

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 2243

September Term, 2023

JOEL UGAH

v.

STATE OF MARYLAND

Graeff,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: September 11, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Joel Ugah, Appellant, was tried before a jury in the Circuit Court for Baltimore City on charges arising from the shooting death of Brittany Keyser and the shooting of Kenneth Wills. Appellant was convicted of first-degree murder, attempted second-degree murder, use of a firearm in the commission of a felony or crime of violence, and wear, carry, or transport of a handgun on his person. He was sentenced to an aggregate term of life incarceration plus thirty-five years. Appellant noted a timely appeal of his convictions. He contends that the admission of voice identification testimony elicited from a detective who administered Appellant’s *Miranda* warnings trapped him in a “Hobson’s choice.”¹ The sole issue for our review is:²

Whether the circuit court erred or abused its discretion in admitting voice identification testimony.

For the reasons to follow, we shall affirm Appellant’s convictions.

FACTUAL AND PROCEDURAL BACKGROUND

In the early hours of April 15, 2022, Kenneth Wills (“Wills”) and Brittany Keyser (“Keyser”) drove together to Brooklyn Homes, the 800 block of Gretna Court in Baltimore City, intending to purchase crack cocaine. At that time, Keyser and Wills were not in a romantic relationship; however, they were “best friend[s]” and had two children in

¹ A Hobson’s choice is “the paradox of an apparently free choice when in reality there is no alternative.” *Simpson v. State*, 442 Md. 446, 464 n. 8 (2015).

² Rephrased from:

Whether the court erred as a matter of law under *Doyle v. Ohio* and *Grier v. State* by allowing voice identification testimony when the witness’s basis of knowledge came from hearing Mr. Ugah’s *Miranda* invocation.

common. Keyser parked the car, and a man whom Wills identified as Appellant approached. Keyser offered Appellant cash to purchase crack cocaine, but Appellant indicated that it was not enough money. Keyser then left the car. Shortly thereafter, Keyser called Wills and asked him to walk to the end of the court because she said someone had hit her. Wills found Keyser and Appellant standing and talking. Wills attempted to convince Keyser to leave after he saw Appellant “reach for his pistol”; however, a physical altercation broke out between Keyser and Appellant’s companion, an unidentified woman. While the two women fought, Appellant walked behind Wills and tried to push him out of the way. Wills pushed Appellant away, attempting to shield Keyser. Appellant then shot Wills in the back of the head. At trial, Wills testified that he lost consciousness; when he awoke, Keyser was lying in the street. Appellant and his companion entered a car and drove away.

Wills called 911 as Appellant and his companion were leaving the scene. Police officers responded to the scene and discovered Wills conscious but struggling to speak due to blood in his mouth; Keyser was lying on the ground and bleeding from her head. Officers provided care to Wills until paramedics arrived. Wills was transported to the hospital and survived his injuries. Keyser died at the scene, having suffered multiple gunshot wounds to the head and neck.

The officers who initially responded to the scene canvassed the area; however, they were unable to discover any witnesses. Additionally, five shell casings and a bloody cigarette butt were recovered from the scene of the shooting. Detective David Moynihan (“Det. Moynihan”), a homicide detective with the Baltimore City Police Department, was

assigned as the lead investigator. Det. Moynihan responded to the scene after Wills had been transported to the hospital. While at the scene, Det. Moynihan noticed a CitiWatch camera mounted on a nearby building.³ Det. Moynihan contacted CitiWatch and learned that the camera had captured video footage of the shooting.

Det. Moynihan reviewed over twenty hours of CitiWatch footage and learned that the car driven by Appellant and his companion, a white Toyota Corolla (“the Corolla”), first appeared at Brooklyn Homes at approximately noon on April 14, 2022, the day before the shooting. However, the Corolla did not remain at that location; throughout the day and following night, the CitiWatch camera captured that the car left and returned to the area multiple times. Appellant could also be seen standing near the car and changing his clothes several times throughout the day. Keyser first appeared in the footage at approximately 6:00 a.m. on April 15, 2022. Appellant could be seen striking her in the face, at which point Wills also entered the frame of the footage. The physical altercation described by Wills was captured in the recorded footage. The camera’s automatic panning obscured some of the incident; however, Appellant could be seen standing over Wills and Keyser, shooting both at point blank range as they lay on the ground.

