Circuit Court for Baltimore City
Case No. 118354003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2641

September Term, 2019

WILLARD TURNER

v.

STATE OF MARYLAND

Friedman,
Wells,
Zic,

JJ.

Opinion by Friedman, J.

Filed: April 20, 2021

A jury in the Circuit Court for Baltimore City convicted appellant, Willard Turner, of first-degree murder, kidnapping, conspiracy to commit kidnapping, false imprisonment, conspiracy to commit false imprisonment, and second-degree arson.[1] The trial court sentenced Turner to a term of incarceration of life plus 80 years. Turner then filed a timely notice of appeal.

Turner presents the following questions for our review:

1. Did the trial court err in denying Appellant's motion to suppress his statement?

2. Did the trial court err in admitting body-worn camera audio that was more prejudicial than probative?

3. Was the evidence legally insufficient to support Appellant's convictions for murder and arson?

For the following reasons, we affirm the trial court's judgments.

FACTS AND LEGAL PROCEEDINGS

At approximately 2:30 p.m. on August 21, 2018, Baltimore City Police Officer Ned Hatcher responded to the Family Dollar store at 3645 Potee Street in response to a 911 call about an abduction. Timmy Jones and his seven-year-old daughter Tamara Jones told Officer Hatcher that a Black male Timmy[2] knew "from the streets" as "Philly" and a Hispanic male with a gun had approached Timmy's wife, Tiffany Jones, as the family tried

[1] The jury acquitted Turner of conspiracy to commit first-degree murder.

[2] Because two of the witnesses and the victim share a surname, we will refer to them by their given names, for clarity.

to enter the store.[3] Philly placed Tiffany in a headlock and held a knife to her throat, telling her, "We're going to talk." A black Chevy Silverado pickup truck driven by a white woman, later identified as Bobie Barncord, approached the scene moments later. Barncord yelled that Tiffany had taken all her money.

The two men forced Tiffany into the pickup truck driven by Barncord. As the pickup truck drove away, Timmy was able to observe the license plate and later reported it to the police. The black pickup truck was registered to Darin Barncord, Bobie Barncord's father.

Bobie Barncord drove Tiffany to a burnt-down, abandoned house where Jessica Bolander was "getting high" in the basement. Turner, whom Bolander knew as "Philly," entered the basement with Tiffany, whom she also knew, in a headlock and at knife point. Turner placed Tiffany on an overturned bucket, tied her up, and told Bolander that she "might want to leave." Bolander left the house and went to a friend's house a few doors down the street but did not call the police.[4]

The next morning, Officer Sharif Kellogg responded to a call for a structure fire at 3420 7th Street, the same abandoned house where Bolander had been the day before. When he arrived at the vacant home, Kellogg observed black smoke billowing out of the basement

[3] In court, Timmy Jones identified Turner as "Philly."

[4] When she was later picked up by the police and shown a photo array, Bolander selected "Philly" as a person of interest in Tiffany's abduction. She did not make a positive identification because, in the "terrible pictures" that appeared "old," Philly looked "a lot different" than he did in person. Bolander did, however, make an in-court identification of Turner as the person who brought Tiffany into the basement of the abandoned house on August 21, 2018.

door. Upon the fire fighters' entry into the house, they discovered the partially burned, nude body of a woman later identified as Tiffany Jones.

Bureau of Alcohol, Tobacco, Firearms, and Explosives Special Agent Daniel Giblin, accepted as an expert in fire origin and cause investigation, determined that the fire damage at 3420 7th Street was contained to the southeast corner of the basement of the house and involved a female victim, who had sustained fire damage to the front of her body. Based on the fire pattern and debris samples, it was Giblin's expert opinion that the fire originated around the body of the victim, which he testified had likely been doused with an ignitable liquid, such as lighter fluid.

The assistant medical examiner testified that Tiffany Jones' body was found with her hands bound behind her back, a "variety of items around her head and neck," burns to her body, and blunt force injuries to her face and head. A plastic bag had been placed in her mouth, and it had partially melted to her face from the fire. The medical examiner concluded that Tiffany's cause of death was "multiple injuries," and the manner of death was a homicide.

The police located the pickup truck involved in the abduction a short distance away from the house in which Tiffany's body was found. Bobie Barncord was arrested in the vicinity of the pickup truck and taken for questioning.[5] From the pickup truck, police recovered a knife, and a pair of Nike sneakers consistent with those Tiffany was wearing at the time of her abduction.

[5] Barncord's trial for her part in the alleged crimes is scheduled to begin in June 2021.

Turner was arrested in Philadelphia on August 31, 2018. Detectives Shawn Reichenberg and Aaron Olmstead traveled to Philadelphia and obtained a recorded statement from Turner. The audio recording was played for the jury and admitted into evidence.

On the audio recording, Turner acknowledged going by the nickname "Philly." Early in the interview, Turner told detectives that he understood that his name arose in relation to the abduction only because he was in the pickup truck with Barncord, who had been looking for Tiffany because Barncord believed that Tiffany had stolen her cellphone. But, he said, he was not involved in the kidnapping and got out of the pickup truck before the abduction and walked around until Barncord received a call that someone had seen Tiffany near the Family Dollar.

