Circuit Court for Montgomery County
Case No. 126736C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1086

September Term, 2016

MAURICIO MORALES-CACERES

v.

STATE OF MARYLAND

Eyler, Deborah. S.,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: December 5, 2017

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

Mauricio Morales-Caceres was convicted of the murder of Oscar Navarro and sentenced to life imprisonment without the possibility of parole. He raises six challenges to his conviction. For the reasons that follow, we affirm the judgment of the trial court.

BACKGROUND

On December 22, 2014, Navarro's ex-wife found him stabbed to death in his home. During their investigation, police discovered a bloody footprint and a palm print at the scene. The Montgomery County Police Department's fingerprint examiner analyzed the palm print and matched it to Morales-Caceres.

On December 27, 2014, police obtained a "Probable Cause Order" in the Circuit Court for Montgomery County that authorized the use of a pen register/trap & trace device on Morales-Caceres's cell phone, and also allowed police to obtain "Geographic Location Information." The Probable Cause Order directed Sprint, Morales-Caceres's mobile carrier, to provide police with "historic call detail records with cellular tower locations for … phone calls, text messages, and data for the date range: December 1, 2014 to [December 27, 2014] and until 30 days after the date of [the Probable Cause Order]." The pen register/trap & trace device provided law enforcement with the phone numbers dialed out by Morales-Caceres's cell phone, a date and time stamp of calls, and the duration of incoming and outgoing calls. The technology used by Sprint was only able to locate Morales-Caceres's cellphone within an average margin of error of 284 meters, or (we are told) about 6 city blocks.

Police obtained a warrant to arrest Morales-Caceres on December 28, 2014. Prior to the execution of the arrest warrant, police—based on previous contact with Morales-Caceres—knew his height, weight, eye color, ethnicity, and mobile phone number. Police also had three known addresses for Morales-Caceres in the Bel Pre area of Silver Spring, Maryland: the 14200 block of Georgia Avenue; the 14100 block of Grand Pre Road; and the 32000 block of Weeping Willow Drive.

Police staked out the three addresses on December 28, 2016, the same day they obtained the arrest warrant. At approximately 10:23 a.m., Sprint received information indicating that Morales-Caceres had used his cell phone in the area of the 14100 address on Grand Pre Road. Sprint immediately provided that information to police. Sometime that same morning, police also used a device known as a "cell site simulator," which provided geographic location information similar to that received from Sprint.[1] Unlike the Sprint information, however, the cell site simulator was much more accurate and identified the exact building in which Morales-Caceres's phone was located.

[1] The difference between the technology utilized by Sprint and a cell site simulator has been previously described at length. *See, e.g.*, *State v. Copes*, 454 Md. 581, 589-90 (2017); *State v. Andrews*, 227 Md. App. 350, 376-80 (2016); *Jones v. United States*, 168 A.3d 703, 709-10 (D.C. 2017). In general, a service provider obtains location information by identifying which cell towers a phone has recently connected to and using the location of those towers to approximate the location of the phone. *Copes*, 454 Md. at 589. A cell site simulator is a portable device that masquerades as a cell tower and can be programmed to search out and connect to a particular cell phone. *Id*. When multiple devices are used together, the location of a phone can be determined with more precision than the information received from a service provider. *Id*.

At 11:20 a.m., Morales-Caceres exited the apartment on Grand Pre Road and headed toward a nearby K-Mart store. Police apprehended and arrested Morales-Caceres in the K-Mart parking lot. During that arrest, police confiscated his cell phone and the shoes that he was wearing which upon investigation were determined to have a tread pattern matching the bloody shoeprint found in the victim's home.

Morales-Caceres was convicted of murder in the first degree in the Circuit Court for Montgomery County and sentenced to life imprisonment without the possibility of parole. Morales-Caceres noted this timely appeal.

DISCUSSION

Morales-Caceres raises six arguments spanning each phase of his trial. He argues that the circuit court erred in denying his pre-trial motion to suppress because police use of a cell site simulator to locate him violated his Fourth Amendment rights. He alleges that during his trial the court abused its discretion by declining to dismiss a juror; refusing to declare a mistrial after police improperly mentioned that he had prior contact with police; and allowing the State to make a "golden rule" argument. Finally, Morales-Caceres challenges his sentence, arguing that a sentence of life imprisonment without the possibility of parole is unconstitutional; and that the trial court erred in allowing the State to present evidence of his MS-13 gang membership at sentencing.

