UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1470 & 1801

September Term, 2015

STEPHEN MICHAEL COOKE, JR.

v.

STATE OF MARYLAND

Graeff,
Arthur,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: May 1, 2017

On April 20, 2000, Heidi Bernadzikowski was murdered. Her boyfriend, appellant Stephen Michael Cooke, Jr., found her in their Dundalk residence, with her throat cut. Fourteen years later, after new information became available because of technological advances in the analysis of DNA evidence, the State charged Cooke with employing a middleman, Grant Lewis, to hire the confessed killer whose DNA was under Ms. Bernadzikowski's fingernails. While Cooke and Lewis were both detained and awaiting trial, Cooke paid for a jailhouse hit on Lewis to prevent him from testifying about a scheme to murder Ms. Bernadzikowski to collect on her life insurance policy.

Cooke was charged with the first-degree murder of Ms. Bernadzikowski, conspiracy to commit her murder, and solicitation to commit murder. In a separate indictment, he was charged with the attempted murder of Grant Lewis, solicitation of murder, first-degree assault, solicitation of first-degree assault, and two counts of solicitation to intimidate a witness. The two cases were tried jointly over nine days in June 2015.

On the charges relating to Ms. Bernadzikowski, a Baltimore County jury convicted Cooke of first-degree murder, conspiracy to commit first-degree murder, and solicitation to commit murder. On the charges relating to Grant Lewis, the jury convicted Cooke of first-degree assault, soliciting a first-degree assault, and solicitation to intimidate a witness. The court sentenced Cooke to life imprisonment without the possibility of parole for the murder of Ms. Bernadzikowski and the related conspiracy, a

consecutive 25-year term for the first-degree assault of Grant Lewis, and another consecutive five-year term for the solicitation to intimidate a witness.

Challenging those convictions and sentences, Cooke presents four issues, which we restate as follows:[1]

> 1. Must the sentence of life imprisonment without the possibility of parole for first-degree murder be vacated, either (a) because Cooke had a right, under Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), § 2-304 of the Criminal Law Article ("CR"), to have the jury decide his sentence; or (b) because the statutory sentencing scheme is unconstitutional?
>
> 2. Did the trial court err or abuse its discretion in granting the State's motion to join the murder and witness intimidation offenses for trial?
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> 3. Is the evidence sufficient to support the convictions for (a) assault in the first degree and (b) solicitation to intimidate a witness?
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> 4. Did the trial court err or abuse its discretion in admitting, over relevancy objections, (a) evidence regarding a civil lawsuit over proceeds of the victim's life insurance policy, or (b) evidence regarding two knives found at the crime scene?

Following the decision in *Bellard v. State*, ___ Md. ___, No. 72, Sept. Term 2016, 2017 WL 1193257 (filed Mar. 31, 2017), we reject Cooke's sentencing challenges. On

[1] The issues were presented in Cooke's brief as follows:

1. Must Appellant's life without parole sentence be vacated?

2. Did the trial court err in granting the State's Motion for Joint Trial of Offenses?

3. Is the evidence insufficient to sustain the convictions for first-degree assault and solicitation to intimidate a witness?

4. Did the trial court err in permitting irrelevant and highly prejudicial testimony?

the remaining issues, we conclude that the trial court did not abuse its discretion in joining the murder and witness-intimidation cases, that sufficient evidence supports the assault and intimidation convictions, and that the court did not err or abuse its discretion in admitting the challenged evidence.

FACTS AND LEGAL PROCEEDINGS

The Murder

The State's theory was that Stephen Cooke, facing bankruptcy and the end of his relationship with Ms. Bernadzikowski, hired a stranger to kill her, so that he could collect on her $700,000 life insurance policy. The State presented evidence that, after corresponding with Cooke online, Grant Lewis sent Alexander Bennett from Colorado to Maryland to commit the murder. Gaining access to the house with keys left by Cooke, Bennett lay in wait until Cooke dropped off Ms. Bernadzikowski at their house. After Ms. Bernadzikowski entered the house, Bennett strangled her, cut her throat to make sure she was dead, staged a crime scene, disposed of evidence, and returned to Colorado.

Although the investigators suspected that Cooke might be responsible for the murder, he had an alibi, having performed errands and visited his sister while Ms. Bernadzikowski was killed. There were no witnesses, confessions, or forensic leads. The DNA found under the victim's fingernails was a mix of hers and of a male donor who could not have been Cooke, but could not be identified with the technology available at that time. At that relatively early stage in the era of digital communications, the police did not think to search the computer that Cooke had used to communicate with Lewis.

As the investigation went cold, Cooke attempted to collect on two policies insuring Ms. Bernadzikowski's life. Although Cooke was named as the primary beneficiary under the policies, her family contested his claims in a civil suit. Several days into that trial, Cooke proposed a settlement under which Ms. Bernadzikowski's mother would receive 80 percent of the insurance proceeds, while Cooke would receive only 20 percent. The family accepted Cooke's proposal.

In September of 2011, 11 years after the murder, the Baltimore County police re-tested the DNA that was found under the victim's fingernails, employing technological advances that allowed the mixed-donor DNA samples to be analyzed separately. A profile was matched to Alexander Bennett, a Colorado resident. Because Maryland Transportation Authority records indicated that Bennett had been stopped while walking along Interstate 295 outside Baltimore on March 30, 2000, about three weeks before the murder, investigators went to Colorado to interview him. When asked how his DNA had gotten under Ms. Bernadzikowski's fingernails, Bennett maintained that he had been stuck and homeless in Maryland during April 2000, where he had an altercation with a young woman at a bus stop. After Bennett identified Ms. Bernadzikowski in a photograph and said that she was the woman with whom he had the altercation, he was arrested, charged with her murder, and extradited to Maryland.

While in Colorado, investigators also met with Grant Lewis, whom Bennett identified as someone who could corroborate his claim that he had been abandoned in Baltimore by friends while on the way to a concert. The State brought Lewis to

Maryland on a material-witness warrant to testify at Bennett's trial. *See Lewis v. State*, 229 Md. App. 86, 90-91 (2016), *aff'd*, ___ Md. ___ (April 24, 2017).

On March 18, 2014, the day on which Bennett was scheduled to go to trial for the murder of Ms. Bernadzikowski, he confessed, implicating Lewis as the middleman who negotiated the killing and Cooke as the person who hired him. Bennett pleaded guilty to first-degree murder and was sentenced to life with all but 30 years suspended under a plea deal that required him to testify against Cooke and Lewis. Cooke and Lewis were arrested and charged with Ms. Bernadzikowski's murder.