By the time Barncord pulled up in the pickup truck moments later, Turner was already talking to Tiffany about the stolen cellphone. He said that after he and the other man at the scene got Tiffany into the pickup truck, Barncord drove away with Tiffany, and he did not see Barncord again until later that evening when they were "chilling" in an abandoned property. He later admitted to detectives that he was in the pickup truck as it drove away from the Family Dollar but said that he exited before it reached the abandoned house in which Tiffany was later found.

Turner explained that later that night, "reports started coming in" that someone had been kidnapped. He assumed that Barncord had taken Tiffany to retrieve the missing cellphone.

Between 3:00 and 4:00 a.m. on August 22, 2018, Turner said, someone asked him to take a ride to Virginia. By the time Turner started getting "even crazier calls" about a burnt body being found in a building, he had been on the road to Virginia for almost two hours. After receiving several calls, Turner asked the person who was driving him to Virginia to take him to Philadelphia.

When the interviewing detective told Turner that he had watched security video of Turner grabbing Tiffany and putting her in a headlock, Turner admitted that he had wrapped his arm around Tiffany before Barncord arrived in the truck because "we going to get this phone[.] [W]e not playing around[.]" He continued to deny that he had brought Tiffany into the abandoned house and that he had laid his hands on her. No forensic evidence connected Turner to the house, but when Detective Reichenberg lied and told Turner his DNA had been found in the house, Turner claimed he had been hired to do some work there and had previously gone there with Barncord to get high.

DISCUSSION

In Section I, we explain why the trial court did not err by denying Turner's motion to suppress his recorded statement. In Section II, we explain why the body-worn camera audio was not unfairly prejudicial to Turner. Lastly, in Section III, we explain why the State's evidence was legally sufficient to support Turner's convictions.

I. THE TRIAL COURT DID NOT ERR BY DENYING TURNER'S MOTION TO SUPPRESS

Turner first contends that the trial court erred by denying his motion to suppress his recorded statement given to Detective Reichenberg. He asserts that he unambiguously requested the presence of a lawyer before answering questions, but that Detective

Reichenberg ignored him and told him he could make a call after he completed his statement. This failure to protect his Fifth Amendment right against self-incrimination, Turner concludes, mandates reversal of his convictions.

Upon Turner's arrest in Philadelphia, he gave a recorded interview to Detectives Reichenberg and Olmstead.[6] Following some preliminary discussion about cigarettes, coffee, and the frigid temperature in the room, the interview began in earnest.

We set forth pertinent portions, lack of punctuation and all:

Reichenberg:	I heard that man. My name is Shawn Reichenberg this is Detective [Olmstead] (inaudible) um and we're from Baltimore Homicide okay um so we made the little drive up here today.
Turner:	I was gonna say, y'all got up here pretty quick.
Reichenberg:	Yeah it's not far a couple hour drive if that we got stuck in traffic a little bit too so um just want to come up here and talk to you a little bit.
Turner:	I wasn't really trying to talk to y'all until I paid for my lawyer but evidently I ain't get the chance to get to working to pay for my lawyer first.
Reichenberg:	Well we're not I'm going to read you uh I'm gonna read you your have you ever been read your rights before?
Turner:	(inaudible) Hell no.
Reichenberg:	Okay you ever heard it on TV and that kind of stuff?
Turner:	Yeah I know what reading rights is.

[6] The latter detective's name is spelled "Ohmstede" in the unofficial transcript of Turner's recorded statement. Because it is unclear which spelling is correct, we will use "Olmstead," as provided in the official trial transcripts.

Reichenberg: We'll go over your explanation of rights I'll get some what we call an information sheet just you know your name that kind of stuff date of birth and stuff like that.

Detective: Here's your coffee that should warm you up. Here you go buddy.

Turner: I appreciate you man.

Detective: Working on a cigarette for you.

Turner: I appreciate you.

Reichenberg: And um thanks Kevin and um so we'll work on this and then um.

Turner: Is there any way my people can get called because I went to the store.

Reichenberg: Okay.

Turner: And before I can get up there they grabbed me like I ain't run from them or no shit I ain't got nothing to run for but I still wanted to make sure once my name is thrown in thrown in this shit let me get this fucking lawyer to talk for me because I'm just saying in general because this shit just ….

Reichenberg: Let me get through this and then when I'll when we get done here however you know long that takes or whatever, uh so we're a guest here obviously.

Turner: (inaudible).

Reichenberg: But I'll let them guys know you want to make a phone call or I can call somebody whatever you need me to do okay?

Turner: Okay.

Reichenberg: Alright brother okay. Alright spell your first name for me?

Turner: W-i-l-l-a-r-d

Reichenberg: And what is your middle name Mr. Willard?

Turner: Cleveland.

Reichenberg: C-l-e-v-e-l-a-n-d?

Turner: Uh huh.

Reichenberg: And your last name?

Turner: Turner.