I. Pre-Trial Motion to Suppress

Prior to trial, Morales-Caceres filed a motion to suppress, seeking to prohibit the State from introducing his cell phone and shoes as evidence in his trial. Morales-Caceres argued that police use of the cell site simulator to determine his location violated his Fourth Amendment rights. The trial court denied Morales-Caceres's motion, finding: (1) that police use of a cell site simulator in Morales-Caceres's case did not violate the Fourth Amendment; (2) that even if police use of the cell site simulator violated the Fourth Amendment, "any conceivable … violation was attenuated by the arrest warrant"; and (3) "[Morales-Caceres's] arrest was inevitable on the same date and time [Morales-Caceres] was arrested." Morales-Caceres renews his argument on appeal. We agree with the trial court that the discovery of the evidence at issue was inevitable, and decline to reach Morales-Caceres's other arguments.

When reviewing a trial court's ruling on a motion to suppress, "we view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the prevailing party on the motion." *Lewis v. State*, 398 Md. 349, 358 (2007). We consider only the information that was available to the court at the suppression hearing, and do not expand our review to the trial record. *Lewis*, 398 Md. at 358. We extend great deference to the suppression court's findings of fact; however, we independently review the application of the law to those facts. *Lewis*, 398 Md. at 358–59; *Pyon v. State*, 222 Md. App. 412, 423

(2015) ("The threshold of Fourth Amendment applicability, moreover, is a legal question calling for a *de novo* determination.").

Under the inevitable discovery doctrine, "[e]vidence obtained as a result of an illegal search is admissible where, absent the illegal conduct, the evidence inevitably would have been discovered through legal means." *Williams v. State*, 372 Md. 386, 415 (2002) (citing *Nix v. Williams*, 467 U.S. 431, 447 (1984)). The focus of review is on "what would have happened if the illegal search had not aborted the lawful method of discovery," and "should focus on historical facts capable of easy verification, not on speculation." *Williams*, 372 Md. at 410, 418 (internal quotations omitted). To establish inevitable discovery, "the State has the burden of proving, by a preponderance of evidence, that the evidence in question inevitably would have been found through lawful means." *Williams*, 372 Md. at 417. "Applicability of the inevitable discovery doctrine is a highly fact-based determination and involves review by a trial court [regarding] whether the evidence in question inevitably would have been found." *Williams*, 372 Md. at 424 (citing *United States v. Lang*, 149 F.3d 1044, 1047 (9th Cir.1998)).

In the present case, we are persuaded that the State met its burden and proved, by a preponderance of the evidence, that police would have inevitably discovered Morales-Caceres's cell phone and shoes without using a cell site simulator. Morales-Caceres became the prime suspect in Navarro's murder once police found his palm print at the scene. Police obtained a warrant for his arrest. Based on prior contacts, police had a photo

of Morales-Caceres, and knew his height, weight, eye color, ethnicity, and cell phone number. Police had three known addresses for Morales-Caceres, and on the morning of his arrest, they were waiting outside all three. At 10:23 a.m., police received information from Sprint indicating that Morales-Caceres's cell phone was in the vicinity of one of the addresses, an apartment on the 14100 block of Grand Pre Road. Neither party disputes that police use of Sprint's technology was lawful. Morales-Caceres exited the apartment on 14100 Grand Pre Road at 11:20 a.m. and police immediately arrested him. At that time, Morales-Caceres was in possession of the evidence he sought to suppress, *i.e.*, he was carrying his cell phone and wearing the shoes.

Although the cell site stimulator further narrowed down Morales-Caceres's location on the morning of his arrest, had it not been used, police still would have been positioned outside Morales-Caceres's apartment building based on legally obtained information. Given those circumstances, we conclude that it was well within the trial court's discretion to determine that, regardless of the use of a cell site simulator, police would have inevitably arrested Morales-Caceres and discovered his cell phone and shoes through a lawful execution of the arrest warrant. As a result, we affirm the trial court's denial of Morales-Caceres's motion to suppress.[2]

[2] Because we hold that the doctrine of inevitable discovery was properly applied in this case, we decline to address Morales-Caceres's argument that police use of a cell site simulator violated the Fourth Amendment. We note that this Court has previously held that police use of a cell site simulator to obtain real-time location information of a suspect was a "search" for Fourth Amendment purposes. *See Andrews*, 227 Md. App. at 395 ("We hold,

II. Trial Challenges

Morales-Caceres raises three challenges to decisions made by the court during his trial. *First*, he argues the trial court abused its discretion when it declined to dismiss Juror 223. *Second*, he argues that the trial court abused its discretion when it declined to declare a mistrial after the State improperly mentioned that Morales-Caceres had had prior contacts with police. *Third*, he argues that the trial court abused its discretion when it allowed the State to make an improper closing argument. We address each contention in turn.