Witness Intimidation

While awaiting trial, Cooke and Lewis were both jailed at the Baltimore County Detention Center. Cooke shared a cell with James DiVenti, who reported to authorities that Cooke asked him to arrange a hit on Lewis, "the guy he . . . did the emails with[,]" because he could "ruin" or "finish" Cooke. DiVenti, wearing a recording device, recorded conversations with Cooke on June 13 and July 9, 2014.

In the recordings, Cooke and DiVenti discussed plans involving an unidentified inmate on the same tier as Lewis. When DiVenti informed Cooke that there were two Lewises on that tier and asked for a first name, Cooke answered, "Grant Lewis."

DiVenti told Cooke that Lewis was "gonna get hit, he's gonna get hurt" and that he "doubt[ed]" that Lewis was "going to talk." A little later, DiVenti told Cooke that Lewis would be "getting his shit split" and that the assailant had been instructed to tell Lewis "what [Cooke] said, 'don't go to court, you don't know nothing from fuckin'

nothing.'" According to DiVenti, the message to Lewis would be that "he's not supposed to say nothing about [Cooke's] case, not supposed to testify."

DiVenti also said that the assailant wanted to be paid $100 in "dots," referring to Green Dot cards, which are untraceable, prepaid money-cards that inmates use covertly in black-market commerce in jail. Cooke obtained the serial number for a $100 Green Dot card, which he delivered to DiVenti, who turned it over to investigators.

Cooke was charged with soliciting and attempting the murder of Lewis, or alternatively his assault, and with soliciting the intimidation of a witness. Before trial, the court granted the State's motion to join the murder and witness intimidation charges for trial.

Trial

At trial, Alexander Bennett testified that in 2000 Grant Lewis sent him to Baltimore to perform a contract murder for a man who wanted his girlfriend killed and who had promised to pay them $60,000 from the victim's life insurance proceeds. Bennett flew to Baltimore, but had to wait several weeks while arrangements were made. During this time, Bennett called Lewis every day, using pay phones to make collect calls.

Before the murder, Bennett met with Cooke at the townhouse that he and Ms. Bernadzikowski rented. At the meeting Cooke detailed his plan to provide Bennett access to the house and stressed that the murder should look like an accident, because it would be more difficult to obtain the insurance money if the death were to be ruled a homicide. Bennett made additional reconnaissance trips to the townhouse, in one

instance using a screwdriver to break in through the basement door so that he could surveil the residence, and in another posing as a member of a neighborhood watch group so that he could see what Ms. Bernadzikowski looked like.

The night before the murder, at a bus stop, Bennett briefly met with Cooke, who told him that on the following day he would leave a key to the back door so that Bennett could be waiting when Ms. Bernadzikowski returned to the residence.

On the day of the murder, Cooke confirmed the plan by email to Lewis, who relayed the message to Bennett on a payphone call. Bennett entered the townhouse with a key to the same basement door that he had previously broken into. After moving the dog (a Rottweiler) into the basement, Bennett watched as Cooke parked his red Honda in front of the residence, dropped off Ms. Bernadzikowski, and drove away. When Ms. Bernadzikowski entered the front door, Bennett grabbed her from behind. As she fought and scratched his face, he choked her until she was unconscious. "[T]o make sure she was dead[,]" Bennett used a knife to cut her throat.

Bennett arranged the crime scene to suggest a botched robbery or a serial killing. After arranging Ms. Bernadzikowski's body with her legs crossed, Bennett dumped her purse out, wiped surfaces, messed up the house, and used the victim's lipstick to write "#1" on the wall. When he left, Bennett disposed of the knife, the key, and his gloves and clothes in a commercial dumpster. He returned to Colorado on a bus ticket bought by his sister. According to Bennett, he and Lewis were never paid for the murder.

Forensic and circumstantial evidence corroborated Bennett's account of the murder and supported the State's theory that Cooke's motive for the murder was to obtain the proceeds of Ms. Bernadzikowski's life insurance policy. Cooke, who had previously filed for bankruptcy protection, told police on the night of the murder that he was in the process of filing a second bankruptcy case. Yet, in February 2000, he had applied for a life insurance policy with a death benefit of $900,000. At the same time, Ms. Bernadzikowski, age 24, had applied for a $700,000 life insurance policy. Cooke and Ms. Bernadzikowski made each other the primary beneficiaries of their respective policies and paid enough to obtain an immediate binder that would cover them in a reduced amount while the applications went through the underwriting process.

During that process, Cooke called the insurance agent several times, asking about the documents that were needed to complete the underwriting review, including Ms. Bernadzikowski's medical records. Because the insurer did not receive those records within the 60-day binder period, it sent written notice, dated April 10, 2000, that Ms. Bernadzikowski's binder had lapsed. Cooke claimed that, after receiving that letter, he called the insurance agent and received assurances that the medical records had been submitted and that Ms. Bernadzikowski's policy was in full effect. Based on that information, Cooke claimed to believe that Ms. Bernadzikowski's policy was in effect at the time of her death on April 20, 2000.

On the evening of the murder, Cooke told the police that he and Ms. Bernadzikowski were planning to be married in a couple months. In the weeks before

she was murdered, however, Ms. Bernadzikowski had had separate conversations with three different friends, all of whom testified that she was unhappy in her relationship with Cooke and was thinking about ending it. About two weeks before her death, Ms. Bernadzikowski discussed beginning a romantic relationship with one of these friends, whom she kissed. In response to her repeated requests, another friend had lent her $200 in cash on the evening of April 18, 2000, two days before she was murdered, because she was moving out and "leaving" Cooke and needed to put her belongings in storage. On the night before the murder, Ms. Bernadzikowski told a female friend that "she was thinking about leaving" Cooke.

Natalie Ott confirmed Bennett's testimony that in March 2000 she drove him and Lewis to the airport in Colorado. She testified that earlier that day the two men had told her that "they were two of the biggest organized crime members in Colorado, and that they were hired to go to Baltimore to make a lot of money." Ott walked Bennett, who had a one-way ticket to Baltimore, to the gate for his flight. During the following month, Bennett called her collect from Baltimore "a few times."