Through the CitiWatch footage, Det. Moynihan observed the license plate number on the Corolla that was at the crime scene. The same license plate number was also captured

³ Det. Moynihan explained that CitiWatch cameras are city-owned and operated surveillance cameras which are capable of panning and zooming in and out. CitiWatch cameras are not monitored constantly and pan automatically if not being manipulated. The CitiWatch camera which captured the shooting automatically panned approximately every eighty seconds.

by a license plate reader⁴ affixed to a passing police car at approximately 9:00 p.m. on April 14 in the same area as the shooting. Det. Moynihan discovered that the vehicle was a rental car owned by Enterprise Rent-A-Car. Sergeant Jonathan Riker, a member of Det. Moynihan's investigative team, visited two Enterprise locations in and around Baltimore and recovered video footage of Appellant retrieving the white Corolla at the Enterprise located on Crain Highway in Glen Burnie, Maryland on April 14, 2022 and returning it to the Enterprise located on Joppa Road in Baltimore on April 16. The rental contract for the Corolla confirmed that the car had been rented and returned on those dates in Appellant's name, and the contract was signed and initialed by Appellant. Additionally, two members of law enforcement who were familiar with Appellant identified him in the Enterprise footage and in the daytime CitiWatch footage. Appellant was arrested on May 10, 2022, and a search of his apartment recovered narcotics and nine cell phones.

In July of 2023, Appellant was tried before a jury; a mistrial was declared following jury deliberations. A second jury trial was held in October of 2023.

On the third day of trial, the State called Det. Moynihan as a witness. During his testimony, the State sought to admit into evidence recordings of three “no pin”⁵ jail calls

⁴ Det. Moynihan explained that a license plate reader is a device which records an image of each license plate it encounters. Det. Moynihan explained that there are “numerous fixed license plate readers throughout the city of Baltimore,” and that some police vehicles and tow trucks are equipped with mobile license plate readers. A mobile license plate reader captured the license plate of the Corolla.

⁵ A recordkeeper for the Baltimore City jail explained that after being arrested and booked, individuals in jail receive a pin which they use to make phone calls, and which is associated with them in the jail's call logs. Prior to being booked, inmates do not have a pin, so any calls they place are not associated with a pin. Such calls are documented as “no pin” calls.

which appeared to be placed by Appellant on May 10 and 11, 2022. The State presented the jail calls as evidence of consciousness of guilt.⁶ To lay a foundation for the calls, the State asked Det. Moynihan if he had ever heard Appellant's voice. Defense counsel objected, and the following exchange ensued:

[STATE]: Do you recognize [Appellant's] voice?

[DET. MOYNIHAN]: Yes.

[STATE]: Did you ever listen to the jail calls --

[DEFENSE COUNSEL] May we approach?

THE COURT: You may.

...

[DEFENSE COUNSEL]: The only way he heard his voice is when he spoke to him that day and he gave his Miranda Rights and he didn't talk.

[STATE]: As we discussed at the last trial, that --

[DEFENSE COUNSEL]: I don't care about the last trial.

[STATE]: Okay. Detective Moynihan knows [Appellant's] voice both from incidental conversations on the day of the arrest, as well as from prior interviews during the investigations of other homicides. In order to not bring either one of those two things up --

⁶ The State emphasized statements made on the calls such as "I'm going to need a real good lawyer," "At least get it down to 15 or 20, I'd take it," and "The bitch should have just let me dip" as indicating consciousness of guilt. The State argued that because the calls were made prior to Appellant receiving his charging documents, the statements indicated prior knowledge of the case.

[DEFENSE COUNSEL]: Oh, no. I would like to know when that was when he heard his voice at another homicide. You never said that before. This is the first time I've ever heard that in my life.

