UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 01848

September Term, 2015

LESTER SNYDER

v.

STATE OF MARYLAND

Graeff,
Berger,
Shaw Geter,
JJ.

Opinion by Shaw Geter, J.

Filed: March 21, 2017

This is an appeal from Lester Snyder's convictions, in the Circuit Court for Carroll County, for first degree murder, robbery with a deadly weapon and related offenses. Snyder preliminarily sought to exclude evidence obtained from the stop of a vehicle in which he was a passenger. Following a hearing, the Court, however, denied his motion and allowed the evidence at trial. Snyder was subsequently convicted by a jury on all counts and sentenced to life imprisonment without the possibility of parole.

On appeal, he presents six questions for review:

1) Did the trial court err in refusing to ask, on *voir dire*, whether any of the potential jurors had been convicted of a crime?
2) Did the lower court err in denying Mr. Snyder's motion to suppress?
3) Did the lower court err in allowing Deputy Cromwell to testify that the defendant would not consent to a search of her car?
4) Was Snyder denied his constitutional right to a unanimous verdict when the jury was not properly polled?
5) Did the trial court err in allowing the state to introduce a tape recording of a call between Mr. Snyder, Mr. Nicholas Valez and Ms. Alexis King?
6) Are several of the sentences illegal?

For the reasons set forth below, we answer the first five questions in the negative and the last question in the affirmative.

BACKGROUND

On October 4, 2014, at around 11:00 p.m., Jacob Kucharski was driving northbound on Route 32 when he saw two people standing over a body lying on the shoulder of the road. He stopped his car, rolled down the window and asked if they needed help. Neither person responded, but instead ran to a nearby car, got in and "took off…very quickly."

Kucharski then called 911 and advised that there was an unresponsive male lying on the side of the road. Corporal Mathew Wilson arrived on the scene at approximately 11:01 p.m. and saw the victim—later identified as Luis Xaiver Pol—lying on the ground next to a guardrail. There were about five to seven people around the victim as well as bullet casings near the victim's feet. Wilson spoke to Kucharski who informed him that the two people originally at the scene had fled in a four-door late model white sedan. A woman was the driver and a male was the passenger. Wilson then broadcasted a description of the car.

Deputy Robert Cromwell heard the broadcast. He saw a car matching the description going southbound on Route 32 and conducted a traffic stop. The driver of the vehicle was Meghan Goforth and the passenger was the appellant, Lester Snyder. Cromwell ordered them both out of the car and had them sit on the curb. At that time, James Smith pulled up in his car and advised Cromwell that the stopped vehicle had been speeding and crossed the double yellow lines to pass him. Goforth admitted she had done so because he was driving too slowly.

During the stop, Trooper Hopkins arrived on the scene and noticed that there was blood on Snyder's left palm and on the leg of his pants. He informed Cromwell of his discovery. Cromwell handcuffed Snyder and inquired about the blood stains. Snyder explained that the blood was a result of a sore on his lip that kept bleeding. Cromwell then frisked Goforth and Snyder, but found nothing illegal or suspicious. He proceeded to take photographs of them, wrote down their names and addresses, and released them with a warning for driving over the double yellow lines. Cromwell testified that there was seven

miles between the scene of the shooting and the area where Goforth and Snyder had been stopped.

The victim, a known drug dealer and resident of New York, sustained multiple gunshot wounds and was pronounced dead at the scene. After the police began investigating the murder, Goforth and Snyder were developed as suspects. When Goforth was interrogated she agreed to cooperate and testify against appellant.

Goforth told police that her boyfriend, Snyder, committed the murder. Like Pol, Snyder earned money by selling drugs and as a result was acquainted with the victim. Goforth testified that Snyder and Pol had a dispute over money Snyder purportedly sent to Pol in exchange for drugs. However, Snyder never received the drugs or his $2,000 back. Snyder was "mad" and complained to Pol about his business practices. According to Goforth, Snyder intended to confront Pol the next time he was in town.

On October 14, 2015, Goforth's friend Alexis King texted her informing that "A1 [Pol's nickname] is here." Around 9:30 p.m., the couple drove to King's apartment where Snyder began talking to Pol. After the conversation, the couple left the apartment and Snyder told Goforth that he did not get any money or drugs from Pol.

On the way home, Goforth stopped at a gas station. When she returned to the car Snyder was on the phone with Nicolas Valez, also known as Nico. She heard Snyder say "that's all you had to say bro. Say no more." Shortly after speaking with Nico, Synder's cell phone rang and it was Pol requesting that the couple give him a ride. The duo then turned around and headed back to King's apartment.

When they arrived, Snyder got into the back seat so that Pol could sit in the front. Goforth believed that Snyder was going to beat up Pol. When they arrived at the intersection of Route 32 and Nicodemus Road, Goforth parked and turned the car off. Pol got out of the car and began to walk away. Snyder got out and started shooting at him. Goforth claimed that she heard Pol yelling "no bro. Why? I didn't do anything." After Pol fell to the ground, Snyder stood over him and "kept shooting." Snyder then went into Pol's right pocket and took something out of it. According to Goforth, at that moment, Kucharski pulled up and asked "is everything ok?" Goforth and Synder jumped back into her car and pulled away. Snyder put the gun into the glove compartment and locked it. On their way home, they were stopped by police, but ultimately let go.

