Circuit Court for Baltimore City
Case No. 118113008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2835

September Term, 2018

ROSCOE WILLIAMS

v.

STATE OF MARYLAND

Arthur,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: March 16, 2020

A jury in the Circuit Court for Baltimore City convicted Roscoe Williams, appellant, of attempted voluntary manslaughter, second-degree assault, and reckless endangerment. The court sentenced Williams to ten years' imprisonment for the attempted manslaughter conviction and a concurrent five years for reckless endangerment. His second-degree assault conviction was merged for sentencing purposes.

Williams raises the following questions in this timely appeal:

1. Did the court err in admitting police officer testimony identifying Appellant in a video and in still photographs from the video?

2. Did the court err in admitting testimony regarding Appellant's prior contacts with the criminal justice system and testimony regarding police observations of Appellant that included observations made of Appellant in a "drug shop" area from a "covert" location?

3. Did the court err in admitting hearsay testimony?

4. Did the court err in admitting testimony regarding Appellant's post-arrest silence and abuse its discretion in denying Appellant's motion for mistrial?

5. Did the court err in admitting testimony regarding police efforts to locate the victim?

6. Did the court err in refusing to merge the sentence for reckless endangerment into the sentence for attempted involuntary [sic] manslaughter?

With respect to the first five issues, we shall hold that the circuit court did not err or abuse its discretion. On the final question, we agree with both Williams and the State that, for sentencing purposes, the court should have merged the reckless endangerment conviction into the attempted voluntary manslaughter conviction. Accordingly, we shall affirm Williams's convictions, but vacate his sentence for reckless endangerment.

BACKGROUND

At around 3:00 p.m. on March 17, 2018, Warren Fenner was found lying in the middle of the 2400 block of Jefferson Street in East Baltimore, bleeding profusely from multiple stab wounds. A paramedic took the victim to a nearby trauma unit, where he was transported to surgery.

Detective Peter Reddy retrieved video footage from cameras located at the adjacent "Coco Mart." The footage showed what Williams concedes are "clear views of the perpetrator" who stabbed Fenner.

Detective Reddy distributed a "seeking-to-identify flyer" to other police officers. The flyer contained still photographs of the perpetrator, taken from the Coco Mart video. Officer Donald Waldron told Detective Reddy that he recognized the person shown in the flyer.

Detective Reddy used the name that Officer Waldron gave him, with an age range, to search "various police databases," including the "arrest viewer." The search yielded information about Williams and photographs of him. Detective Reddy testified "that the suspect in the video and the picture that [he] pulled up from arrest viewer were the same." After observing the similarity, the detective obtained an arrest warrant for Roscoe Williams.

The stabbing victim could not be located to testify at trial, but the State presented the Coco Mart video and identification testimony by Officer Waldron. Officer Waldron testified that, based on his prior interactions with Williams, he was familiar with

Williams's appearance and voice. According to Officer Waldron, "Roscoe was in the video, that's 100 percent."

The State introduced two recorded jail calls that were made shortly after Williams's arrest, using a PIN number that was directly linked to Williams's account. Officer Waldron testified that one of the voices on the calls "sounded like" Williams.

Williams incriminated himself in the calls. In the first call, Williams said that he had been arrested because "they saw [him] on camera," but that the victim "ain't telling" and "ain't coming to court." In the second, Williams reiterated that the victim "ain't know who [he] was" and that he had been arrested because "they said they saw [him] on camera." He blamed himself for his predicament ("it's my fault"), and he vowed, "I'm done with that shit when I get home."

We shall add material from the record in our discussion of the numerous issues raised by Williams.

DISCUSSION

I. Challenges to Identification Testimony

Williams contends that the trial "court erred in admitting police officer testimony identifying [him] in a video and in still photographs from the video." Specifically, he challenges the testimony of Detective Reddy and Officer Waldron concerning the Coco Mart video and stills, as well as Officer Waldron's testimony that the person on the video was "Roscoe Williams, that's 100 percent." After reviewing the relevant record, we shall address Williams's arguments in turn.

A. Relevant Record

At trial, Detective Reddy testified that, using the name that he received from Officer Waldron, he searched "various police databases such as our arrest viewer." As a result of the search, the detective obtained photographs of Williams. When the detective compared the results of that search to the still photographs from the Coco Mart video, he "noticed that the suspect in the video and the picture that [he] pulled up from the arrest viewer were the same." "At that point," the detective "obtained an arrest warrant."

Officer Waldron testified about his familiarity with people he encountered while patrolling the 2300 block of Jefferson Street. He explained that "[a]s part of the drug unit we're there all the time." "It's an active drug shop," he said.

During his patrols, Officer Waldron had "come into contact with Williams a couple times" at a "little alleyway" "around Montford Street." "Every time he'd pass," the officer said, "[W]e'd go, 'Roscoe,' because we just remember his name." "It's a unique name."