* * *

Reichenberg: Willard, are you a senior … junior?

Turner: 3rd.

Reichenberg: Willard Cleveland Turner 3rd. Okay it is August 31, 1449 hours.

Turner: These rooms (inaudible) this shit be freezing. A/C work better in here than in the office.

Reichenberg: Always. The air conditioning in our office will run you out of there man you wake up in the morning if you been there all night your nose is cold you're like man it's like being outside.

Turner: Yeah. Shit I had work for me waiting down Florida under the table work for about a month and a half I was going to make sure I paid lawyer off then for him to tell me come on up here.

Reichenberg: Got you.

Turner: You don't really get a fair you don't really get a fair shake you already painted as you know what I mean.

Reichenberg: Got you alright Mr. Willard can you read and write? These questions aren't meant to offend.

Turner:	I mean it ain't offend me you doing your job.
Reichenberg:	Got you ok so obviously you see these 5 points right here I want you to read those out loud for me if you can.
Turner:	You have the right to remain silent anything you say.
Reichenberg:	Okay hold on so number 1 is what?
Turner:	You have the right to remain silent I got to initial all that shit.
Reichenberg:	Yep you understand that?
Turner:	Yeah.
Reichenberg:	Alright buddy and number 2?
Turner:	Anything you say or write may be used against you in a court of law.
Reichenberg:	Understand?
Turner:	You have the right to talk to an attorney before questioning before any questioning or during any questioning. Let me read that again you have the right to talk with an attorney before any questions or during any questions I know that shit recorded so I'm just doing it right.
Reichenberg:	That's alright number 4.
Turner:	If you agree to answer questions you may stop at any time and request an attorney and no further questions will be asked of you. If you want an attorney and cannot afford to hire one an attorney will be appointed to represent you.
Reichenberg:	And read that bold statement right here.

Turner:	(inaudible) I have been advised I understand my right I freely and voluntarily waive my rights and I agree to talk with the police without having an attorney present.
Reichenberg:	Okay. Okay so [Willard] you understand your rights?
Turner:	Yes.
Reichenberg:	Okay. You can talk you can stop at any time you want a lawyer we can do that and uh we'll go from there okay let me get this information sheet again so it's Willard[.]

Turner did not ask to stop the interview, and Detective Reichenberg obtained more of Turner's personal information, including his address, phone number, age, birthdate, height, weight, social security number, education, and employment. Detective Reichenberg then asked Turner if he knew why he was there. Turner acknowledged that "they … said that I … kidnapped a girl" named Tiffany he knew from the neighborhood.

Turner went on to provide a lengthy explanation of the events that had transpired on August 21, 2018. He said that he believed his name came up in relation to the kidnapping because he was in the pickup truck with his "good friend" Bobie while Bobie looked for Tiffany after Bobie's cellphone went missing. Once they found Tiffany and put her in the pickup truck, Turner said he was only in her presence "for like five minutes" before Bobie let him out. He didn't know where they went from there, and he didn't see Bobie again until later that night.

When Turner explained how he ended up in Philadelphia, he again mentioned a lawyer:

Turner:	Would have had any been slacking for about another three hours I would have been out of PA. Like I said I got work waiting for me down mother fucking Florida

you know what I mean, doing demolition, you know what I mean. The guy already know my situation already know I'm trying to get this money up for this lawyer you know what I mean. He got to put a crew together he gots like fifteen properties all got to get demoed and rebuilt like I said I got my certifications you know what I mean I'm I'm like you I'm coming I need to get this lawyer money up you know what I mean. Like I said I had every plan in the world to go ahead and got to work, stack my money, pay Robert Cole you know what I mean and then tell him let him tell me when it's time to come back in.

Reichenberg: Okay alright um okay so I guess you're, um I just want to come back to a few things just try to clarify some things.

Turner: Shoot.

After more conversation with Detective Reichenberg, Turner lamented the fact that he might miss his daughter's first day of school on September 5, 2018, and commented, "But yeah y'all mother fuckers y'all mother fuckers wasn't supposed to see me for like 2 months so I could have got my whole lawyer money shit together." Detective Reichenberg then said he would find a cigarette for Turner, and Turner responded, "I appreciate you," before continuing with his statement. At the close of the interview, Turner again asked if there was "any way I get a phone call?" Detective Reichenberg responded that he would ask the Philadelphia detectives how long it would be until Turner could make a call.

On the first day of trial, after jury selection, the trial court heard argument on Turner's previously filed written motion to suppress,[7] noting that it had reviewed the nearly

[7] Turner's written motion is not in the record. The State, however, did file a response to the motion, with a footnote stating that "[t]he motion has not been stamped as being

two-hour recording of Turner's statement in chambers. The court correctly surmised that Turner's argument in favor of suppression was that he had unequivocally requested an attorney, which should have suspended the interview.