Goforth drove to Snyder's friend Bishop's house. Snyder wrapped the gun in a t-shirt and gave it to Bishop telling him to "get rid of it." Bishop gave Snyder a change of clothes and also provided him with a trash bag and bleach for his soiled clothing. Snyder told Bishop, "his broke ass only had 300," referring to Pol. Goforth and Snyder left the apartment and threw the trash bag into a nearby dumpster. The two then drove home.

Snyder told Goforth to get the car washed. She went to a carwash and cleaned the car inside and out. When she stopped at a nearby gas station she was apprehended by police, which led to her confession and subsequent cooperation.

On October 30, 2014, Snyder was charged in the Circuit Court for Carroll County with first degree murder, robbery with a deadly weapon, conspiracy to commit robbery, and related counts. At trial, Julie Kempton testified as an expert in serology and DNA evidence. She examined swabs taken from three areas of Goforth's car: two from the front

passenger seat and one from the top of the glove compartment. All swabs showed the presence of blood. DNA analysis of the swabs from the front passenger seat revealed a mixed profile, with Pol as the major contributor. The DNA profile obtained from the glovebox swab had a single source, Snyder. The serology and DNA evidence was consistent with Goforth's testimony at trial.

At the conclusion of the jury trial, Snyder was convicted of first degree murder, second degree murder, theft under $1,000, second degree assault, robbery with a deadly weapon, conspiracy to rob, felony murder, and use of a handgun in the commission of a crime of violence. Snyder was sentenced to life without the possibility of parole for first degree murder, ten years concurrent for robbery, ten years consecutive to the robbery conviction for robbery with a deadly weapon, and life without the possibility of parole, to be served consecutively for felony murder. This timely appeal followed.

We shall recite additional facts as necessary to our discussion of the issues.

DISCUSSION

I. *Voir Dire*

Prior to trial, appellant submitted *voir dire* questions to the trial court that he wanted the court to propose to potential jurors. Specifically, Question 16 asked:

> 16. Have you or any member of your family or close friends or neighbors ever been a victim of, accused of or a witness to any other crime, other than a minor traffic offense?"

At trial, the court declined to ask the question and the following colloquy[1] occurred:

> THE COURT: All right. Now, one thing I will direct your attention to, on the 4th page I am not giving the instruction about people being victims of crimes, witnesses to crimes, accused of crimes. The Court of Appeals says I don't have to give that instruction per a decision by Judge Watts and that case is Pearson v. State, 437 Md. 350.
>
> Anybody want to see the case?
>
> (Pause.)
>
> ***
>
> [DEFENSE]: May I see that case real quick?
>
> (Pause.)
>
> [PROSECUTION]: Your Honor, while we're reviewing that case would Your Honor mind inquiring as to Mr. Snyder coming up to the bench? Whether he waives that ability to come up to the bench.
>
> ***
>
> THE COURT: All right. Now --
>
> [DEFENSE]: Here is your case, Your Honor.
>
> THE COURT: -- anybody have anything we need to talk about now?
>
> [DEFENSE]: As to the jury instructions, I put a question in there about --
>
> THE COURT: Are you talking about voir dire?
>
> [DEFENSE]: Correct. Voir dire, as in has anybody voted for Mr. DeLeonardo --
>
> THE COURT: I am not asking that.
>
> [DEFENSE]: Okay.
>
> THE COURT: I am not asking that

In his brief, Snyder argued that the court abused its discretion in failing to ask whether members of the venire had been convicted of a crime. However, during oral

[1] At trial, Brian DeLeonardo and Allan Culver appeared on behalf of the State. Samuel Nalli and David McFadden represented Snyder.

argument, Snyder further explained his argument contending that the court was required to ask the "accused" portion of the requested *voir dire* question because it was intended to expose the venire persons' statutory disqualification. According to Snyder, if a member of the venire had been "accused" of a crime, it would lead to the discovery of members who were ultimately convicted of serious offenses, thereby disqualifying them from jury service.

In response, the State contends that the defense failed to preserve Snyder's argument regarding the court's failure to ask the requested *voir dire*. Based on the colloquy reproduced above, the State argues that the defense "acquiesced in the ruling [because]…defense counsel voiced no opposition to the court's ruling or its reliance on [the] *Pearson* [case]." As such, the State avers that Snyder has "no basis to appeal from the court's ruling." We agree.

Generally, in order to preserve an issue for appellate review, an individual must object to the trial court's ruling and a failure to object amounts to a waiver of the objection and acquiescence to the ruling. *See Graham v. State*, 325 Md. 398, 411 (1992); *see also Church v. State*, 408 Md. 650, 662 (2009). Maryland Rule 4-323(c) governs the method of making objections during jury selection, including objections made during *voir dire*. *Smith v. State*, 218 Md. App. 689, 700 (2014). It provides:

> **(c) Objections to Other Rulings or Orders.** For purposes of review by the trial court or on appeal of any other ruling or order, it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs. If a party has no

> opportunity to object to a ruling or order at the time it is made, the absence of an objection at that time does not constitute a waiver of the objection.