A. Dismissal of Juror 223

On the first day of trial, Juror 223 told the trial court's law clerk that seeing photographs of the victim and of the murder scene gave her anxiety. The court disclosed this communication to the State and Morales-Caceres:

> [A] juror approached my law clerk and said that she's suffering some anxiety as a result of the pictures because she is a school teacher in an area with the same demographics, and she's picturing her school kid's faces superimposed on the decedent's body. I don't know what to do with it. They've

therefore, that the use of a cell site simulator, such as Hailstorm, by the government, requires a search warrant based on probable cause and describing with particularity the object and manner of the search, unless an established exception to the warrant requirement applies."). The government did not seek certiorari in *Andrews* and the Court of Appeals in *Copes* did not disturb this conclusion. Thus, this aspect of *Andrews* remains governing law in this jurisdiction. Moreover, we need not reach the State's alternative argument that police acted in good faith when they used the cell site simulator to track Morales-Caceres's cell phone and therefore suppression is not a proper remedy. *See Copes*, 454 Md. at 626 (finding that police officers there acted in good faith). *Copes* did not address the conclusion reached in *Andrews* that the police department and State's Attorney failed to act in good faith by entering into a confidentiality agreement by which they purported to avoid court supervision of their use of cell site simulators. *Andrews*, 227 Md. App. at 417-20.

> already been screened that these pictures were going to be graphic in nature, and I'm not sure, its [Juror] 223, whether she even said anything. I don't know that there's much to be done about it.

Morales-Caceres requested that the trial court strike the juror. The trial court denied Morales-Caceres's request, and noted that the juror did not request exclusion:

> Okay. I'm going to deny [Morales-Caceres's] request at this time with respect to Juror 223. This juror did not ask for anything, only to report. I had a sense, and it wasn't communicated, but that this was the worst of [the pictures], knowing there [were] still pictures from the [Medical Examiner].

On appeal, Morales-Caceres argues that the trial court abused its discretion in declining to dismiss Juror 223. We disagree.

When the reasons for excusing a seated juror would be particular to that specific juror and not related to a general class of people, a trial court's decision is reviewed only for an abuse of discretion. *Diaz v. State*, 129 Md. App. 51, 59 (1999). Under the Maryland Rules, "[a]t any time before the jury retires to consider its verdict, the trial judge *may* replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate." Md. Rule 4-312(g)(3) (emphasis added). The decision to make such a finding, however, is discretionary. *State v. Cook*, 338 Md. 598, 608-09 (1995). The trial judge, having had the opportunity to observe the demeanor of the juror, is in the unique position to make an evaluation based on matters that may not be reflected in the record. *Diaz*, 129 Md. App. at 59; *Cook*, 338 Md. at 615. As such, we "give deference to

the trial judge's determination and will not substitute our judgment for that of the trial judge unless the decision is arbitrary and abusive or results in prejudice to the defendant." *Cook*, 338 Md. at 598.

The trial court ruled that it did not need to strike Juror 223, and we are not persuaded that this determination resulted in prejudice to Morales-Caceres. As the trial court explained, Juror 223 "did not ask for anything, only to report" the reactions she had to the pictures. The juror did not request to be excused, nor did she indicate an inability or unwillingness to continue. The trial court determined that the jury had seen "the worst of [the pictures]," implicitly finding that it was unlikely that the continuation of the trial would further upset Juror 223. There is no indication that the trial court's decision was an abuse of discretion. As a result, we affirm.

B. Prior Contacts & RAFIS

Prior to trial, Morales-Caceres filed a motion *in limine* seeking to prohibit the State from mentioning that he had a criminal record, and that his fingerprints were catalogued in the Regional Automated Fingerprint Identification System ("RAFIS"), which would imply a previous arrest. The State agreed not "to talk about criminal arrests," and the trial court granted Morales-Caceres's motion with regard to RAFIS, ruling that the State could not use RAFIS information as evidence in his trial.