The State's Attorney argued that Turner's request for a telephone call, which was denied by Reichenberg, related to his desire to alert his family that he had been arrested while on his way to the store and was not a request to call an attorney.[8] Although Turner referenced trying to raise money for an attorney, the State's Attorney continued, "there was no direct request that officers would understand to be a request for an attorney." The comment was "instead [a musing] of the defendant wishing that he had the opportunity to

[filed] with the clerk's office and the certificate of service indicates it was provided to the Office of the State's Attorney for Baltimore City on October 28, 2019." Defense counsel advised the trial court that he had hand delivered the motion to the State's Attorney's Office on that date but that the State's Attorney did not see it until she completed another trial on November 1, 2019. Because there appears to be no dispute that the motion was timely filed, or about its contents, we merely point out the omission from the record and continue our discussion.

[8] The trial court, "in the interest of context," stated:

> Very early in what I'll call the meeting within the interview room, as to the top of page two, Mr. Turner expressed concern about his people, any way his people could get called and I infer from that, his family or others who may be concerned about his welfare because the last those people had known, Mr. Turner had just left to go to the store from wherever he was and at that point, Mr. Turner says and before I can get up there, meaning the store, they come up and grabbed me. Presumably, I'm inferring from that the Warrant Apprehension Task Force members who effectuated the arrest. Is that what happened at that point?

The State's Attorney agreed that the court's understanding was correct, and defense counsel did not comment to the contrary.

pay his counsel to then afford his counsel the opportunity to be willing to engage on his behalf." After that initial comment, "nothing else in the video suggest[ed] any discussion about his lawyer whatsoever," and Turner clearly understood, during the recitation of his *Miranda* rights, that he had the right to stop at any point in time if he wanted to.

Defense counsel countered that "the first thing" Turner said when Detective Reichenberg walked into the interview room was "basically" that "I really wasn't trying to talk to y'all until I paid for my lawyer" and that when his "name got thrown into this shit, I wanted to get a lawyer to speak for me." He even mentioned Robert Cole, a defense attorney known to the trial court. In counsel's view, those comments made it clear that Turner wanted a lawyer, and, according to him, Detective Reichenberg impermissibly "danc[ed] around the enunciated request," instead of ending the interview.

The trial court ruled:

> Upon consideration of the defense motion to suppress the statement made by Mr. Turner on August 31, 2018 to certain members of the Baltimore Police Department's Homicide Unit, upon an interview that occurred in Philadelphia, Pennsylvania.
>
> Upon consideration of the State's response and opposition thereto, the Court certainly recognizes that *Edwards v. Arizona*, 451 U.S. 477 (1981) Supreme Court case requires, it doesn't ask, it requires law enforcement officers to cease questioning immediately upon the making of an unambiguous or unequivocal reference to an attorney made by a suspect, an arrestee, a person of interest for purposes of a custodial interrogation.
>
> In the view of this [c]ourt, Mr. Turner was certainly the subject of such a custodial interrogation. He had been picked up and placed under arrest and Baltimore authorities were contacted upon being notified that Mr. Turner was in custody in Philadelphia, Pennsylvania. He was met by the Baltimore Police Homicide Detectives. He referenced, Mr. Turner did, immediately upon the beginning of the interview with the police, can I get a phone call to talk with my people or to call with my people because I went to the store.

And that is a far cry from can I get a phone call to call my lawyer or to call a lawyer. Admittedly, within nine minutes and change of the beginning of the video, noting that the first several minutes are no activity because Mr. Turner is alone in the room, literally the first thing out of his mouth, Mr. Turner's, when he is encountered by the Baltimore Police Department Homicide Detectives is, "I didn't get to pay for my lawyer first." He then follows that up with, "Let me get this fucking lawyer to talk for me." And at that point literally within less than two minutes, Mr. Turner doesn't say perhaps you didn't hear me, I want to speak with my lawyer. He didn't say I won't talk with you, I want to speak with my lawyer. He [then] proceeds to acquiesce upon a reading of his Miranda rights and in [no] uncertain terms acknowledges that he understood each and every one of the right[s] without exception, initialing each in a singular fashion and then signing the document indicating his understanding of all the rights, and then proceeds to talk and to talk and to talk and to talk and to build a story and to effectively explain how he is anywhere near the alleged kidnapping of the victim leading up to the event of the alleged murder of the victim in the case.

At no time during any of that talking is he saying stop, I told you I want an attorney, maybe you didn't hear me say when I said I wished I had been able to pay for my attorney or finish paying off the attorney, meaning any balance I may have owed to an attorney from a prior matter or anything else, to engage him or her, so that my lawyer would speak for me here. But at no time did he unequivocally say that and the point is … that at any time he could have said that.

The [c]ourt finds that the very words of Mr. Turner do not square up with what the law expects in order to place upon the law enforcement authorities the requirement that they cease questioning or that they not talk to him in the first instance. Going back to the initial phase of these proceedings, I do equate the statement made, the very first statement made by Mr. Turner as not only [a musing] if you will, but an expression of regret by Mr. Turner that he didn't get to pay his lawyer first and that may have been so and that could have been what it was, and I'll assume for the sake of these observations that that is what that is, but that is in the view of the [c]ourt a far cry from saying stop, I know I don't need to talk to you. And even before you read the rights to me, even if I don't know, then I don't have to talk to you, I'm telling you I want to talk to a lawyer first, I want to make a phone call to a lawyer as opposed to what he said which is I want to call my people because I went to the store and presumably none of his people, his family members and folks who love him know where he was.