...

[STATE]: I'm asking a very circumscribe question. I'm asking, do you recognize the voice? I'm not asking from where.

THE COURT: Okay. I will allow the question, do you recognize the voice? And I will allow him to answer it. And I will allow you to cross-examine him about how weak that recognition could be.

[DEFENSE COUNSEL]: I don't know how he did it.

THE COURT: Well, you'll get to explore it.

[DEFENSE COUNSEL]: It's Miranda. That's how he did it.

THE COURT: You'll get to explore it.

The State continued to examine Det. Moynihan on his experience listening to the "no pin" jail calls and whether he recognized the voice making each call. Det. Moynihan identified Appellant's voice, and the State moved to enter the calls into evidence. Defense counsel objected again, and a second bench conference took place:

THE COURT: All right. What's the objection to this?

[DEFENSE COUNSEL]: The objection is basically that I don't have any idea where he heard his voice before other than the Miranda Rights when he declined to talk.

THE COURT: Well, they talked. The fact that he didn't discuss things with him --

[DEFENSE COUNSEL]: Oh, no, no, no. That's where he gets it from.

THE COURT: You can explore that.

[DEFENSE COUNSEL]: Wouldn't that have to -- how can I explore the fact that my client didn't agree to talk to him? I don't think that's --

THE COURT: Artfully, you'll have to figure out a way to talk about how to minimize [what] their conversation was.

[DEFENSE COUNSEL]: Well, I can't minimize the conversation. I can't minimize it, Judge.

THE COURT: Well, you can ask how many words did he speak to you.

[DEFENSE COUNSEL]: Yeah, but once it comes out --

THE COURT: I'm not asking you to bring that out. I'm asking you to say, did you talk to him any other time than X when he was arrested. No. How many words did he speak to you? What words were they? Were they sentences? Were they single words? You can explore that.

The court and counsel for both parties briefly discussed the basis for Det. Moynihan's knowledge and the admission of the jail calls at the prior trial.⁷ The court then admitted the jail calls into evidence. During cross-examination of Det. Moynihan, defense counsel did not ask any questions about the voice identification.

The jury found Appellant guilty of first-degree murder for the death of Brittany Keyser, attempted second-degree murder for the shooting of Kenneth Wills, and related

⁷ Defense counsel asserted that he had no knowledge of any prior conversations between Appellant and Det. Moynihan; the State noted that Det. Moynihan's reports included a record of a conversation between the two in 2015, which had been discussed at the prior trial. At oral argument, the parties conceded that there had been previous contact between Appellant and Det. Moynihan in 2015.

firearm offenses. In January of 2024, the court sentenced Appellant to life incarceration for first-degree murder and twenty years for the use of a firearm in the commission of a crime of violence, to run consecutive. Additionally, the court imposed twenty-five years for attempted second-degree murder, to run consecutive, with all but fifteen years suspended. Appellant noted a timely appeal.

DISCUSSION

THE CIRCUIT COURT DID NOT ERR OR ABUSE ITS DISCRETION IN ADMITTING THE VOICE IDENTIFICATION TESTIMONY.

Appellant contends that the circuit court made cross-examination impossible by admitting Det. Moynihan’s voice identification testimony. Appellant asserts that any cross-examination regarding the discussion that led to Det. Moynihan’s voice identification of Appellant would inevitably compel Det. Moynihan to reveal Appellant’s *Miranda*.⁸ invocation as the source of his knowledge. Thus, Appellant asserts that admitting the testimony created an “unconstitutional Hobson’s choice”—to either reveal the *Miranda* invocation to the jury, or to decline to cross-examine Det. Moynihan on the voice identification in total. Appellant further contends that because evidence of a *Miranda* invocation is inadmissible against a criminal defendant, voice identification testimony based on a *Miranda* invocation should by extension be inadmissible.⁹

⁸ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁹ Appellant further contends that he was prejudiced by the voice identification testimony because the jail calls were “critical” to the State’s case. We need not reach this contention, as we conclude that the testimony was admissible. We do note that Appellant’s contention of reversible error does not demonstrate that, if the circuit court had excluded Det.