MD. RULE 4-323(c).

This Court has repeatedly found that an appellant preserves the issue of omitted *voir dire* questions when a party makes an objection at the time the court declines to ask the question. *See Benton v. State*, 224 Md. App. 612, 620-22 (2015); *see also Smith v. State*, 218 Md. App. 689, 700 (2014); *see also Baker v. State*, 157 Md. App. 600, 610 (2004). In *Benton*, prior to trial, the defense submitted a written request that the court ask potential jurors whether they had "been charged with or convicted of a serious offense[.]" *Benton*, 224 Md. App. at 620. During *voir dire*, the court declined to ask the proposed question. *Id.* at 618. At the conclusion of *voir dire*, the court inquired whether the parties had "[a]ny exceptions to the Court's voir dire[?]" *Id.* At that time, defense counsel joined in the State's request for a three-part "charged with, convicted of, victim of" question, indicating that he was "going to ask for the same thing in addition" to the State's request." *Id.* at 620. We concluded that "[t]hese efforts were sufficient to let the court know that the defense wanted the court to ask the proposed question and that the defense objected to the court's refusal to ask the question." *Id.* Therefore, "Benton adequately preserved his objection to the court's failure to propound his question." *Id*. at 622.

Likewise, in *Baker*, the appellant submitted a written list of proposed *voir dire* questions. *Baker*, 157 Md. App. at 608. At trial, appellant objected to the trial court's failure to propound several *voir dire* questions. *Id.* The court asked defense counsel whether he wanted to be heard regarding the objections, but counsel declined. *Id.* at 609. "On appeal

from the court's failure to ask one of the proposed questions, the State argued that the defendant had waived his rights by failing to state the basis for his objection." *Benton*, 224 Md. App. at 622 (citing *Baker*, 157 Md. App. at 609)). Applying Rule 4-323(c), we held that the defendant preserved his objection simply by informing "the trial court that he objected to its failure to ask his requested *voir dire* questions." *Baker*, 157 Md. App. at 610.

Here, in contrast to the above referenced cases, Snyder did not object to the court's failure to ask his requested *voir dire* question. The court stated, "I am not giving the instruction about people being victims of crimes, witnesses to crimes, [or] accused of crimes. The Court of Appeals says I don't have to give that instruction per a decision by Judge Watts and that case is *Pearson v. State*, 437 Md. 350. Anybody want to see the case?" Defense counsel reviewed the case and did not object to the court's ruling. Furthermore, Snyder did not request that the court ask whether any member of panel had been convicted of a crime. Based on these facts, Snyder did not "make known" to the court that he disagreed and therefore, did not properly preserve the issue.

II. Motion to Suppress

Snyder's second claim challenges the trial court's denial of his motion to suppress evidence recovered from the alleged unlawful search and seizure of Goforth's vehicle, in which Snyder was a passenger. He first contends that the initial stop of the car was not supported by reasonable articulable suspicion "that the occupants of Goforth's car, had been, or was about to be, engaged in criminal conduct." He also argues that the stop was

unlawfully prolonged after the officer's suspicions had been dispelled and therefore, constituted a "second stop" that was not supported by reasonable suspicion. As such, he avers that "[a]ll information learned during these illegal stops…should have been suppressed" and the trial court erred in denying his motion.

The State argues, conversely, that the trial court did not err in denying Snyder's motion to suppress. The State asserts that the stop was proper because the description of the vehicle was sufficiently similar to Goforth's vehicle and the "time and location of the stop was consistent with the known and probable direction of the suspects' flight." Therefore, the State maintains that the officers had reasonable suspicion to conduct the stop. In response to Snyder's second argument, the State asserts that the length of the stop, which "lasted only 18-19 minutes," was reasonable and there, consequently, was no second stop requiring independent justification.

The trial court denied Snyder's motion to suppress in a written opinion issued after a hearing. The court found that "based on the totality of the circumstances, [the] [o]fficer…had reasonable articulable suspicion" to stop the Lumina because:

> [the] vehicle match[ed] the general description of a vehicle observed leaving the scene of a shooting…it was headed away from the scene, on the same road and direction described by the witness…the vehicle was approximately six to seven miles away from the scene of the shooting, which occurred approximately ten minutes prior…[and] the probability that another…older model white vehicle would be traveling in that direction on that road that time of night is *de minimus*.

The court further concluded that there was no unlawful second detention. It reasoned that the entire stop was a permissible *Terry* stop that was related to the shooting and occurred

concurrently with the investigation of a traffic offense. The court found that the seizing officer "worked diligently to complete both purposes of this stop in a reasonable amount of time[.]" Therefore, the court concluded that the "officers involved did not unreasonably delay the stop[.]" We agree with the trial court's conclusion and reasoning on both points.