Bennett testified that he flew to Baltimore with no money, no murder plan, no photos, and only Ms. Bernadzikowski's name, work address, and directions to her house, printed out from MapQuest. While walking from Baltimore-Washington International Airport to Dundalk, he was stopped by an officer, who expressed concern about the danger of walking along a highway at night. The officer gave him a ride to Dundalk, dropping him a few blocks away from the townhouse shared by Cooke and Ms.

Bernadzikowski. Maryland Transportation Authority records confirm that this encounter occurred on March 30, 2000.

In the days before her murder, Ms. Bernadzikowksi herself confirmed Bennett's account of surveilling her residence. She reported both to the rental property manager and to Cooke that a black or Hispanic male with a tattoo on his left inner forearm had come to the door, saying something about starting a block watch program. She reported being frightened by the encounter. Bennett matched the description that she gave.

The wooden basement door, where Bennett had broken into the townhouse the week before the murder, showed distinctive gouging that was consistent with Bennett's testimony that he used a screwdriver to loosen the lock enough to open the door. On April 19, 2000, the day before the murder, the property management company replaced all three exterior door locks, giving three sets of the two new keys to Cooke. Consistent with Bennett's testimony that Cooke left him a key to the back door, there was no sign of forced entry on the night of the murder. Consistent with Bennett's testimony that he threw away the key that he had used to enter the house, Cooke returned only two sets of keys to the property manager on June 2, 2000.

The physical evidence was also consistent Bennett's account of how he staged the crime scene to look like a robbery or serial killing. Written in lipstick on the wall above Ms. Bernadzikowski's body was "#1," and her legs were crossed. The contents of her purse were dumped on the floor near her body. Upstairs, a mattress was pulled askew, drawers were opened, and clothes were scattered on the floor.

After confessing to the murder, Bennett identified Cooke from a photo, as "the boyfriend" who ordered the killing, met with Bennett, but did not pay for the killing. According to DiVenti, Cooke confessed, in unrecorded conversations, to hiring Lewis, meeting with Bennett, and (in his words) "stiffing" them after the murder.

Thomas Scott Hood, a Towson attorney, testified about the civil litigation in 2002-03 regarding two life insurance policies covering Ms. Bernadzikowski. Cooke was the primary beneficiary on both a $52,000 policy through her employer and a State Farm policy in the face amount of $700,000; Ms. Bernadzikowski's mother and brother were secondary beneficiaries on those policies. There were disputes over whether the State Farm policy was in effect for the full amount or for only the $300,000 covered by the binder and over whether Cooke or the Bernadzikowkis were entitled to the proceeds. In a March 2002 deposition, Cooke testified that, after his insurance agent assured him and Ms. Bernadzikowski that her missing medical records "had been taken care of," they threw away the April 10, 2000, letter in which the insurer terminated the policy, believing "the policy was in effect" for the full $700,000. Several days after trial began on the civil suit, Cooke's attorney proposed a settlement, under which Cooke received only 20 percent of the policy proceeds, and Ms. Bernadzikowski's mother received 80 percent. The Bernadzikowskis accepted the offer.

Cooke took the stand and denied any involvement in the murder. Cooke also denied that he asked DiVenti to harm Grant Lewis. He claimed that he went along with whatever DiVenti was saying in the recorded conversations because he was afraid of

DiVenti, who he said was a "bully." Despite Cooke's claims, however, the recordings include inculpatory statements in which Cooke identified "Grant Lewis" as the correct target, asked DiVenti to tell him what to do, authorized DiVenti to "handle it," expressed his trust in DiVenti, and asked how the inmate who would do the hit "knows about Bennett?"

Corroborating DiVenti's testimony that Cooke agreed to pay for the hit on Lewis with "dots," Cooke's former wife testified that during a jail visit on July 22, 2014, he asked her to purchase $50 Green Dot cards. The next day, she bought a single $100 card, to avoid paying two service fees, and the transaction was recorded on the store's video surveillance system. When she visited Cooke in jail on July 24, 2014, she held the card up to the glass while he wrote down the serial number. On August 14, 2014, Cooke, who had been temporarily moved to another tier, gave DiVenti the serial number, which DiVenti reported to investigators. At trial, the State introduced a piece of cardboard with a handwritten number matching the serial number on the $100 Green Dot card purchased by Cooke's ex-wife.

DISCUSSION

I. Sentencing Challenges

In Maryland, the penalty for murder in the first degree is either life imprisonment with the possibility of parole or life imprisonment without the possibility of parole. *See*

CR § 2-201(b). The State must file written notice if it intends to seek life imprisonment without the possibility of parole. CR § 2-203.[2]

Under CR section 2-304(b),[3] a provision of the statutory sentencing scheme for first-degree murder that previously had been applied only in cases in which the State sought the death penalty, "[a] determination *by a jury* to impose a sentence of

[2] CR section 2-203 provides:

> A defendant found guilty of murder in the first degree may be sentenced to imprisonment for life without the possibility of parole only if:
>
> (1) at least 30 days before trial, the State gave written notice to the defendant of the State's intention to seek a sentence of imprisonment for life without the possibility of parole; and
>
> (2) the sentence of imprisonment for life without the possibility of parole is imposed in accordance with § 2-304 of this title.

[3] CR section 2-304 provides:

> (a) If the State gave notice under § 2-203(1) of this title, the court shall conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant shall be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.
>
> (b)(1) A determination by a jury to impose a sentence of imprisonment for life without the possibility of parole must be unanimous.
>
> (2) If the jury finds that a sentence of imprisonment for life without the possibility of parole shall be imposed, the court shall impose a sentence of imprisonment for life without the possibility of parole.
>
> (3) If, within a reasonable time, the jury is unable to agree to imposition of a sentence of imprisonment for life without the possibility of parole, the court shall impose a sentence of imprisonment for life.

imprisonment for life without the possibility of parole must be unanimous." (Emphasis added.) Cooke contends that because section 2-304(b) preserved the jury-sentencing provisions after Maryland repealed the death penalty in 2013, he has a statutory right to have a jury decide whether he receives a sentence of life without parole. In addition, Cooke challenges the constitutionality of a sentencing regime under which the State can seek life imprisonment without parole without proving anything beyond a first-degree murder, and under which the court may impose the sentence without any predicate findings of eligibility by the jury.

Following the Court of Appeals' decision in *Bellard v. State*, ___ Md. ___, No. 72, Sept. Term 2016, 2017 WL 1193257 (filed Mar. 31, 2017), we reject Cooke's statutory and constitutional sentencing challenges.