* * *

> On the contents of this interview, this [c]ourt does find that there was at best an ambiguous and I mean at best from the perspective of Mr. Turner, an ambiguous and equivocal reference to the need for an attorney but not an unambiguous, unequivocal request for an attorney, nor an unambiguous or unequivocal demand to stop the discussion whether before the rights were given or certainly after the rights were given. And upon those findings, Mr. Turner, respectfully the motion to suppress your statement is denied.

Our review of a court's denial of a motion to suppress is ordinarily limited to information contained in the record of the suppression hearing and not the record of the trial. *State v. Johnson*, 458 Md. 519, 532 (2018). When, as here, the motion to suppress has been denied, we consider the facts in the light most favorable to the State as the prevailing party on the motion. *Dashiell v. State*, 374 Md. 85, 93 (2003) (quoting *State v. Collins*, 367 Md. 700, 706-07 (2002)).

We "'extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous.'" *Padilla v. State*, 180 Md. App. 210, 218 (2008) (quoting *Brown v. State*, 397 Md. 89, 98 (2007)). As to the ultimate conclusion of whether an action taken was proper, "we must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Collins*, 367 Md. at 707.

The United States Supreme Court held in *Miranda v. Arizona* that the police must "advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation." *Lee v. State*, 418 Md. 136, 149 (2011) (cleaned up). "These well-known *Miranda* warnings require an individual to be informed that 'he has a right to remain silent, that anything he says can be used against him in a court of law, that

he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.'" *Reynolds v. State*, 461 Md. 159, 178 (2018) (quoting *Miranda v. Arizona*, 384 U.S. 436, 479 (1966)).

"Once an individual is apprised of these warnings, the individual has the right to invoke the constitutional safeguards or waive them and engage with law enforcement." *Id.* If he invokes his rights, all questioning must cease. *Williams v. State*, 445 Md. 452, 470 (2015) (citing *Miranda*, 384 U.S. at 473-74). If the officers continue to question him, "any evidence flowing therefrom is illegally obtained and thus subject to exclusion as fruit of the unlawful conduct." *Reynolds*, 461 Md. at 178.

"The accused's invocation of the right to counsel, though, cannot be equivocal or ambiguous." *Ballard v. State*, 420 Md. 480, 490 (2011). "If an accused makes a statement concerning the right to counsel 'that is ambiguous or equivocal' or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wanted to invoke his or her *Miranda* rights." *Williams*, 445 Md. at 470-71 (quoting *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010)).

The test for determining whether an individual properly invoked his *Miranda* rights is an objective one. *Ballard*, 420 Md. at 490. If the invocation "is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning." *Davis v. U.S.*, 512 U.S. 452, 459 (1994) (emphasis in original). A statement invoking the right to counsel "must be sufficiently clear 'that a reasonable police officer in the circumstances would understand the statement to be a request for an

attorney.'" *Billups v. State*, 135 Md. App. 345, 354 (2000) (quoting *Davis*, 512 U.S. at 459).

In *Ballard*, the defendant filed a pre-trial motion to suppress a portion of what he disclosed during his police interview in relation to a murder. 420 Md. at 483. Although he had properly received and waived his *Miranda* rights before speaking to the interrogating officer, Ballard argued that by saying "You mind if I not say no more and just talk to an attorney about this," he unequivocally invoked his right to counsel. *Id*. at 486-87. The trial court denied his motion to suppress. *Id*. at 487. The Court of Appeals reversed, and held that Ballard's statement "was a sufficiently clear articulation of his desire to have counsel present during the remainder of the interrogation, such that a reasonable police officer … 'would understand the statement to be a request for an attorney.'" *Id*. at 491 (quoting *Davis*, 512 U.S. at 459). The Court compared Ballard's statement to those in *Davis*, *Matthews v. State*, 106 Md. App. 725 (1995), and *Minehan v. State*, 147 Md. App. 432 (2002). *Id*. at 491-92. In *Davis*, the Supreme Court held that the statement "Maybe I should talk with a lawyer" was an ambiguous invocation of the right to counsel. 512 U.S. at 462. In *Matthews*, this Court held that "Where's my lawyer?" was an ambiguous assertion of the right to counsel. 106 Md. App. at 737-38. And in *Minehan*, this Court noted in dicta that "Should I get a lawyer?" would likely constitute an ambiguous request under *Davis*. 147 Md. App. at 443-44.

The *Ballard* Court distinguished Ballard's statements from those in *Davis*, *Matthews*, and *Minehan*, stating:

> None of the statements under consideration in those cases—"Where's my lawyer," "Maybe I should talk to a lawyer," or "Should I get a lawyer"—provides any indication that the suspect, at the time the statement was uttered, actually desired to have a lawyer present for the remainder of the interrogation.