A. Standard of Review

When reviewing a lower court's ruling on a motion to suppress, we look exclusively to the evidence adduced at the suppression hearing. *Crosby v. State*, 408 Md. 490, 504 (2009) (internal citations omitted). We give "'great deference to the fact finding of the suppression hearing judge with respect to determining the credibilities of contradicting witnesses and to weighing and determining first-level facts.'" *McDuffie v. State,* 115 Md. App. 359, 366 (1997) (quoting *Perkins v. State,* 83 Md. App. 341, 346 (1990)) "'[W]e view the evidence and inferences that may be reasonably drawn therefrom in the light most favorable to the prevailing party on the motion,'" in this case, the State. *Owens v. State*, 399 Md. 388, 403 (2007) (quoting *State v. Rucker*, 374 Md. 199, 207 (2003)). Nevertheless, in resolving the ultimate question of whether the detention and attendant search of an individual's person or property violates the Fourth Amendment, we "make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Crosby,* 408 Md. at 490 (quoting *State v. Williams*, 401 Md. 676, 678 (2007)).

B. Reasonableness of the Stop

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. *Lewis v. State*, 398 Md. 349, 361 (2007) (quoting

Whren v. United States, 517 U.S. 806, 809-10 (1996)). The temporary detention of individuals during a traffic stop constitutes a seizure under the Fourth Amendment. *Id.* As such, all traffic stops must be reasonable. *Id.*

A traffic stop is reasonable and, therefore, justified under the Fourth Amendment where the police have reasonable suspicion supported by articulable facts that criminal activity is afoot. *Lewis*, 398 Md. at 361 (citing *Whren*, 517 U.S. at 812-13)). The reasonable suspicion standard requires police to have "a particularized and objective basis" for suspecting legal wrongdoing. *Id.* at 362. The Court of Appeals has adopted the following "LaFave factors" to assess whether the reasonable suspicion standard has been satisfied:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) *observed activity by the particular person stopped;* and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Id. We examine these factors based on the totality of the circumstances. *Crosby v. State*, 408 Md. 490, 505 (2009). To satisfy the reasonable suspicion standard, these factors considered as a whole, "must serve to eliminate a substantial portion of innocent travelers." *Id.* at 291 (citations omitted).

The Court of Appeals applied the above referenced six factors in *Cartnail v. State*, 359 Md. 272 (2000). In *Cartnail*, police received a report that "three black male suspects" fled the scene of a robbery in an "unknown direction driving a gold or tan Mazda." *Id.* at 277. One hour and fifteen minutes later, police stopped Cartnail, a black male, in a gold Nissan. *Id.* at 277-78. Cartnail was stopped in a different section of the city than where the

report indicated that the suspects were last seen. *Id.* at 277. The Court held that officers did not have reasonable suspicion to stop the Nissan. *Id.* at 296. It noted that given the size of the area, there was a wide "range of possible flight" that the perpetrators could have taken over the more than one hour time span after the robbery. *Id.* at 295. In considering the "whole picture," the Court concluded that the "details of the robbery suspects used by the patrol officer to make the stop did not reasonably and articulably match [Cartnail's] circumstances." *Id.* at 295-96.

Likewise, in *Madison-Sheppard v. State*, 177 Md. App. 165 (2007) police received a radio alert to "be on the look out for" a suspect in an attempted murder that occurred earlier that week. *Id.* at 168. The alert described the suspect as, "a black male, approximately six feet tall, 180 pounds, with cornrow-style hair[.]" The alert further informed that the crime occurred in the "Winding Brook" area. *Id.* at 168-69. Several days after the alert, an officer stopped Madison-Sheppard, who generally fit the description, searched him and found cocaine. *Id.* at 169. This Court looked to the LaFave factors and held the search invalid, reasoning that the physical description "could apply to a large segment of the African American male population. *Id.* at 179-80. We also based our conclusion on the fact that the crime was committed several days before the search, therefore, the area of possible flight "could be enormous." *Id.* at 180.

The common thread among these two cases is that the information broadcast to the police was not specific enough and the time that had elapsed since the crime had occurred, widened the pool of possible suspects and made it difficult to eliminate a substantial portion of innocent travelers.

In the case *sub judice*, the deputies received a radio broadcast to be on the "lookout for an older model, white vehicle that was leaving the scene of a possible shooting at Route 32 and Nicodemus Road[,]" now "traveling southbound on Route 32." After hearing the police broadcast, Deputy Cromwell observed a white vehicle pass him traveling south on Route 32. Cromwell subsequently stopped the car. The suspect car, an older model white Chevy Lumina, traveled over 500 yards before stopping. The location of the stop was about six to seven miles from the scene of the shooting and 14 minutes had elapsed since the initial 911 call. Furthermore, the stop occurred later in the evening, sometime after the 11 o'clock hour, in a rural area where there was little to no traffic. Given that the stop occurred late at night, less than 15 minutes after police were notified of the shooting, and there were not many motorists on the road, it was highly unlikely that a substantial number of innocent travelers were traveling southbound on Route 32 in an old model white vehicle. We therefore hold that, under the totality of the circumstances, Officer Cromwell had reasonable articulable suspicion to believe that Snyder and Goforth were suspects in the shooting and to detain them for a brief period of time so that he could either conform or dispel his suspicions.