A. Claim of Statutory Right to Jury Sentencing Under CR Section 2-304

As Cooke acknowledges, his statutory challenge was raised in other cases that were pending in this Court before this appeal ripened. In *Bellard v. State*, 229 Md. App. 312, 333-38 (2016), *aff'd*, ___ Md. ___, 2017 WL 1193257 (Mar. 31, 2017), this Court held that CR section 2-304 does not authorize jury sentencing in first-degree murder cases. *See also Shiflett v. State*, 229 Md. App. 645, 674-76 (2016). The Court of Appeals has now affirmed that decision and confirmed its rationale:

> under 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[.]

Bellard, ___ Md. at ___, 2017 WL 1193257, at *2.

Before the repeal of the death penalty in 2013, the jury-sentencing procedure in subsection (b) of section 2-304 was available only when the State sought the death penalty. *Id*. at ___, 2017 WL 1193257, at *12-14. *See generally Woods v. State*, 315 Md. 591, 599-600 (1989) (under predecessor statute, defendant convicted of first-degree murder was not entitled to jury-sentencing unless the State sought the death penalty). Although the General Assembly eliminated a long list of statutory provisions pertaining to the death penalty in 2013, it overlooked subsection (b) of section 2-304. The failure to repeal subsection (b) gave rise to an ambiguity as to whether the right to jury-sentencing had been extended, at least by implication, to defendants facing a sentence of life imprisonment without the possibility of parole. *Bellard*, ___ Md. at ___, 2017 WL 1193257, at *7-11.

The *Bellard* Court conducted a "thorough review" of the legislative purpose and history of Senate Bill 276, the legislation that simultaneously repealed the death penalty and created the ambiguity in section 2-304. *Id*. at ___, 2017 WL 1193257, at *8-14. Writing for a unanimous Court, Judge Watts concluded that the "legislative history unequivocally demonstrates that the General Assembly's sole intent was to repeal the death penalty[.]" *Id*. at ___, 2017 WL 1193257, at *14. While focusing on "identifying, and deleting, express references to the death penalty[,]" none of which appeared in section 2-304(b), the General Assembly apparently failed to notice that the jury-

sentencing procedure in that provision was available only when the State sought the death penalty. *Id*. at ___, 2017 WL 1193257, at *12-14. The Court of Appeals, like this Court, found it "evident that CR § 2-304(b) is a vestige" of the prior law, which "is no longer operative in light of the General Assembly's repeal of the death penalty." *Bellard*, ___ Md. at ___, 2017 WL 1193257, at *14.

The Court recognized that in 2015 and 2016 the General Assembly had considered, but failed to pass, legislation that would have repealed section 2-304 and its provisions concerning a separate jury-sentencing proceeding in cases involving life imprisonment without the possibility of parole. Nonetheless, the Court attributed no weight to the failed legislation, reasoning that a bill's failure is a weak reed upon which to lean in ascertaining legislative intent, because a bill might fail for a myriad of reasons. *Id*. at ___, 2017 WL 1193257, at *15. "[T]he General Assembly's inaction with respect to bills that were introduced after Senate Bill 276 was passed in 2013," proposing to repeal section 2-304(b), are "not indicative of an intent on the part of the General Assembly to create a right for a defendant who is convicted of first-degree murder to have a jury determine whether to impose life imprisonment without the possibility of parole." *Id*.[4]

[4] On March 30, 2017, the day before the Court of Appeals handed down its decision in *Bellard*, the Senate passed Senate Bill 1187, which would repeal the provision concerning a separate jury-sentencing proceeding in first-degree murder cases in which the State requests a sentence of life imprisonment without the possibility of parole. http://thedailyrecord.com/2017/03/30/md-senate-gives-initial-ok-to-life-without-parole-sentencing-bill/ (last viewed Apr. 11, 2017). The bill's sponsor, Senator Cassilly, was (continued)

The Court went on to explain that the rule of lenity is inapplicable here, because the ambiguity created by Senate Bill 276 is resolved by its purpose and history. *Id*. at ___, 2017 WL 1193257, at *16.

> [A]n examination of the circumstances of that repeal reveals that the General Assembly did not intend to do more than repeal the death penalty, and certainly did not intent [sic] to disturb the established principle, as set forth in this Court's holding in *Woods*, that a trial court, not a jury, decides whether to impose life imprisonment without the possibility of parole where a defendant is convicted of first-degree murder and the State has provided notice of its intent to seek such a sentence.

Id. at ___, 2017 WL 1193257, at *15.

This decision governs our disposition of Cooke's statutory sentencing challenge, which rests on the same arguments that the Court rejected in *Bellard*. Accordingly, we hold that the trial court correctly ruled that Cooke did not have a right under CR section 2-304 to be sentenced by a jury.

B. Constitutionality of Sentencing Scheme For First-Degree Murder

Cooke also challenges the constitutionality of the current sentencing scheme for murder in the first degree on the grounds that (1) "it does not limit prosecutorial discretion" over which cases merit a request for the harsher sentence, (2) "it fails to provide any meaningful guidance" for the sentencing authority in determining when to impose the harsher sentence, and (3) it does not identify factors justifying the harsher

(continued)
quoted as saying that the legislature had "overlooked" the jury-sentencing provision when it repealed the death penalty in 2013. *Id.* On April 4, 2017, however, the legislation was recommitted to the Senate Judicial Proceedings Committee. https://legiscan.com/MD/bill/SB1187/2017 (last viewed Apr. 11, 2017).

sentence or require the sentencing authority "to find any such factors beyond a reasonable doubt."

The *Bellard* Court reviewed and rejected constitutional challenges identical to those raised by Cooke:

> 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.

Bellard, ___ Md. at ___, 2017 WL 1193257, at *2.

Citing the holding in *Woods v. State*, 315 Md. at 599-600, that a defendant facing a maximum sentence of life without the possibility of parole for first-degree murder does not have the right to have a jury decide his sentence, the Court of Appeals reiterated that "the imposition of a sentence of life without the possibility of parole rests with the trial court's discretion and is subject to traditional sentencing procedures." *Bellard*, ___ Md. at ___, 2017 WL 1193257, at *21. The Court rejected the argument that the sentencing scheme was unconstitutional in the absence of "guidelines regarding what considerations are relevant in determining whether to impose life imprisonment or life imprisonment without the possibility of parole." *Id*. at ___, 2017 WL 1193257, at *22. Because Supreme Court and Maryland precedent establish that "the death penalty differs from all other sentences," neither a mandatory list of relevant factors, nor the "type of

individualized sentencing that is required when imposing the death penalty," is necessary to comport with federal or Maryland constitutional law. *Id*.