The State contends that this issue is unpreserved. Should we conclude that the issue is preserved, the State contends that the circuit court was within its discretion to admit the testimony. The State asserts that, because the circuit court suggested alternative methods of cross-examination which would not reveal the *Miranda* invocation, Appellant’s claim is without merit. The State further maintains that the number of words spoken, not the substance of the words themselves, was relevant to cross-examining Det. Moynihan; thus, Appellant had a viable option for cross-examination. The State also asserts that Appellant could have sought another solution, such as asking the court to instruct the witness or, if the *Miranda* invocation was revealed, to request a curative instruction or to have the testimony struck.

A. Standard of Review

The parties disagree regarding the applicable standard of review in this case. Appellant asserts that the issue raises a purely legal question and should thus be reviewed by this Court *de novo*. The State asserts that the issue is one of trial management, which we review for an abuse of discretion. The issue which Appellant raises stems from the circuit court’s ruling on the admissibility of voice identification testimony; we thus will review this as an admissibility of evidence question. Where an evidentiary ruling “involves an interpretation and application of . . . case law,” we determine *de novo* whether the trial court’s conclusions are legally correct. *Lupfer v. State*, 420 Md. 111, 122 (2011) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)). Where an evidentiary ruling is discretionary,

Moynihan’s voice identification testimony, no other evidence authenticating the voice on the jail calls as that of Appellant would have been admissible.

we review the trial court’s decision for abuse of discretion. *Id.* “An abuse of discretion is found where the decision is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Freeman v. State*, 487 Md. 420, 429 (2024) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)).

B. Analysis

i. Preservation

At the outset, we address the preservation of this issue. The State contends that Appellant has not preserved this issue because he “failed to object when Detective Moynihan was asked to identify his voice as to two of the three jail calls at issue[.]” The State further contends that Appellant did not “express dissatisfaction with the court’s solution,” thus acquiescing to the ruling. We find that this issue is preserved.

Maryland Rule 4-323(a) states that “[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent.” Rule 4-323 is a preservation rule which serves the purpose of “preventing unfairness and requiring that all issues be raised in and decided by the trial court[.]” *Conyers v. State*, 354 Md. 132, 150 (1999). Here, defense counsel first objected to Det. Moynihan’s testimony that he recognized Appellant’s voice. The objection and subsequent bench conference made clear to the court that the basis of the objection was the foundation for Det. Moynihan’s knowledge, the *Miranda* invocation. Defense counsel’s subsequent objection, upon the State moving to admit the jail calls into evidence, again made clear that the *Miranda* invocation and defense counsel’s ability to cross-examine Det.

Moynihan was at issue. These objections were sufficient to notify the court of the grounds for objection, and the court was able to address and rule on the objections based on those grounds.

Further, the transcript does not indicate that defense counsel acquiesced to the court's ruling. Even after the court offered a solution, defense counsel continued to assert that the solution was inadequate, particularly because of the perceived inability to effectively cross-examine Det. Moynihan regarding his recognition of Appellant's voice. When the court suggested defense counsel could "minimize" the testimony, defense counsel replied, "I can't minimize it[.]" Counsel for the State and defense counsel discussed whether Det. Moynihan had another basis for his knowledge, and the court inquired as to the ruling at the previous trial. As to the previous trial judge's ruling to admit the jail calls, defense counsel stated, "that doesn't make it right, judge." Appellant adequately preserved this issue for our review.

ii. Admissibility

We first examine whether Det. Moynihan's testimony violated the prohibition on admitting evidence of post-*Miranda* silence. "Evidence of post-arrest silence, after *Miranda* warnings are given, is inadmissible for any purpose, including impeachment." *Grier v. State*, 351 Md. 241, 258 (1998) (citing *Doyle v. Ohio*, 426 U.S. 610, 619 (1976); *Miranda v. Arizona*, 384 U.S. 436, 468 n. 37 (1966)); *see also Kosh v. State*, 382 Md. 218, 233–34 (2004) ("A defendant's post-arrest silence may not be used as substantive evidence of guilt."). This prohibition is "implicit to any person who receives [*Miranda*] warnings"

because “it would be fundamentally unfair and a deprivation of due process to allow the arrested person’s silence” to be used against them at trial. *Doyle*, 426 U.S. at 618.