C. Duration of the Traffic Stop

Any detention, under the Fourth Amendment, "must be temporary and last no longer than is necessary to effectuate the purposed of the stop." *Munafo v. State*, 105 Md. App. 662, 670 (1995). When the length of a traffic stop is in question, that is, the officer unreasonably prolonged the traffic stop to effectively constitute an unreasonable seizure

implicating the Fourth Amendment, we look at whether the investigating officer has proceeded as diligently as the officer could have under the circumstances. *See Graham v. State*, 119 Md. App. 444, 465-68 (1998).

The Supreme Court has explained further:

> In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. A creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But '[t]he fact that the protection of the public might, in the abstract, have been accomplished by "less intrusive" means does not, itself, render the search unreasonable.' The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

United States v. Sharpe, 470 U.S. 675, 686–87 (1985) (citations omitted). Therefore, we must determine whether Deputies Cromwell, Hugel, and Trooper Hopkins "diligently" investigated to determine whether Goforth and Snyder were the suspects described in the lookout and to issue a warning to Goforth for a traffic violation.

Deputy Cromwell stopped Goforth's vehicle because it matched the description of the vehicle seen leaving the scene of a shooting. With his gun drawn, and with Deputy Hugel providing back-up, Cromwell approached the driver's side and saw Goforth, a white female in the driver's seat and Snyder, a black male, in the passenger's seat. Cromwell ordered both occupants out of the car and patted them down for weapons. He retrieved their

identification and had them sit on the curb while he checked their licenses for any outstanding warrants and the car's registration. His investigation identified the driver and registered owner of the Lumina as Meghan Goforth. The passenger was identified as Snyder.

Simultaneously, about 20 seconds after the initial stop, an off-duty police officer stopped at the scene and told Deputy Hugel that the Lumina had crossed the double yellow lines in order to pass him on Route 32. Goforth admitted to the traffic violation explaining that he was going too slow and that she "had to pee."

Because Snyder and Goforth's information checked out, Deputy Hugel left to search for other cars matching the description of the lookout. Shortly after Hugel left, State Trooper Douglas Hopkins arrived on the scene. Cromwell then asked Goforth to consent to a search of her vehicle. Goforth refused. As a result, Cromwell asked Tropper Hopkins to watch the occupants, who were still seated on the curb, while he inspected the vehicle from the outside. While he was walking around the Lumina, he heard Trooper Hopkins ask Snyder "where the blood came from." Cromwell walked over to where Snyder was seated and observed small amounts of blood on Snyder's left hand and pant leg. Snyder informed that he had bitten his lip and showed Cromwell a sore which could have been the source of the blood.

Cromwell and Hopkins then conferred and decided to release Snyder and Goforth. Before releasing them, Cromwell photographed Snyder, Goforth, and the blood on Snyder's hand and pants. He testified that he did so because the description, timing, and location "matched up very perfect" to the lookout description. Cromwell also issued

Goforth a warning for crossing the double-yellow lines. The entire stop lasted 18 to 19 minutes.

Under these particular facts and circumstances, Deputy Cromwell worked with sufficient diligence to investigate whether Goforth and Snyder were the suspects in the shooting and to issue a warning for Goforth's traffic violation. There was nothing dilatory about Cromwell's actions. He merely used enough time to conduct a record check of Goforth's license and registration, Snyder's identification, as well as warrant checks on both individuals. He further conducted an examination of the suspects' car, before issuing a warning and releasing the occupants. Cromwell's conduct fell well within the permissible limits of a *Terry* stop and investigation for a suspected shooting and a routine traffic stop. *See Nathan v. State*, 370 Md. 648, 660 (2002) ("For Fourth Amendment purposes, a police officer who has reasonable suspicion that a particular person has committed…a crime may detain that person briefly in order to investigate the circumstances that provoked suspicion.") (citations omitted); *see also Byndloss v. State*, 391 Md. 462, 660 (2006) ("It is established that a records check of a driver's license, registration, and outstanding warrants is an integral part of any traffic stop."). We, therefore, find that the duration of the stop lasted only long enough to complete the procedures incident to both the *Terry* and traffic stop and was reasonable under the circumstances. The circuit court correctly concluded that there was no second detention requiring independent justification.

III. Admission of testimony that Goforth refused to consent to a search of her vehicle.

During the State's case in chief, Deputy Cromwell testified about his encounter with Goforth and Snyder. After he stopped their vehicle, he asked Goforth for consent to search the car. The following testimony ensued:

> Q: Did you ask, at some point did you ask Ms. Goforth if you could search her vehicle?
>
> A: Yes, I did.
>
> Q: And what was her response?
>
> [DEFENSE]: Objection. I mean we need Ms. Goforth here to say what happened--not--Mr. Cromwell's version of what Ms. Goforth said.
>
> THE COURT: Overruled.
>
> [PROSECUTION]:
>
> Q: You can answer.
>
> A: She told me no.