Finally, the Court rejected an argument, based on *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), that a defendant is entitled to have a jury make factual findings that support the imposition of the harshest penalty available under the sentencing scheme, life imprisonment without the possibility of parole. *Bellard*, ___ Md. at ___, 2017 WL 1193257, at *22. *Apprendi* held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. at 490. Hence, predicate fact-finding by a jury would be constitutionally required if the State sought to impose a sentence greater than the statutory maximum sentence, as in the case of the hate-crime "enhancement" that was struck down in *Apprendi*. *See id.* at 490-91. But when the State seeks life without the possibility of parole for first-degree murder, the *Bellard* Court explained, no additional fact "must be established to increase the penalty for first-degree murder beyond the prescribed statutory maximum[.]" *Bellard*, ___ Md. at ___, 2017 WL 1193257, at *22. That is because life without the possibility of parole *is* the prescribed statutory maximum for that crime. *Id*.

Following *Bellard*, we hold that the circuit court did not violate Cooke's constitutional rights under federal and Maryland law by imposing a sentence of life imprisonment without the possibility of parole under the current statutory scheme.

II. Joinder Challenge

Cooke contends that the trial court erred in granting the State's motion for joinder, which allowed a single jury to decide the charges stemming from Ms. Bernadzikowski's murder and those involving the plot to assault Grant Lewis while he was in jail. Applying settled law governing joinder of offenses, we disagree.

A. Joinder of Offenses for Trial

Under Maryland Rule 4-253:

> **(b) Joint Trial of Offenses**.—If a defendant has been charged in two or more charging documents, either party may move for a joint trial of the charges. In ruling on the motion, the court may inquire into the ability of either party to proceed at a joint trial.
>
> (**c) Prejudicial Joinder.—**If it appears that any party will be prejudiced by the joinder for trial of . . . charging documents, . . . the court may, on its own initiative or on motion of any party, order separate trials of . . . charging documents, . . . or grant any other relief as justice requires.

"[J]oinder of offenses, traditionally, has been justified on the basis that 'a single trial effects an economy, by saving time and money, to the prosecution, the defendant, and the criminal justice system.'" *Conyers v. State*, 345 Md. 525, 548 (1997) (quoting *McKnight v. State*, 280 Md. 604, 608-09 (1977)). Nevertheless, when offenses are joined for trial, there are recognized risks of unfair prejudice in three respects:

> First, [the accused] may become embarrassed, or confounded in presenting separate defenses. Secondly, the jury may cumulate the evidence of the various crimes charged and find guilt when, if the offenses were considered separately, it would not do so. At the very least, the joinder of multiple charges may produce a latent hostility, which by itself may cause prejudice to the defendant's case. Thirdly, the jury may use the evidence of one of the crimes charged, or a connected group of them, to infer a criminal

> disposition on the part of the defendant from which he may also be found guilty of other crimes charged.

McKnight, 280 Md. at 609 (citations omitted).

"In any given case of similar offense joinder, therefore, the trial judge must balance the likely prejudice caused by the joinder against the important considerations of economy and efficiency in judicial administration." *Id.* at 610.

In *McKnight* the Court of Appeals held "that a defendant charged with similar but unrelated offenses is entitled to a severance where he establishes that the evidence as to each individual offense would not be mutually admissible at separate trials." *Id.* at 612. In reaching that decision, the Court "limited the discretion afforded to a trial judge under Rule 4-253(c)[.]" *State v. Hines*, 450 Md. 352, 366 (2016).

> The pertinent principles have been distilled into the following two-part test:
>
> (1) is evidence concerning the offenses . . . mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. . . . If question number one is answered in the negative, then there is no need to address question number two; *McKnight* mandates severance as a matter of law.

Conyers, 345 Md. at 553.

B. Mutual Admissibility

"The question of mutual admissibility is simply a method of assessing what difference there would be between a joint and a separate trial in any given case." *Hines*, 450 Md. at 373. "Mutual admissibility" means that "evidence of each crime would be admissible in a trial for the other." *Bussie v. State*, 115 Md. App. 324, 333 (1997). In

such circumstances, the "defendant will not suffer any additional prejudice if the two charges are tried together." *McKnight*, 280 Md. at 610.

There is "a 'substantive overlap' between the mutual admissibility test and the evidentiary law of 'other crimes' evidence." *Garcia-Perlera v. State*, 197 Md. App. 534, 547 (2011) (quoting *Solomon v. State*, 101 Md. App. 331, 340 (1994)). In particular, "'other crimes' may be joined if they fall within the recognized exceptions set forth in Rule 5-404, which include motive, intent, absence of mistake, identity, common scheme, and *modus operandi*," or if they involve "'several offenses [ ] so connected in point of time or circumstances that one cannot be fully shown without proving the other.'" *Id.* (quoting *Solomon v. State*, 101 Md. App. at 350-54).

Here, the trial court ruled that evidence of witness intimidation would be admissible in the trial of the murder to show Cooke's consciousness of guilt in Ms. Bernadzikowski's murder. Similarly, the court ruled that evidence of the murder would be admissible in the witness intimidation trial to show Cooke's motive for preventing Lewis from aiding the murder prosecution.

Cooke challenges this determination of mutual admissibility, contending that evidence of witness intimidation case should not have been admitted to prove consciousness of guilt in Ms. Bernadzikowski's murder, because "there could be multiple reasons why [Cooke] would not want Lewis to testify, other than the murder of Ms. Bernadzikowski." In support of that contention, Cooke cites the reason defense counsel

argued in opposing joinder – that Cooke did not want Lewis to falsely accuse him of ordering the murder.