The rule has evidentiary as well as constitutional implications; a defendant’s silence after *Miranda* warnings “carries little or no probative value, and a significant potential for prejudice.” *Kosh*, 382 Md. at 232 (quoting *Grier*, 351 Md. at 258). In *Lupfer v. State*, the defendant, Lupfer, testified that he intended to cooperate with police prior to arrest. 420 Md. at 117. On cross-examination, the State then asked Lupfer whether he had been given the opportunity to “tell [his] side of the story” after being arrested. *Id.* at 119. Lupfer answered that after being presented with the charges, he immediately asked for a lawyer. *Id.* The Supreme Court of Maryland held that this evidence was inadmissible under Maryland Rule 5-403 because “the probative value of such evidence is dwarfed by the danger of unfair prejudice.” *Id.* at 140.

Appellant does not contend, nor would we find, that the prohibition on admitting post-*Miranda* silence was directly violated here. Det. Moynihan testified that he had heard Appellant’s voice and that he recognized Appellant’s voice as that on the three no pin jail calls. This was proper voice identification testimony, elicited by the State to authenticate the calls. *See* Md. Rule 5-901(b)(5) (“Identification of a voice . . . based upon the witness having heard the voice at any time under circumstances connecting it with the alleged speaker.”). The State did not elicit testimony from Det. Moynihan as to the basis of his knowledge, nor did Det. Moynihan offer such an explanation. Thus, evidence of Appellant’s *Miranda* invocation was never heard by the jury, meaning there was no violation of *Doyle* and *Grier*.

Rather, Appellant contends that the admission of the voice identification testimony implicated *Doyle* and *Grier* because it created a “Hobson’s choice”—a situation in which he could either leave the voice identification testimony unchallenged or introduce evidence of his *Miranda* invocation as his only means of impeachment. Thus, Appellant contends that he was unable to cross-examine Det. Moynihan without sacrificing his right not to have post-*Miranda* silence used against him. To illustrate this contention, Appellant offers two cases which he asserts are analogous. We find both to be inapposite.

In *Simpson v. State*, the defendant was charged with arson and signed a written statement confessing to the crime. 442 Md. 446, 450–51 (2015). During opening statements, the prosecutor remarked multiple times that Simpson “himself will tell you” about committing the crime and would “tell you why he did it.” *Id.* at 451. These remarks were references to Simpson’s signed statement, but created the implication that he would testify at trial. *Id.* at 453. Simpson did not testify. *Id.* The Supreme Court of Maryland held that the prosecutor’s remarks were adverse comments on Simpson’s failure to testify and thus violated his Fifth Amendment right to remain silent. *Id.* at 462. In so holding, the Court noted that the prosecutor’s remarks “forced upon [Simpson] a Hobson’s choice¹—either testify and subject himself to all the adverse consequences that might hold, or invoke his constitutional right to remain silent and risk that the jury would punish him for the prosecutor’s error by inferring guilt from his failure to testify.” *Id.* at 464. The Court noted that the prosecutor “may strike hard blows,” but not “foul ones.” *Id.* at 463 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