At trial, Officer Charlie Bullock violated the State's agreement not to mention Morales-Caceres's criminal record when he testified as follows:

[STATE:]	Okay. Now at the time you arrested [Morales-Caceres] you have what information available to you.
[OFFICER:]	We had his picture. We had his height and weight, his eye color, hair color, date of birth, and addresses that he used in the past when he … had [contacts] with the police.

Morales-Caceres moved for a mistrial. The trial court denied the motion, but explained to the State that "you've got to explain to your witnesses that this is dangerous territory, and you will get yourself a mistrial." Although the trial court instructed the jury to disregard the reference to Morales-Caceres's prior contacts with police, it declined to issue a more-detailed curative instruction, finding that "if [it] highlight[ed] it, it's going to make it worse."

Later the same day, Sergeant Lawrence Haley testified about reaching out to the RAFIS unit after finding the palm print in the victim's home:

[STATE:]	What did you decide to do about [the palm print] on the bathroom wall?
[SERGEANT:]	At some point I am told that—
[STATE:]	As a result of receiving or being told—
[SERGEANT:]	—Right
[STATE:]	—information, and knowing that [the palm print] on the bathroom wall is there—

* * *

[STATE:]	What do you do?

[SERGEANT:] **I reached out to the RAFIS unit**[.]

Morales-Caceres's attorney again moved for a mistrial, arguing that Sergeant Haley's mention of RAFIS necessarily implied to the jury that Morales-Caceres had a criminal history. Moreover, Morales-Caceres's attorney asserted that the reference to RAFIS, coming after Officer Bullock had mentioned that Morales-Caceres had prior contacts with police, made the implication even more damaging. The trial court again denied Morales-Caceres's mistrial request, but urged the State to "control [its] witnesses."

Morales-Caceres argues that the trial court abused its discretion in denying his motions for mistrial. In his view, the jury would have naturally inferred that he had a criminal record based on the references by the State's witnesses to his prior contacts with police and his RAFIS information. He argues that as a result, his right to a fair trial was prejudiced.

"[T]he decision of whether to grant a motion for a mistrial rests in the discretion of the trial judge." *Parker v. State*, 189 Md. App. 474, 494 (2009). We will not reverse a trial court's decision absent a clear abuse of that discretion. *Rutherford v. State*, 160 Md. App. 311, 323 (2004). In reviewing for an abuse of discretion, we determine if the trial court's decision was "well removed from any center mark imagined" and "beyond the fringe of what [we deem] minimally acceptable." *Patterson v. State*, 229 Md. App. 630, 639 (2017).

A mistrial is "an extreme sanction that courts generally resort to only when no other remedy will suffice to cure the prejudice." *Rutherford*, 160 Md. App. at 323 (cleaned up).[3] Whether a mistrial is necessary depends on "whether the defendant was so prejudiced by the improper reference that he was deprived of a fair trial." *Parker*, 189 Md. App. at 494. The Court of Appeals has identified five factors to consider when evaluating whether a mistrial is required:

> [W]hether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]

Rutherford, 160 Md. App. at 323-24 (quoting *Rainville v. State*, 328 Md. 398, 408 (1992)).

We are not persuaded that the trial court's refusal to declare a mistrial constituted an abuse of discretion. The statements were each isolated and inadvertent. The officers were two among many witnesses testifying in the case, and there was an array of other evidence presented. Moreover, the principal purpose of the motion *in limine* was to prevent the State from admitting evidence of Morales-Caceres's criminal background. Both

[3] "Cleaned up" is a new parenthetical intended to simplify quotations from legal sources. *See* Jack Metzler, *Cleaning Up Quotations*, J. APP. PRAC. & PROCESS (forthcoming 2018), https://perma.cc/JZR7-P85A. Use of (cleaned up) signals that to improve readability but without altering the substance of the quotation, the current author has removed extraneous, non-substantive clutter such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization.

statements were vague, and it is questionable whether either would have led the jury to infer that Morales-Caceres had a prior criminal history. After cautioning the State in both instances, the trial court determined that the comments did not have a profound effect on the jury and made a conscious decision not to give a detailed curative instruction so that the jury's attention would not be drawn back to the statements. Given those circumstances, the trial court's refusal to declare a mistrial was not "well removed from any center mark imagined" or "beyond the fringe of minimally acceptable conduct." *See Patterson*, 229 Md. App. at 639. We, therefore, affirm the trial court.