We are unpersuaded that Cooke's alternative inference proves that the court could not join the cases. In *Conyers*, another case involving charges of silencing a witness to a murder, the defendant and his accomplice, Bradshaw, allegedly committed a burglary during which a resident, Wanda Johnson, was killed. *Conyers*, 345 Md. at 534-35. When the police identified Bradshaw as a suspect in that crime, Conyers allegedly murdered Bradshaw. *Id*. at 535-36. The Court of Appeals affirmed the joinder of the two murder charges:

> The judge determined that evidence concerning the Johnson murder would be admissible in a trial on the Bradshaw murder because it would be relevant to show motive. The Bradshaw murder was, according to the State's theory, committed to conceal the Johnson murder. This Court has repeatedly stated that motive is one of the "other purposes" that will overcome the presumption of exclusion that pertains to "other crimes" evidence.
>
> Evidence concerning the Bradshaw murder, similarly, would be admissible in a trial on the Johnson murder. It would be relevant to show consciousness of guilt by showing that Appellant murdered the only witness to the Johnson killing. This Court has held that consciousness of guilt is an "other purpose" that will overcome the presumption of exclusion that is attached to "other crimes" evidence. . . . Mr. Bradshaw was present at the scene of Ms. Johnson's murder and potentially could identify Appellant as Ms. Johnson's murderer. Evidence that Appellant was also responsible for Mr. Bradshaw's murder would be admissible as evidence of Appellant's consciousness of guilt and as an expression of his attempt to conceal his involvement in the murder of Ms. Johnson.

Id. at 554-55 (citations omitted).

This Court reached the same result in another decision affirming the joinder of murder charges with charges of soliciting the murder of a witness. In *Lee v. State*, 186 Md. App. 631, 672 (2009), *rev'd on other grounds*, 418 Md. 136 (2011), this Court held that "evidence of the murder . . . was admissible with respect to the solicitation charge because it was relevant to show motive." Similarly, "evidence relating to the offense of soliciting the murder of . . . one of 'two people who could have ratted him out' on the murder, was admissible to show consciousness of guilt[.]" *Id*.[5]

Here, as in *Conyers* and *Lee*, evidence of the murder was admissible in a trial involving a cover-up – attempting to silence an accomplice who could implicate the accused in that murder – because those offenses are "'so connected in . . . circumstances that one cannot be fully shown without proving the other.'" *Garcia-Perlera*, 197 Md. App. at 547 (quoting *Solomon v. State*, 101 Md. App. at 354). If the Bernadzikowski murder charges were tried separately from the witness-intimidation charges, evidence that Cooke solicited a jailhouse hit on Grant Lewis would have been admissible to show Cooke's consciousness of guilt in that murder, *i.e.,* to show that Cooke tried to silence Lewis because he knew Lewis was one of only two people who could have implicated him in the murder of Ms. Bernadzikowski. By the same token, in a separate witness-intimidation trial, evidence that Cooke hired Lewis to murder Ms. Bernadzikowski would

[5] In *Lee*, 418 Md. at 157-58, the Court of Appeals reversed the judgment of this Court because of a *Miranda* violation, without addressing the joinder issue.

have been admissible as evidence of Cooke's motive for soliciting the jailhouse hit on his accomplice.

In short, evidence of an attempt to assault and intimidate a witness to a murder would be admissible in a stand-alone trial concerning the murder itself, while evidence of the murder would be admissible in a trial concerning the assault and intimidation of the witness. In other words, the evidence would have been mutually admissible in separate trials.

C. Prejudice

Cooke argues that even if the evidence would have been mutually admissible in separate trials, "the cases still should not have been tried together" because they were too "similar in nature," in that each involved charges that he paid "for someone else to hurt individuals." In his view, the trial court abused its discretion under the second part of the *McKnight* test by determining that the interest in judicial economy was not outweighed by other non-evidentiary considerations.

Cooke's argument faces a formidable obstacle: "[O]nce a determination of mutual admissibility has been made, any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder." *Conyers*, 345 Md. at 556.

In this case, it is true that joinder allowed the jury to cumulate the evidence of similar contracts to harm others. But because that evidence would have been mutually admissible in separate trials, the jury would have heard evidence of the other hit even if

the court had not allowed for joinder. Cooke was not prejudiced within the meaning of Rule 4-253(c) merely because he incurred "damage from evidence that would have been admissible in any event even had the trials of the . . . charges been severed." *Solomon v. State*, 101 Md. App. at 349.

In summary, given the mutual admissibility of the evidence and the necessity of understanding both sets of charges to understand the prosecution theory, joinder of these cases was not *unfairly* prejudicial in any of the respects identified by the *McKnight* Court. In these circumstances, the trial court did not err or abuse its discretion in joining the murder and witness intimidation charges for trial.

III. Sufficiency Challenges

Based on the evidence that Cooke arranged for a jailhouse hit on Grant Lewis, he was convicted of first-degree assault in violation of CR section 3-202(a)(1), as well as soliciting the intimidation of a witness in violation of CR section 9-305(b). Cooke challenges the sufficiency of the evidence supporting both convictions.

In considering a sufficiency challenge to a criminal conviction, we determine whether, when the evidence presented at trial is considered in the light most favorable to the prosecution, "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Jones v. State*, 440 Md. 450, 454-55 (2014) (quoting *Hobby v. State*, 436 Md. 526, 538 (2014)). In doing so, we defer to the jury's evaluations of witness credibility, its resolution of evidentiary conflicts, and its discretionary

weighing of the evidence, by crediting any inferences the jury reasonably could have drawn. *See State v. Manion*, 442 Md. 419, 431 (2015).

A. Assault in the First Degree

Although the crime of "assault" is now codified, the term "assault" is still defined to mean "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." CR § 3-201(b).

In general, an assault, without more, is an assault in the second degree. *See* CR § 3-203(b). An assault in the first degree, on the other hand, entails either "commit[ting] an assault with a firearm" or "intentionally caus[ing] or attempt[ing] to cause serious physical injury to another." CR § 3-202(a)(1)-(2). "Serious physical injury" means physical injury that "creates a substantial risk of death" or "causes permanent or protracted serious: (i) disfigurement; (ii) loss of the function of any bodily member or organ; or (iii) impairment of the function of any bodily member or organ." CR § 3-201(d). In cases that do not involve a firearm, first-degree assault is essentially a second-degree assault plus a specific intent to inflict serious physical injury. *See Snyder v. State*, 210 Md. App. 370, 385-86 (2013).

This Court has explained the distinctions between the different forms of assault: "The statutory offense of second-degree assault encompasses three modalities: (1) intent to frighten, (2) attempted battery, and (3) battery." *Id.* at 382. Cooke's sufficiency challenge focuses on the intent to frighten, while the State set out to prove an attempted battery.