420 Md. at 492. In contrast, because the phrase "you mind if …" did nothing to detract from Ballard's clear desire for the assistance of an attorney, the Court of Appeals held that Ballard's request was unambiguous and that he unequivocally invoked his right to counsel. *Id*. at 494.

Turner argues that he, like Ballard, unequivocally invoked his right to counsel when he made the following five statements:

1. I wasn't really trying to talk to y'all until I paid for my lawyer but evidently I ain't get the chance to get to working to pay for my lawyer first.

2. Is there any way my people can get called because I went to the store. And before I can get up there they grabbed me like I ain't run from them or no shit I ain't got nothing to run for but I still wanted to make sure once my name is thrown in thrown in this shit let me get this fucking lawyer to talk for me because I'm just saying in general because this shit just. . .

3. Shit I had work for me waiting down Florida under the table work for about a month and a half I was going to make sure I paid lawyer off then for him to tell me come on up here.

4. Like I said I got work waiting for me down mother fucking Florida you know what I mean, doing demolition, you know what I mean. The guy already know my situation already know I'm trying to get this money up for this lawyer you know what I mean. He got to put a crew together he gots like fifteen properties all got to get demoed and rebuilt like I said I got my certifications you know what I mean I'm I'm like you I'm coming I need to get this lawyer money up you know what I mean. Like I said I had every plan in the world to go ahead and got to work, stack my money, pay Robert Cole you know what I mean and then tell him let him tell me when it's time to come back in.

> 5. But yeah y'all mother fuckers y'all mother fuckers wasn't supposed to see me for like 2 months so I could have got my whole lawyer money shit together.

We disagree with Turner. None of these statements are an unequivocal invocation of the right to counsel like that in *Ballard*.

Turner first told Detective Reichenberg, "I wasn't really trying to talk to y'all until I paid for my lawyer but evidently I ain't get the chance to get to working to pay for my lawyer first." We understand the expression, "I wasn't really trying to … " to be a commonly used colloquialism, to express a lack of desire to do something.[9] This interpretation is borne out by Turner's later lamentation that the police "got up [to Philadelphia] pretty quick," that is, picked him up sooner than he expected, therefore he wasn't going to get the chance to go to Florida to work for "about a month and a half" to pay the lawyer, who would have told him "when it's time to come back in" and then speak for him. Referencing only the possibility of retaining a lawyer in the future, Turner never expressed a desire to end the questioning and speak with an attorney in the present. In any event, even if that is what Turner wanted to convey, his statement was not a clear, unequivocal invocation of his right to counsel.

Moreover, Turner read and recited his *Miranda* rights, including his right to speak with an attorney before questioning, which he carefully repeated because "I know that shit recorded so I'm just doing it right." He also recited his right to stop answering questions at

[9] *See* urbandictionary.com, last visited April 20, 2021, which defines "trying to" as "a phrase used to express a desire to do something. Often used as a question when looking for confirmation. Also means 'looking to' or 'want to.'"

any time to request a lawyer, who would be appointed if he could not afford one. Turner indicated he understood his rights, and Reichenberg reiterated, "You can talk you can stop at any time you want a lawyer we can do that." Immediately thereafter, Turner expressed no desire to have an attorney present while he gave his statement, and willingly spoke with Detective Reichenberg about the abduction of Tiffany Jones. In the recorded statement, which was played for the jury and admitted into evidence, Turner denied having any part in Tiffany's kidnapping, other than talking to her when he found her at the Family Dollar and escorting her into Barncord's truck. Turner denied knowing anything about Jones' death.

The only time Turner mentioned a telephone call was when he asked: "Is there any way my people can get called because I went to the store[?]." In light of the context, we agree with the suppression court's interpretation of that question, that is, that Turner was expressing a desire to call his friends or family, who might have been worried that he left to go the store and didn't return, because he was picked up by the police.

We conclude that a reasonable police officer in Detective Reichenberg's position would not have construed Turner's statements about working for a few months to raise money to hire a lawyer as requests not to talk with the police further without a lawyer present. Accordingly, we cannot say that Turner unambiguously and unequivocally invoked his right to counsel during his police interview. The suppression court did not err in denying his motion to suppress.

II. ADMISSION OF THE AUDIO FROM THE BODY-WORN CAMERA

Turner next contends that the trial court erred when it permitted the State to introduce into evidence the audio from Officer Hatcher's body-worn camera during his interview of Timmy Jones (the victim's husband) and Tamara Jones (the victim's daughter) at the scene of Tiffany Jones' abduction. In Turner's view, the audio "unduly emphasized the violent details of the kidnapping in a case where the identity of the perpetrators was the disputed issue." The audio, he concludes, had no probative value but prejudicially inflamed the passions of the jurors, and violated his right to a fair and impartial trial.

The State raises a preservation issue, asserting that Turner did not object to similar evidence when it was later introduced into evidence and that his objection to the admission of the audio before the trial court was on a different ground than the ones he raises here.[10] Even if preserved, the State continues, the trial court properly exercised its discretion in overruling Turner's objection to the admission of the audio because the evidence was relevant and more probative than prejudicial.