C. Closing Arguments

Murder in the first degree requires the State to prove that a murder was deliberate. Md. Code Ann., Crim. Law § 2-201(a)(1) ("A murder is in the first degree if it is a deliberate, premeditated, and willful killing"). During closing arguments, the State made the following argument that Morales-Caceres deliberately killed Navarro:

> Deliberate. Deliberate means that the defendant was conscious of his intent to kill. How can you not be conscious of your intent to kill someone when you're stabbing them 89 times with a knife? With this knife. Look at the size of this knife. This is not a bowl of spaghetti. It's not a wet noodle. It's not a couch cushion. It's not even a fish. This is a big knife.
>
> Each and every one of you has cut yourself by accident with a knife like this or know someone that did. And I'm telling you, you remember how bad it hurt. You are aware of what this knife can do even in an accidental manner.

* * *

> Certainly if you were to take this knife and draw it across your skin with force, enough force to go through two jackets. Remember, Oscar Navarro was killed wearing two jackets. If you were to take this knife and hack and chop at your arm with enough force to go through two jackets, and then all the way to the bone—
>
> * * *
>
> Any reasonable person would know that by plunging this knife into their own body over six inches would cause death. So we know, from the wounds that we saw on the pictures, that everything the defendant did was a deliberate means to cause the death of Oscar Navarro.

Morales-Caceres was granted a continuing objection to the State's closing argument. Here, Morales-Caceres asserts that the State's closing argument was an improper and prejudicial "golden rule" argument, and therefore the trial court abused its discretion in allowing it.

Trial courts have broad discretion in regulating closing arguments. *Ware v. State*, 360 Md. 650, 681-82 (2000). The "determination of whether the prosecutor's comments were prejudicial or simply rhetorical flourish lies within the sound discretion of the trial court." *Juliano v. State*, 166 Md. App. 531, 545 (2006). On review, "we defer to the trial court's evaluation of the effect of a comment upon the jury." *Juliano*, 166 Md. App. at 545 (citing *Henry v. State*, 324 Md. 204, 231, (1991)). Reversal is only required where the court "clearly abused the exercise of its discretion and prejudiced the accused." *Juliano*, 166 Md. App. at 545 (citing *Spain v. State*, 386 Md. 145, 158–59 (2005)).

A "golden rule" argument is one "in which an arguing attorney asks the jury to place themselves in the shoes of the victim." *Lawson v. State*, 389 Md. 570, 594 n.11 (2005)

(citing *Lawson v. State*, 160 Md. App. 602, 626-27 (2005) (finding it improper for the prosecutor to ask that in weighing the child victim's testimony, the jurors should imagine if their own child was a victim of sexual assault)). Such arguments are prohibited because they "encourage the jurors to abdicate their position of neutrality and decide cases on the basis of personal interest rather than the evidence." *Lawson*, 389 Md. at 594.

We disagree with Morales-Caceres' characterization of the State's closing as a "golden rule" argument. The State asked the jurors to remember a time they were accidentally cut by a knife, use that knowledge to evaluate the weapon that had been wielded and the force that would have been required to cause the injuries to Navarro, and draw the conclusion that the injuries could only have been caused deliberately. Though the State asked the jury to remember how much it hurts to accidently cut oneself with a knife, at no point were the jurors asked to put themselves in the place of Navarro and imagine being stabbed 89 times. The Court of Appeals has noted that "'great leeway' [is] given to attorneys during closing arguments." *Lawson*, 389 Md. at 591 (quoting *Spain*, 386 Md. at 145, 152-53 (quoting *Degren v. State*, 352 Md. 400, 722 (1999)). We cannot say that the State's argument was impermissible or that the trial court abused its discretion in allowing it. We affirm the ruling of the trial court.

III. Sentencing

A. Life Without the Possibility of Parole

Morales-Caceres asserts that he was entitled to be sentenced by a jury instead of the trial court, and because he was not, his sentence of life imprisonment without the possibility of parole is unconstitutional.