"The intent to frighten variety [of assault] requires," among other things, "that the defendant commit an act with the intent to place another in fear of immediate physical harm." *Id.* at 382. Under this variety of assault, "[t]he victim must be aware of the impending battery." *Id.*

By contrast, "[t]he attempted battery variety of assault requires that the accused had a specific intent to cause physical injury to the victim, and to take a substantial step towards that injury." *Id.* "[T]here is," however, "no need for the victim to be aware of the impending battery." *Id.* To the contrary, "the attempted battery variety of assault may be committed 'even though the victim is entirely unaware of the impending battery.'" *Id.* (quoting C. Torcia, *Wharton's Criminal Law* § 179 (15th ed. 1993)).

Cooke argues that he could not be guilty of first-degree assault on Lewis because the State had no evidence that Lewis knew of the planned hit. His argument focuses on the wrong modality of assault.

In this case, the State's theory was that the assault was an attempted battery, not an "intent to frighten." To establish an attempted battery, it was not necessary to establish that Lewis was aware of the impending hit. *See id*.

The evidence was sufficient to establish, beyond a reasonable doubt, all elements of an attempted battery in the first degree. The State had the burden of proving "that the defendant actually tried to cause immediate . . . physical harm to . . . [the victim]," that he "intended to bring about" serious physical harm, and that he believed that he had the ability to do so. *See* Maryland Criminal Pattern Jury Instruction (MPJI-Cr) 4:01 (2d ed.

2013); *Snyder*, 210 Md. App. at 382. The evidence showed that Cooke made arrangements through his cellmate to have other detainees inflict injuries that were serious enough to prevent or deter Lewis from testifying. Cooke's recorded conversations with DiVenti confirm the existence of a plan whose purpose was to intimidate Lewis so that he would not give evidence against Cooke. When this evidence is considered in light of the trial testimony from DiVenti and Cooke's former wife, there was sufficient evidence that Cooke believed he had the ability to harm to Lewis. Moreover, Cooke took a substantial step toward that goal, based on the evidence that he authorized DiVenti to "handle it," agreed to pay for the hit with "dots," arranged for the purchase of a Green Dot card, and gave DiVenti the information necessary to use that card. Cooke is not relieved of criminal responsibility for the attempted battery merely because DiVenti was secretly working with the law enforcement authorities and did not intend to carry out the hit.

B. Solicitation to Intimidate a Witness

Cooke challenges his conviction under CR section 9-302(b), which prohibits:

> solicit[ing] another person to harm another . . . with the intent to: (1) influence a . . . witness to testify falsely or withhold testimony; or (2) induce a . . . witness . . . (i) to avoid the service of a subpoena or summons to testify; or (ii) to be absent from an official proceedings to which the . . . witness has been subpoenaed or summoned; or (iii) not to report the existence of facts relating to a crime[.]

In Cooke's view, the evidence was insufficient to convict him under this statute because "the State offered no evidence that Grant Lewis had been subpoenaed or was scheduled to be a witness."

Cooke's argument ignores the pertinent provisions of the statute. "Witness" is expressly defined to mean:

> a person who:
>
> (1) *has knowledge of the existence of facts relating to a crime or delinquent act*;
>
> (2) makes a declaration under oath that is received as evidence for any purpose;
>
> (3) has reported a crime or delinquent act to a law enforcement officer, prosecutor, intake officer, correctional officer, or judicial officer; or
>
> (4) has been served with a subpoena issued under the authority of a court of this State, any other state, or the United States.

CR § 9-301(d) (emphasis added).

Although the State did not subpoena Lewis to testify against Cooke or list Lewis as a witness, he undisputedly was a "witness" to the contract murder of Ms. Bernadzikowski, as he dealt directly with Cooke and Bennett throughout the negotiations, planning, and performance of the crime. As detailed in the summary of the record, there was ample evidence from which the jury could infer that Cooke acted to prevent Lewis from reporting information relating to the murder, because Lewis, even more damningly than Bennett, could implicate Cooke. The crime was complete once Cooke asked DiVenti to make the hit, and Cooke's subsequent delivery of payment information (the serial number of the Green Dot cards) confirmed the existence of that request. *See generally Monoker v. State*, 321 Md. 214, 220 (1990) ("[t]he solicitation is complete once the incitement is made, even if the person solicited does not respond at all").

IV. Evidentiary Challenges

Cooke's final assignments of error challenge the admission of evidence relating to the civil lawsuit over the life insurance proceeds and to the presence of two knives at the crime scene. Cooke contends this evidence was either irrelevant or that its probative value was outweighed by its unfairly prejudicial effect.

A. Relevancy Standards

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "Evidence that is not relevant is not admissible." Md. Rule 5-402. Even if relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403.

"A trial court's decision to admit relevant evidence over objection that the evidence is unfairly prejudicial will not be reversed absent an abuse of discretion." *Donaldson v. State*, 200 Md. App. 581, 595 (2011) (citing *Merzbacher v. State*, 346 Md. 391, 405 (1997)). "'[T]he fact that evidence prejudices one party or the other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403.'" *Odum v. State*, 412 Md. 594, 615 (2010) (quoting Lynn McLain, *Maryland Evidence: State and Federal* § 403:1(b) (2d ed. 2001)); *accord Burris v. State*, 435 Md. 370, 392 (2013). "'[E]vidence may be unfairly prejudicial 'if it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which

[the defendant] is being charged.'" *Odum v. State*, 412 Md. at 615 (quoting Lynn McLain, *Maryland Evidence: State and Federal*, *supra*, § 403:1(b)); *accord Burris v. State*, 435 Md. at 392. "The more probative the evidence is of the crime charged, the less likely it is that the evidence will be unfairly prejudicial." *Id*.; *accord Burris v. State*, 435 Md. at 392.

B. Evidence Regarding Insurance Litigation

During a motions hearing, the State proffered that Cooke, who was the primary beneficiary on Ms. Bernadzikowski's two life insurance policies, settled a civil lawsuit with the Bernadzikowski family over those proceeds for an amount equal to only 20 percent of the policy proceeds, and that he did so just before he was scheduled to testify at trial. The State argued that Cooke's conduct was admissible as evidence of his consciousness of guilt. The trial court agreed in part, allowing the State to elicit evidence that Cooke proposed and accepted that settlement, but excluding any evidence that the settlement occurred immediately before Cooke was called to testify in that civil trial. At trial, the State called the attorney who represented Ms. Bernadzikowski's mother in the civil action, who testified, over a defense objection, that Cooke proposed and accepted a settlement under which he received only 20 percent of more than $500,000 in life insurance proceeds.