At a bench conference during Officer Hatcher's testimony, defense counsel preemptively objected to the State's expected attempt to admit into evidence the audio of Hatcher's body-worn camera footage of his interview with Timmy and Tamara upon

[10] Our review of the record satisfies us that Turner sufficiently preserved the issue by objecting to the admission of the evidence on the ground of unfair prejudice. His failure to object to similar evidence when it was later admitted is relevant to the harmlessness of the error, if any, but does not compel us to find waiver of the issue on appeal.

responding to the call for an abduction at the Family Dollar.[11] The bases for his objection were that the statements contained in the audio, particularly by Tamara about Turner's threats to shoot her and her father, her fear for their safety, and her mother being taken, were "really prejudicial," rather than probative, and comprised hearsay.

The State's Attorney argued that the statements were being offered to show the effect of the statements on Officer Hatcher as the listener, rather than for the truth of the matter asserted.[12] After Timmy provided him the tag number and description of the pickup truck that his wife was taken in, Hatcher ran the tag and put out an announcement over his police radio for officers to look for the vehicle.

The trial court asked defense counsel to state a non-speaking objection when the State's Attorney sought to admit the audio as State's exhibit 5, and the trial court would "handle it when it is ripe."[13] The State's Attorney's request for admission of the disc containing the body-worn camera audio recording occurred moments later. In line with the trial court's instruction, defense counsel objected without further comment. Referring to defense counsel's argument, and the State's Attorney's opposition, the trial court overruled

[11] Counsel did not object to the admission of the video portion of the recording.

[12] The Assistant State's Attorney actually argued that the statement was hearsay but fit within an exception to the hearsay rule. Hearsay, however, is "a statement … offered in evidence to prove the truth of the matter asserted." MARYLAND RULE 5-801. If it is offered for any other purpose, it is not hearsay. Thus, the Assistant State's Attorney should not have said hearsay, but it ultimately does not matter.

[13] It is the general rule in Maryland that parties are not to state the grounds for their evidentiary objections unless asked. MD. R. 2-517(a).

the objection and admitted the audio recording into evidence.[14] The audio recording was then played for the jury.

In that recording, Timmy explained that a man he knew as "Philly" had grabbed his wife, placed a knife to her throat, and forced her into a truck upon threat of death. During the encounter, Timmy said, Tamara started crying, and when Tiffany pleaded, "my daughter right there," Philly said, "I don't give a fuck. I'll shoot him and her and kill your bitch ass too." When Barncord drove up in the truck, Tamara cried, "don't hurt my mom," and then, "she tooks my mommy." Near the end of the interview, Tamara asked if Officer Hatcher was going to call "more police to stay with us" and asked whether they'd be safe at the police station.

Relevant evidence is generally admissible. MD. R. 5-402. "Evidence is relevant if it tends 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.'" *Walter v. State*, 239 Md. App. 168, 198 (2018) (quoting MD. R. 5-401). "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018) (quoting *State v. Simms*, 420 Md. 705, 727 (2011)).

Still, a trial court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice or other countervailing concerns. MD. R. 5-403; *Decker v. State*, 408 Md. 631, 640 (2009). In balancing probative value against unfair prejudice, however, prejudicial evidence is not excluded under Rule

[14] Except for a brief reference to the trial court's ruling on this hearsay matter, Turner appears to have abandoned the hearsay argument on appeal.

5-403 merely because it hurts one party's case. *Burris v. State*, 435 Md. 370, 392 (2013) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)). Instead, probative value is substantially outweighed by unfair prejudice only when the evidence "tends to have some adverse effect beyond tending to prove the fact or issue that justified its admission." *State v. Heath*, 464 Md. 445, 464 (2019) (quoting *Hannah v. State*, 420 Md. 339, 347 (2011) (cleaned up). Evidence 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*, 412 Md. at 615 (quoting LYNN MCLAIN, MARYLAND EVIDENCE §403:1(b) (2d ed. 2001)). And even so, the admission of evidence is "committed to the considerable and sound discretion of the trial court." *Merzbacher v. State*, 346 Md. 391, 404 (1997).

In the instant case, the identity of, and connection among, the perpetrators of Tiffany Jones' abduction were, of course, facts of consequence. In addition to the trial testimony of Timmy and Officer Hatcher, the jury was presented with the audio and video recording of Hatcher's body-worn camera, which captured Timmy and Tamara's raw emotion shortly after Tiffany's abduction.

The audio recording presented the jury with Timmy's first-hand account of the abduction and included his description and identification of "Philly" as one of the perpetrators and "Bobie" as the woman driving the pickup truck, as well as the connection between the two. Timmy provided the police with the license plate number of the pickup truck his wife had been forced in, which led the police to Barncord and then to Turner. Timmy also arguably provided a motive for the abduction, and his statement tended to

show that Tiffany did not leave the scene willingly, thus establishing the elements of kidnapping and, circumstantially, the other related crimes with which Turner was charged. The audio of Hatcher's body-worn camera footage was therefore legally relevant.