Snyder contends that the deputy's testimony that Goforth denied consent to search her vehicle was inadmissible. He cites *Longshore v. State*, 399 Md. 486 (2007), where the Court of Appeals held:

> A person has a constitutional right to refuse to consent to a warrantless search of his or her automobile, and such refusal may not later be used to implicate guilt. An unfair and impermissible burden would be placed upon the assertion of a constitutional right if the State could use a refusal to a warrantless search against an individual.

Id. at 537. Snyder avers that the trial court, therefore, "erred" in allowing Cromwell's testimony about Goforth's refusal to consent. He asserts that such an error warrants a "mistrial."

Conversely, the State argues that Snyder has waived this argument on appeal because he objected on different grounds below and he "failed to object when Goforth herself testified about her refusal to consent." Notwithstanding, the State contends that Snyder's claim is without merit because he is attempting to "vicariously" assert Goforth's Fourth Amendment rights. It asserts, "The rule in *Longshore* is rooted in an individual's *personal* Fourth Amendment right to refuse to consent—in that case the defendant [was] on trial." As such, the State asserts that "Snyder's Fourth Amendment rights were not violated by evidence of someone else's refusal to consent, and he may not invoke Goforth's Fourth Amendment rights." Last, the State alternatively, argues that if Snyder's claim is found to be meritorious, the trial court's error in admitting the testimony "at best amounts to harmless error."

> Maryland Rule 8–131(a) provides, in pertinent part:
>
> > Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.
>
> The purposes of Rule 8–131 are:
>
> > (a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation.

Webster v. State, 221 Md. App. 100, 111 (2015) (citing *Fitzgerald v. State*, 384 Md. 484, 505 (2004)).

It is well settled under Maryland law that when a party asserts specific grounds for an objection, all other grounds not specified by the party are waived. *Id.* at 111 (citing *Thomas v. State*, 183 Md. App. 152, 177 (2008)); *Ayala v. State*, 174 Md. App. 647, 665 (2007) ("It is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.") (quotation and citation omitted); *Stewart-Bey v. State*, 218 Md. App. 101, 127 (limiting appellate review to "the grounds assigned" in the objection during trial). Furthermore, "when evidence is received without objection, a defendant may not complain about the same evidence coming in on another occasion even over a then timely objection." *Williams v. State*, 131 Md. App. 1, 25-26 (2000); *see also DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.").

Our review of the record in this case persuades us that Snyder's objection was based on hearsay, when counsel articulated specific grounds stating, "[W]e need Ms. Goforth here to say what happened--not--Mr. Cromwell's version of what Ms. Goforth said." Snyder did not argue below as he does now, that Goforth's refusal to consent was inadmissible. Furthermore, we agree with the State that Snyder's reliance on *Longshore* is misplaced. He cannot invoke Goforth's Fourth Amendment rights and claim his rights were violated. Additionally, at trial, Goforth testified, without objection that "another police officer came up and asked if he could search [her] car, and [she] said no." Thus, even if the defense had objected previously to the testimony based on the grounds which he now

asserts, it was waived independently when Goforth herself was allowed to offer testimony to the effect without objection. Accordingly, the issue is not properly before us.

IV. Polling the Jury Panel

After the jury deliberated, the foreperson announced findings of guilty on all counts and the following occurred:

> THE CLERK: If this is the verdict of the jury, please respond yes.
>
> (Chorus of yes)
>
> THE COURT: Mr. Nalli?
>
> [DEFENSE]: Can I get an individual count?
>
> THE COURT: I'm sorry?
>
> [DEFENSE]: Can I get an individual count on the verdict?
>
> THE COURT: Do you want to poll the jury?
>
> [DEFENSE]: Yes.
>
> (The jury was polled)
>
> [DEFENSE]: Thank you, Your Honor.

The record shows that the foreperson was never individually polled.

Snyder contends that the "jury was not properly polled" because the foreperson was excluded from the poll. As such, he asserts that "there was no unanimous verdict," and the jury's guilty verdict is therefore, a nullity, entitling him to a new trial.

The State, on the other hand, asserts that Snyder's claim is not preserved because he did not object to the polling procedure at the time it was used. Nonetheless, the State avers that Snyder's claim fails on the merits because the procedure used in this case has

been sanctioned by both this Court and the Court of Appeals. Therefore, the State contends that Snyder has failed to state a basis for reversal. We agree.

The Court of Appeals' recent decision in *Colvin v. State*, 450 Md. 718 (2016), is controlling. The defendant in *Colvin*, challenged the legality of his sentence based solely on the fact that the jury foreperson was not polled. *Id.* at 726-27. He claimed, as Snyder does here, "that the procedure by which the verdict was returned does not reflect juror unanimity[.]" *Id.* at 726. The Court concluded that the alleged procedural flaws did not automatically implicate the jury's unanimity because the verdict was hearkened. *Id.* at 728. Chief Judge Barbera, writing for the Court explained:

> The most that can be said of Colvin's alleged claim is that the record does not reflect, at least as Colvin would argue, a properly conducted polling process. Yet, that allegation, even if true, does not make a substantive allegation of a lack of juror unanimity without more: **the additional lack of a proper hearkening of the jury to the verdict**. The alleged lack of unanimity of the verdict is the lynchpin of Colvin's argument that the verdict, as rendered, is unconstitutional and therefore a "nullity" upon which no legal sentence can be imposed. Without that lynchpin, the fragile structure of Colvin's allegation of an illegal sentence collapses of its own weight.