Cooke contends that evidence regarding this settlement was irrelevant and unfairly prejudicial. In his view, neither the initiation of the civil case based on the family's concerns that Cooke was involved in Ms. Bernadzikowski's death, nor his interest in

settling the case, nor the amount of the settlement had any "bearing on establishing that [he] actually was involved" in the murder. Alternatively, even if that evidence was relevant, he contends that "the trial court still abused its discretion because the slight probative value was outweighed by the prejudicial impact" of the jury learning "that the family of Ms. Bernadzikowski believed [he] was involved in her death[.]" Furthermore, Cooke maintains, the purpose and effect of such evidence was "to appeal to the passions of the jury[.]"

"Evidence of a defendant's behavior after commission of a crime may be relevant and admissible as tending to show the defendant's consciousness of guilt." *Martin v. State*, 364 Md. 692, 706 (2001).

> Consciousness of guilt evidence is "considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind[,]" and state of mind evidence is relevant because "the commission of a crime can be expected to leave some mental traces on the criminal." Thus, by application of the accepted test in Maryland for ascertaining relevancy, "guilty behavior should be admissible to prove guilt if we can say that the fact that the accused behaved in a particular way renders more probable the fact of [his or her] guilt."
>
> As with other forms of circumstantial evidence, however, "the probative value of 'guilty behavior' depends upon the degree of confidence with which certain inferences may be drawn." "There must be an evidentiary basis, either direct or circumstantial," to link the defendant's conduct to the consciousness of guilt inference.

Decker v. State, 408 Md. 631, 641 (2009) (citations omitted).

In light of these concerns, courts have developed the following relevancy test for consciousness of guilt evidence:

> To be relevant, evidence of post-crime conduct must satisfy four inferences: (1) from the defendant's conduct, a desire to evade prosecution or conceal evidence; (2) from a desire to evade prosecution or conceal evidence, consciousness of guilt; (3) from consciousness of guilt, consciousness of guilt with respect to the charged offenses; and (4) from consciousness of guilt with respect to the charged offenses, actual guilt.

Wagner v. State, 213 Md. App. 419, 465 (2013) (citations omitted).

The evidence need not "'conclusively establish guilt.'" *Thomas v. State*, 397 Md. 557, 577 (2007) (quoting *Thomas v. State*, 168 Md. App. 682, 712 (2006)); *accord Wagner v. State*, 213 Md. App. at 465. Rather, the "'proper inquiry is whether the evidence *could* support an inference that the defendant's conduct demonstrates a consciousness of guilt." *Thomas v. State*, 397 Md. at 577 (quoting *Thomas v. State*, 168 Md. App. at 712) (emphasis in original); *accord Wagner v. State*, 213 Md. App. at 465. "'If so, the evidence is relevant and generally admissible.'" *Thomas v. State*, 397 Md. at 577 (quoting *Thomas v. State*, 168 Md. App. at 712) (emphasis in original); *accord Wagner v. State*, 213 Md. App. at 465.

Although Cooke does not specify which of these inferences he is challenging, he appears to dispute that his conduct in settling the lawsuit supports the first inference, *i.e.*, that in agreeing to take less than he initially claimed, he sought "to evade prosecution or conceal evidence[.]" In our view, however, the trial court did not err in concluding that, from Cooke's proposal and acceptance of a deeply-discounted settlement in litigation in which his role in Ms. Bernadzikowski's murder was under examination, the jury could infer that he was motivated to evade prosecution or conceal evidence of his role. Cooke, who had already filed bankruptcy at least once, was entitled to more than half a million

dollars as the policy's primary beneficiary, but only if he was uninvolved in Ms. Bernadzikowski's murder. *See generally Fister ex rel. Estate of Fister v. Allstate Life Ins. Co.*, 366 Md. 201, 218 (2001) ("a beneficiary of a life insurance policy may not recover under the policy if she is responsible for bringing about the death of the insured"). Yet rather than press his entitlement to the proceeds, Cooke compromised for 20 cents on the dollar.

Cooke was free to argue alternative reasons for the settlement, but the existence of competing inferences went to the weight of that evidence, not its admissibility. *Cf. State v. Manion*, 442 Md. at 431 ("It is simply not the province of the appellate court to determine 'whether the [trier of fact] could have drawn other inferences from the evidence,' . . . . because it is the trier of fact, and not the appellate court, that possesses a better opportunity to view the evidence presented first-hand, including the demeanor-based evidence of the witnesses, which weighs on their credibility"); *Thomas v. State*, 397 Md. at 578 (evidence is not *per se* inadmissible simply because there may be some "innocent, or alternate, explanation for the conduct").

C. Knives Shown in Crime Scene Photos

Cooke complains that the trial court abused its discretion in denying his motion to exclude evidence of two knives that were present at the crime scene when the police arrived. The first knife was one that Cooke had removed from his person and placed on the floor when an officer asked whether he had any weapons. The second was a knife that was found in an upstairs bedroom. Because neither knife was involved in Ms.

Bernadzikowski's murder, Cooke argues that they were irrelevant and "highly prejudicial" "propensity evidence." He maintains that "in a case where the victim was killed by a cutting, the jury would naturally assume that [he] was engaged in wrongdoing and was involved in the death of Ms. Bernadzikowski."

The record established that the challenged evidence was not presented for the prejudicial purpose posited by Cooke; to the contrary, the State inquired about both knives for the express purpose of *preventing* the jury from concluding that they were linked to the murder. Because multiple crime-scene photos show the knives, but were relevant for other purposes, the State sought to explain that neither of the knives were used in the murder. The prosecutor elicited that evidence from State witnesses. In addition, Cooke testified on direct that when an officer asked whether he had weapons, he took a pocket knife out and tossed it where the photos show it on the floor. Furthermore, the State consistently argued that Cooke did not perform the *actus reus* of the murder and was not present while it occurred.

In short, because the challenged evidence regarding knives not used in the crime was exculpatory, not prejudicial, the trial court did not err in concluding that it was relevant to explain their insignificance in crime-scene photographs. Nor did the court abuse its discretion in ruling that this evidence was not unfairly prejudicial.

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