, 2015, Detective Reichenberg commented: "So in seven days of being in the hospital, talking, whatever, you never once thought to say, hey, this guy attacked me and he's in his house, stabbed?" These were direct comments upon Deberry's silence in the immediate aftermath of the stabbing and during his weeklong hospital stay that came before the jury without objection. Excerpt Two, which retread this same territory, was cumulative of this evidence that came in without objection. Therefore, we hold that any error in the admission of Excerpt Two was harmless because it was cumulative of so much evidence that had been admitted without objection, and we do not find that there is a reasonable possibility that the jury's decision would have been different had Excerpt Two been excluded. *See Dove*, 415 Md. at 743-44.

IV.

Flight Instruction

Deberry contends the court erred by instructing the jurors on flight as follows:

> A person's flight or concealment immediately after the commission of a crime or after being accused of committing a crime is not enough by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt. Flight or concealment under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of flight or concealment. If you decide there is evidence of flight or concealment, you then must decide whether this flight or concealment shows a consciousness of guilt.

He maintains that this instruction was not generated by the evidence because his "behavior did not suggest flight."

The State responds that this contention of error is not preserved because although defense counsel lodged an objection to the giving of the flight instruction after the court instructed the jurors, he did not state the grounds for his objection. Alternatively, the State contends that an instruction was generated by evidence that Deberry directed Mason to don latex gloves and remove his belongings from Mr. Dews's house

As a threshold matter, Deberry adequately preserved this issue. Rule 4-325(e) states, in pertinent part, that "[n]o party may assign as error the giving . . . [of] an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." In the instant case, the court held an in-chambers, off-the-record charge conference with counsel. After the court instructed the jurors, it asked counsel to approach. The court asked if they had "any other objections or exceptions" to the instructions aside from those "raised before the jury instructions, which are all preserved for the record[.]" Defense counsel replied that he was unsure if his exceptions were "on the record because they may have been made in chambers," but noted that he excepted to

the giving of the flight instruction. He did not otherwise state "the grounds of the objection." Considering the court's comment that the previously made objections all were "preserved for the record" and defense counsel's timely post-instructions objection to the giving of the flight instruction, this issue properly is before us.

Turning to the merits, pursuant to Rule 4–325(c), the court "may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." The court must give a requested instruction if it is "(1) . . . a correct statement of the law; (2) . . . applicable under the facts of the case; and (3) the content . . . was not fairly covered elsewhere in the jury instruction[s] actually given." *Ware v. State*, 348 Md. 19, 58, (1997) (citations omitted). Deberry disputes only the second prong: that the flight instruction was "applicable under the facts of the case." We review that determination *de novo*. *See Dishman v. State*, 352 Md. 279, 292 (1998) ("The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge."). A party "needs only to produce 'some evidence' that supports the requested instruction." *Bazzle v. State*, 426 Md. 541, 551 (2012) (citing *Dykes v. State*, 319 Md. 206, 216-17 (1990)).

A flight instruction is appropriate if the evidence reasonably supports four inferences:

> that the behavior of the defendant suggests flight; that the flight suggests a consciousness of guilt; that the consciousness of guilt is related to the crime charged or a closely related crime; and that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Thompson v. State, 393 Md. 291, 312 (2006). "At its most basic, evidence of flight is defined by two factors: first, that the defendant has moved from one location to another; second, some additional proof to suggest that this movement is not simply normal human locomotion." *Hoerauf v. State*, 178 Md. App. 292, 323 (2008) (quoting Charles Alan Wright, et al., *Federal Practice and Procedure* § 5181 (1978 & 2007 Supp.)).

Here, Dr. Ali's testimony, Mason's testimony, and Deberry's statement to the police all supplied evidence that: Deberry cut and stabbed Mr. Dews 33 times, with at least two of the stab wounds being "rapidly fatal"; that instead of calling 911, Deberry called Mason and waited 45 minutes for her to arrive; that when she arrived, Deberry directed her to put on latex gloves, collect his belongings from the house, and put them in a plastic bag; and that he then directed Mason to drive him to the hospital. This was "some evidence" supporting an inference that Deberry left Mr. Dews's house to avoid apprehension, not, as he argues, to seek emergency medical attention. Moreover, evidence that Deberry left Mr. Dews's house without contacting the police was inconsistent with his only defense to the crime charged–self-defense–and thus was suggestive of guilt. The court did not err in instructing the jury on flight.

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