Id. (emphasis added). The Court ended its opinion by stating that "an alleged procedural error in the taking of the verdict must be preserved by contemporaneous objection and, if not cured at the time, be raised on direct appeal[.]" *Id.* at 728–29.

Here, Snyder's claim is not preserved because he alleges a procedural error to the polling process and he did not object to the taking of the verdict at trial. *Id.* at 728 ("[P]rocedural challenges to a verdict ought be done by contemporaneous objection.") Notwithstanding, Snyder's argument also fails because the jury unanimously assented to

the verdict as hearkened. *Id.* at 727 ("[H]earkening the verdict 'serves the same purpose' as a poll of the jury.") (citing *Santiago v. State*, 412 Md. 28, 37 (2009)); *see Jones v. State*, 384 Md. 669, 684 (2005) ("Hearkening…like polling the jury, is conducted to 'secure certainty and accuracy, and to enable the jury to correct a verdict, which they have mistaken, or which their foreman has improperly delivered.'") (citations omitted). As such, the verdict is not a nullity.

V. Admissibility of the Recorded Jail Call

At trial, the State introduced into evidence a recorded telephone call from Nicholas Valez—an inmate at the Carroll County Detention Center and associate of Snyder—to his girlfriend, Alexis King. During the phone call, King called Snyder and formed a three-way call. The State sought to admit the call to show that Valez gave Snyder the "green light" to murder Pol.[2] The defense made a motion *in limine* to preclude introduction of the jailhouse call. The court denied the motion and allowed the call to be played for the jury.

Snyder asserts that the recording was admitted in violation of the Wiretapping and Electronic Surveillance Act, MD. CODE, Cts. & Jud. Proc. § 10-401 *et seq.* (2013), because he neither consented to nor was aware that the call was being recorded. The State responds by asserting that Snyder has waived his purported argument. Nevertheless, the State argues that the Wiretap Act does not apply to the call. It further argues that Snyder did in fact

[2] Goforth testified that Valez was "more [of] a friend to [Pol] than [Snyder] was." Therefore, she believed that Snyder sought Valez's "permission" to murder Pol.

know the call was being recorded because he had been incarcerated previously. Therefore, the State contends that the call was lawfully recorded and is admissible.

The Court of Appeals has established:

> [W]hen a motion *in limine* to exclude evidence is denied, the issue of the admissibility of the evidence that is the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial.

Klauenberg v. State, 355 Md. 528, 539 (1999) (citations omitted). Furthermore, "[i]t is well settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal. *Id.* at 541 (citations omitted).

Snyder has waived his current argument that the recording is inadmissible under the Wiretap Act because he objected based on different grounds below. At trial, when the State introduced the recording, the following colloquy occurred:

> [PROSECUTION]: Your Honor, at this time, the State would offer into evidence State's Exhibit 98.[3]
>
> [DEFENSE]: I object, Your Honor, may we approach?
>
> (Whereupon, a bench conference follows.)
>
> [DEFENSE]: From what I understand of the testimony of Lieutenant Wolf is that a phone call was made with Mr. Nicholas Valez DC number but we don't -- she is saying it is Nicholas Valez. We don't know if that is true or not.
>
> ***
>
> [DEFENSE]: It can come in, but I would ask that it just be a call initiated by whoever has that DC number or at that point. She can't – she is saying –

[3] The recording had previously been marked as State's Exhibit 98.

> [PROSECUTION]: I think that is what she is saying.
>
> [DEFENSE]: I think she is saying Nicholas Valez.
>
> [PROSECUTION]: Well I can clarify with her that this is from the account of Nicholas Valez.

Snyder objected to the witness' characterization that the call had been made by Valez. He did not object to the admissibility of the call per se. Additionally, when the call was eventually played for the jury, the defense objected only on the basis that a "voice expert" would be necessary to identify Snyder's voice on the recording. Because Snyder objected based on the initiation of the call and the identification of the voice on the call, he failed to preserve the issue of the admissibility of the recording under the Wiretap Act, which he now raises on appeal. Nevertheless, the Wiretap Act is not applicable because the call was not intercepted and furthermore, Snyder implicitly consented to the recording.

VI. Illegal Sentences

Snyder's final contention is a request for sentencing relief. The jury found Snyder guilty of first degree murder, second degree murder, theft under $1,000, second degree assault, robbery with a deadly weapon, conspiracy to rob, felony murder, and use of a handgun in the commission of a crime of violence. The trial judge sentenced Snyder as follows:

> **As to the charge of first-degree premediated murder…I impose the sentence of life without the possibility of parole.** As to the charge of second-degree murder,…I will merge that charge into the first charge.
>
> As to the count of theft less than $1,000, I will simply enter the finding of guilt. On the charge of assault in the second degree, I will likewise entering the finding of guilt.