The second case relied upon by Appellant is *Thompson v. State*, in which the Supreme Court examined whether it was an abuse of discretion to give a jury instruction on flight. 393 Md. 291, 294 (2006). Police officers arrested Thompson as he fled the scene of a reported shooting on a bicycle. *Id.* at 294. When he was arrested, officers recovered a “significant quantity of cocaine” on Thompson’s person. *Id.* Evidence of the cocaine was suppressed prior to trial. *Id.* at 295. However, the State introduced evidence of Thompson’s flight at trial, and the circuit court gave a flight instruction to the jury. *Id.* at 297-98, 300. The Court determined that the instruction was improper because it was not reasonable to infer, under the facts of the case, “that the consciousness of guilt was consciousness of guilt of the crimes for which he was on trial[.]” *Id.* at 312, 314. It was equally reasonable to infer that Thompson fled due to consciousness of guilt for cocaine possession rather than attempted murder; thus, the Court held that the trial court abused its discretion in giving the instruction. *Id.* at 314. The Court noted that Thompson

was placed in a difficult situation where he must either not object to the highly prejudicial evidence concerning his possession of a significant amount of cocaine being introduced to the jury to explain his flight (or perhaps forced to make a Hobson’s choice to introduce such evidence himself), or decline to explain his flight and risk that the jury would not infer an alternative explanation for his flight.

Id. Appellant contends that his situation is similar to both cases because he, too, was given a Hobson’s choice to either let something detrimental stand unchallenged or take action which could further prejudice him. However, the facts of this case make it evident that Appellant was not faced with such a choice.

The State contends, and we agree, that this case is unlike *Simpson* and *Thompson* because “there was a third choice available” to Appellant. The circuit court suggested to defense counsel that there were avenues available for cross-examination which would have attacked the strength of Det. Moynihan’s voice identification without inquiring into the subject matter of the conversation underlying his knowledge, i.e., Appellant’s *Miranda* invocation. Moreover, the circuit court, in permitting Det. Moynihan’s testimony, noted that it would “allow [defense counsel] to cross-examine him about how weak that recognition could be.” The court suggested questions such as, “did you talk to him any other time than [] when he was arrested[?]” and “[h]ow many words did he speak to you? What words were they? Were they sentences? Were they single words?”¹⁰ Additionally, defense counsel could have inquired into the duration of the conversation, how long ago the conversation occurred, whether Det. Moynihan could describe any distinctive characteristics of Appellant’s voice—all avenues which could call into question the reliability of Det. Moynihan’s testimony without revealing Appellant’s *Miranda* invocation to the jury. Thus, Appellant’s choices, contrary to his assertions, were not limited to revealing the *Miranda* invocation or forgoing cross-examination altogether. Admission of the voice identification testimony neither directly nor indirectly implicated

¹⁰ Appellant, in his brief, describes a hypothetical cross-examination based on the circuit court’s suggested questions to speculate that the court’s suggestions would not have worked. However, courts must “decide actual cases and controversies, not abstract or hypothetical cases.” *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308, 342 n.8 (2020). We decide this case based on the record and decline to speculate about the results of a hypothetical cross-examination which did not occur.

Doyle and *Grier*; thus, the circuit court did not err as a matter of law. *See Lupfer*, 420 Md. at 122.

Additionally, the circuit court did not abuse its discretion in admitting the testimony over Appellant’s objections. *See id.* Separate from the factual distinctions, this case is unlike Appellant’s analogs because the concern in this case was only the potential risk of impermissible prejudice, while in both *Simpson* and *Thompson*, impermissible prejudice resulted. In *Simpson*, the prosecutor’s remarks violated the defendant’s right to remain silent by inviting an adverse inference from his failure to testify. 442 Md. at 462. In *Thompson*, the circuit court gave a flight instruction which was not based upon the requisite inference that the defendant had a consciousness of guilt for the crime charged. 393 Md. at 314. Here, by contrast, no undue prejudice was introduced by Det. Moynihan identifying Appellant’s voice on the “no pin” jail calls. The testimony and evidence introduced here is the sort that arises in the ordinary course of a criminal trial; such evidence is not unduly prejudicial “only because it hurts one party’s case.” *Montague v. State*, 471 Md. 657, 674 (2020). Defense counsel’s choice to forgo cross-examination to avoid any risk, however attenuated, of exposing the *Miranda* invocation was not the result of a “foul blow” on the part of the State. *Simpson*, 442 Md. at 463. Accordingly, the circuit court did not abuse its discretion in admitting the voice identification testimony.

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