In the time since Morales-Caceres filed his brief, his arguments have been foreclosed. In *Bellard v. State*, the Court of Appeals held:

> (I) [U]nder CR § 2–304(a), where a defendant is convicted of first-degree murder and the State has given notice of an intent to seek life imprisonment without the possibility of parole, the trial court, not the jury, determines whether to sentence the defendant to life imprisonment or life imprisonment without the possibility of parole; stated otherwise, CR § 2–304 does not grant a defendant who is convicted of first-degree murder the right to have a jury determine whether to impose a sentence of life imprisonment without the possibility of parole; and (II) Maryland's sentencing scheme for life imprisonment without the possibility of parole does not violate the United States Constitution or the Maryland Declaration of Rights, and neither the United States Constitution nor the Maryland Declaration of Rights provides a defendant with a right to have a jury determine whether the defendant should be sentenced to life imprisonment without the possibility of parole; stated otherwise, both the United States Constitution and the Maryland Declaration of Rights permit a sentence of life imprisonment without the possibility of parole to be imposed in the same manner as every other sentence except the death penalty, which has been abolished in Maryland.

452 Md. 467, 474 (2017). We, therefore, affirm the ruling of the trial court.

B. Gang Membership

Finally, Morales-Caceres argues that the trial court erred in allowing the State to present evidence at sentencing that he is a member of the MS-13 gang. As the Court of Appeals has explained, the stated objectives of MS-13 are to "kill, rape, and control," and its members are required to commit criminal acts and "'participate in violence' or be subject to discipline by other gang members." *Cruz-Quintanilla v. State*, 455 Md. 35, 49 (2017). The State contends that the information about Morales-Caceres's membership in this violent gang was tied to the crime at issue and therefore properly considered by the sentencing court.

In Maryland, it has long been established that a "sentencing judge is vested with virtually boundless discretion in devising an appropriate sentence." *Cruz-Quintanilla*, 455 Md. at 40. A sentencing judge is "not constrained simply to the narrow issue of guilt," and may take into account "a wide variety of information about a specific defendant [that will permit] the sentencing judge to individualize the sentence to fit the offender and not merely the crime." *Cruz-Quintanilla*, 455 Md. at 40-41 (internal quotations omitted). An appellate court reviews a trial court's decision on sentencing for an abuse of discretion. *Sharp v. State*, 446 Md. 669, 685 (2016).

To make his argument, Morales-Caceres principally relies on the United States Supreme Court's decision in *Dawson v. Delaware*, 503 U.S. 159 (1992), and asserts that his membership in MS-13 was a constitutionally protected association and therefore any

evidence of it was inadmissible. In *Dawson*, at sentencing, the prosecution had admitted into evidence a stipulated statement regarding the defendant's membership in the Aryan Brotherhood.[4] *Dawson*, 503 U.S. at 162. Although Morales-Caceres is correct that the Supreme Court held that the admission in *Dawson* was unconstitutional, the exclusion is not as broad as Morales-Caceres would have us apply it. Rather, the Supreme Court held that "the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." *Dawson*, 503 U.S. at 165. In *Dawson*, it was "the narrowness of the stipulation [that] left the Aryan Brotherhood evidence totally without relevance to Dawson's sentencing proceeding," to the extent that the record "left [one] with the feeling that the Aryan Brotherhood evidence was employed simply because the jury would find these beliefs morally reprehensible." *Dawson*, 503 U.S. at 165, 167. But, where evidence shows more than mere abstract belief and may have bearing on the issue being tried, such as relevant character evidence or aggravating circumstances, it may be admissible. *Dawson*, 503 U.S. at 165, 167–68.

In Maryland, the Court of Appeals has applied the guidance from *Dawson* and explained that "evidence of a defendant's membership or association in an organized gang

[4] The stipulated statement read: "The Aryan Brotherhood refers to a white racist prison gang that began in the 1960's in California in response to other gangs of racial minorities. Separate gangs calling themselves the Aryan Brotherhood now exist in many state prisons including Delaware." *Dawson v. Delaware*, 503 U.S. 159, 162 (1992).

is relevant and admissible during sentencing if the State establishes that the gang's purposes and objectives are criminal in nature." *Cruz-Quintanilla*, 455 Md. at 45. Thus, "a sentencing court may consider a defendant's gang membership as relevant to the imposition of a proper sentence, so long as the evidence presented goes beyond the abstract beliefs of the gang." *Cruz-Quintanilla*, 455 Md. at 45.

Here, the testimony established that to advance in the hierarchy of MS-13, it is necessary to commit acts of violence. The testimony further noted that it was possible that the murder of Navarro was related to Morales-Caceres's efforts to advance his status. We consider this evidence to be relevant to the substance of the case at hand, and not merely a description of whatever abstract beliefs MS-13 might espouse. The sentencing court did not abuse its discretion in admitting the evidence and considering it in determining Morales-Caceres's sentence. We affirm the ruling of the trial court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.