> As to the charge of robbery, I will impose a sentence of 10 years concurrent with the first count. As to the charge of robbery **with a dangerous weapon, I will impose a sentence of 10 years consecutive to the robbery count, concurrent with the more serious count.** On the charge of use of a firearm in a crime of violence, I will merge that into the preceding count.
>
> On the charge of conspiracy to commit robbery, I will simply enter the conviction. **And on the charge of felony murder in the first degree, I will enter a sentence of life concurrent with the life without parole sentence, consecutive to the other counts.**

Emphasis added.

Snyder argues, and the State concedes, that his conviction of robbery should have merged into his conviction of robbery with a deadly weapon because the former is a lesser included offense of the latter. Snyder also contends that he should have received only one sentence for the two murder convictions. He asserts that "the trial court erred in failing to merge the convictions for felony murder and first degree premeditated murder" because "he cannot be convicted of killing the same individual twice." The State agrees that "he could not have been *sentenced* for both convictions, but emphasizes however, that "Snyder could have been (and in fact was) convicted of both first-degree premediated murder and first-degree felony murder." As such, both parties agree that Snyder's life sentence for felony murder should be vacated. We agree with both of Snyder's contentions.

"Maryland recognizes three grounds for merging a defendant's convictions: (1) the required evidence test; (2) the rule of lenity; and (3) the principle of fundamental fairness. *Carroll v. State*, 428 Md. 679, 693-94 (2012) (internal quotations and citations omitted). We explained the required evidence test, in *Kyler v. State*, 218 Md. App. 196 (2014), *cert. denied*, 441 Md. 62 (2014):

> In determining whether one offense merges with another, we initially apply the "required evidence test. The required evidence test focuses upon the elements of each offense; if all the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter. If each offense contains an element which the other does not, there is no merger under the required evidence test even though both offenses are based upon the same act or acts.

Id. at 225–26 (internal quotations and citations omitted).

Here, Maryland Code, Section 3-402(a) of the Criminal Law Article provides that a "person may not commit or attempt to commit robbery." Under the common law, robbery is defined as "the felonious taking and carrying away of the personal property of another from his person by the use of violence or by putting in fear." *Fetrow v. State*, 156 Md. App. 675, 687 (2004) (quoting *Metheny v. State*, 359 Md. 576, 605 (2000)). Likewise, robbery with a deadly weapon, although sometimes called armed robbery, is defined as a robbery "(1) with a dangerous weapon; or (2) by displaying a written instrument claiming that the person has possession of a dangerous weapon." Crim. Law § 3-403(a). Based on these definitions, it is clear that robbery is a lesser included offense of robbery with a deadly weapon because the latter contains the added element of a dangerous weapon. As such, since robbery with a deadly weapon contains all the elements of a robbery and both offenses are based upon the same incident, the robbery sentence merges into the robbery with a deadly weapon sentence.

As to Snyder's convictions for first-degree premeditated murder and felony murder, the Court of Appeals has established that these offenses would not be deemed the same

offense under the required evidence test.[4] *See Williams v. State*, 323 Md. 312, 324–25 (1991). However, the Court hypothesized this case's exact scenario in its 1991 opinion in *Williams v. State*, and resolved the proposed issue under the principle of fundamental fairness. The Court explained:

> First degree murder under Art. 27, § 407, and felony murder under Art. 27, § 410…each have distinct elements and would not be deemed the same offense under the required evidence test. Nevertheless, those homicide offenses which would not be deemed the same under the required evidence test are generally treated as the same offense for multiple punishment and successive trial purposes. Thus, if one wilfully, with deliberation and premeditation, kills a person in the course of an armed robbery, he cannot receive both a sentence for deliberate and premeditated murder under Art. 27, § 407, and a separate sentence for felony murder under Art. 27, § 410. In Maryland the homicide of one person ordinarily gives rise to a single homicide offense, and multiple prosecutions or punishments for different homicide offenses, based on the slaying of one person, are generally precluded.

Id. at 324–25 (internal quotations and citations omitted). "Upholding two first degree murder [sentences] for the killing of the same victim(s) is redundant." *Wagner v. State*, 160 Md. App. 531, 559 n.21 (2005) (citing *Burroughs v. State*, 88 Md. App. 229, 247 (1991). Based on past precedent, we therefore, vacate the life sentence imposed for the felony murder conviction.

[4] Section 2-201(a)(1) of the Criminal Law Article defines first-degree premeditated murder as a murder that is "a deliberate, premeditated, and willful killing." Section 2-201(a)(4) of the same Article defines felony murder as a murder that is "committed in the perpetration of or an attempt to perpetrate" a list of enumerated felonies, including "robbery." As such, both first-degree homicide offenses have distinct elements and would therefore, not merge under the required evidence test.

SENTENCES FOR ROBBERY AND FELONY MURDER VACATED. ALL OTHER JUDGMENTS OF CONVICTION ARE AFFIRMED. COSTS TO BE PAID ONE–HALF BY APPELLANT, ONE–HALF BY CARROLL COUNTY.