The kidnapping of Tiffany Jones, at knife-point and with callous disregard for the presence of her husband and young daughter, was a heinous crime, compounded by Tiffany's later apparent beating, murder, and burning, all over nothing more than either a missing cellphone or small amount of cash. The jury was entitled to hear Timmy and Tamara's first-hand account of the kidnapping, their anguish, and the harsh behavior of the assailants at the scene of the abduction, all of which could have circumstantially implicated them in her later beating and murder.

That the audio of the body-worn camera footage was cumulative to Officer Hatcher's and Timmy's trial testimony does not mandate a finding of unfair prejudice in its admission into evidence. *See Ford v. State*, 462 Md. 3, 59 (2018) ("The mere fact that evidence may be cumulative does not mean that the evidence is unfairly prejudicial. Indeed, Rule 5-403 couches cumulativeness in terms of the '*needless* presentation of cumulative evidence.'" (emphasis added)). The on-the-scene video, while repeating some of the information provided in Timmy's trial testimony, added the emotional component of the violent kidnapping of Tiffany Jones, in broad daylight, in front of her husband and young daughter. We are satisfied that the trial court did not abuse its discretion in admitting the audio from the body-worn camera recording.

III. SUFFICIENCY OF THE EVIDENCE

Finally, Turner contends that the State's evidence was insufficient to sustain his convictions of first-degree murder and second-degree arson. In the absence of any physical evidence connecting him to the crimes, Turner contends that the State failed to prove his criminal agency in the murder and the arson at the abandoned house where Tiffany's body was found.[15]

"The test of appellate review of evidentiary sufficiency is whether, after viewing the evidence 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." *Donati v. State*, 215 Md. App. 686, 718 (2014) (cleaned up). "The same review standard applies to all criminal cases, including those resting upon circumstantial evidence [because] generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitnesses accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "'the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Darling v. State*, 232 Md. App. 430, 465 (2017) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004)) (emphasis in original). In making that determination, we give deference to all the reasonable inferences made by the jury, regardless of whether we would have chosen a

[15] During his motions for judgment of acquittal before the trial court, Turner argued that the State's evidence failed to prove his premeditation to kill to support a conviction of first-degree murder. He appears to have abandoned this argument on appeal.

different reasonable inference. *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). And, we defer to the jury's "'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (quoting *Sparkman v. State*, 184 Md. App. 716, 740 (2009)).

The State presented sufficient circumstantial evidence to permit the jury to infer that Turner participated in Tiffany Jones' murder and the arson at the abandoned house, either as a principal or an accomplice. Timmy and Tamara recognized Turner as the person who threatened Tiffany with death and kidnapped her at knife point from the Family Dollar. Moreover, Turner did not dispute that he physically led Tiffany into Barncord's pickup truck. Turner also admitted to having a friendship with Barncord and to trying to help her retrieve her allegedly stolen cellphone from Tiffany, providing a motive for the kidnapping.

Then Bolander saw Turner force Tiffany, in a headlock and at knife point, into the basement of the abandoned house where she was found dead the next morning. Turner advised Bolander to leave the house before others arrived, arguably implying that what might follow would likely be unpleasant and illegal. Tiffany Jones was then tied up, gagged with a plastic bag, and beaten about the head and neck.

Evidence presented at Turner's trial tended to show that Barncord was just over five feet tall and weighed less than 100 pounds, lending doubt to an assertion that she alone could have subdued Tiffany, who was several inches taller and approximately 40 pounds heavier than she. Turner, at over 200 pounds and over six feet tall, was presented by the State's Attorney as more than capable of assisting in Tiffany's restraint and beating.

Although he denied to Detective Reichenberg that he entered the house with Tiffany, when Detective Reichenberg lied and said that Turner's DNA had been found in the basement, Turner came up with an explanation why his DNA might have been in the house. Turner also later instructed Barncord to clean any potential evidence that would connect him with her truck, and he fled the State, permitting the jury to infer a consciousness of guilt. And, when he was arrested in Philadelphia in connection with the kidnapping, Turner expressed surprise that the Baltimore police had found him so quickly but was not surprised that they were looking for him.

Less than 24 hours after the kidnapping, a fire was reported at the abandoned house, which, according to the ATF expert, originated in the corner of the basement where Tiffany's body was found bound, gagged, beaten, and burned. In the expert's opinion, an accelerant was used to light the body on fire, which the jury could have inferred was intended to destroy evidence of her murder.

A rational jury could have inferred that Turner either inflicted the fatal injuries on Tiffany, and started the fire to erase evidence of the murder, or acted as an accomplice with Barncord in those crimes. *See Sheppard v. State*, 312 Md. 118, 121-23 (1988), *abrogated in part on other grounds by State v. Hawkins*, 326 Md. 270 (1992). Taking the evidence in the light most favorable to the State, we are persuaded that there was sufficient evidence of Turner's involvement in the murder and arson to sustain his convictions beyond a reasonable doubt.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS ASSESSED TO APPELLANT.