Officer Waldron would "watch[] the [drug] shop" while he was (in his words) "in covert." On those occasions, the officer "always" saw Williams "on cameras."

Officer Waldron testified that he had "personally interacted" with Williams, talking with him on approximately ten occasions. He had last seen Williams a couple of months before the trial.

Officer Waldron did not testify about the Coco Mart video on direct examination. On cross-examination, however, the defense established that he had viewed the video. Then, on redirect, the State elicited the following testimony:

[PROSECUTOR]: Now, Officer Waldron, you testified that you saw the video footage in regards to the incident today?

[OFC. WALDRON]: I did.

[PROSECUTOR]: And, upon viewing that video footage, was the suspect readily identifiable to you?

[DEFENSE COUNSEL]: Objection.

THE WITNESS: Yeah.

THE COURT: Sustained.

[PROSECUTOR]: Were you able to identify anyone – was anyone in the video footage familiar to you?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

THE WITNESS: Yeah, Roscoe was in the video, that's 100 percent.

B. Williams's Challenges

Citing an assortment of evidentiary rules, Williams argues that "[t]he identification testimony of both Officer [sic] Reddy and Officer Waldron should not have been admitted" because, he says, it testimony contained "[i]nadmissible identification[s] *per se*." First, Williams contends that because "neither officer had personal knowledge of the events that took place on March 17, 2018[,]" the testimony was inadmissible under Md. Rule 5-602, which states that, "[e]xcept as otherwise provided by Rule 5-703 [governing expert testimony], a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Second, Williams argues that "the court erred as a matter of law in admitting incompetent and irrelevant evidence[,]" in violation of Md. Rule 5-402, which states that

irrelevant evidence is inadmissible, and Md. Rule 5-701, which requires that a lay witness's opinion testimony be "helpful to the trier of fact[.]" In addition, Williams challenges Officer Waldron's testimony on the grounds that it went beyond the scope of cross-examination in violation of Rule 5-611(b) and that it revealed a discovery violation under Rule 4-263. Alternatively, Williams maintains that, to the extent "the officers' testimony had some probative value[,]" it "was substantially outweighed by the danger of unfair prejudice" and should have been excluded under Rule 5-403.

In its response, the State distinguishes the challenged identification testimony by Detective Reddy from the challenged identification testimony by Officer Waldron. We shall do the same, considering each challenge in turn.

1. Testimony by Detective Reddy

Williams challenges Detective Reddy's testimony that he believed the photos taken from the Coco Mart video and the photos obtained from police databases, including an "arrest viewer," depicted the same person. In Williams's view, this testimony was not admissible under Rule 5-602, because Detective Reddy lacked "personal knowledge of the matter," and was not admissible as a lay opinion under Rule 5-701 because the identification was not "helpful to . . . the determination of a fact in issue[.]" Alternatively, Williams contends that Detective Reddy's identification was inadmissible under either Rule 5-402, because it was irrelevant, or under Rule 5-403, because it was unfairly prejudicial.

"The admissibility of evidence ordinarily is left to the sound discretion of the trial court." *Moreland v. State*, 207 Md. App. 563, 568 (2012) (citing Md. Rule 5-104(a)).

"We will not disturb a trial court's evidentiary ruling unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion." *Id.* (citations and quotation marks omitted). Although relevance is a question of law, which we typically review on a de novo basis (*see, e.g.*, *Smith v. State*, 218 Md. App. 689, 704 (2014)), the issue of relevance in this instance is subsumed in the contentions that the witness lacked personal knowledge and that he offered an improper lay opinion. "The decision to admit lay opinion testimony is vested within the sound discretion of the trial judge." *Warren v. State*, 164 Md. App. 153, 166 (2005). Because a lay opinion must be "rationally based on the perception of the witness" (Md. Rule 5-701), the decision to admit lay opinion testimony necessarily entails a finding that the witness had personal knowledge. We review preliminary findings such as those under the deferential "clearly erroneous" standard." *See Jones v. State*, 410 Md. 681, 699 (2009).

Here, Detective Reddy compared the still photographs that he had taken from the Coco Mart video with the photographs of Williams from the police databases, including the "arrest viewer." On the basis of the comparison, the detective testified that both sets of photographs depicted the same person. As a consequence, he obtained an arrest warrant for the person depicted in the police databases – Williams.

The detective unquestionably had personal knowledge of the matter about which he testified, because his testimony was based on the visual data that his eyes received as he viewed and compared the two sets of photographs. Furthermore, his testimony was admissible as a lay opinion, because it was not only "rationally based on the perception of the witness," but was also in some way "helpful to a clear understanding of the witness's

testimony or the determination of a fact in issue." Md. Rule 5-701. In particular, the challenged testimony explained that the detective obtained an arrest warrant for Williams because, in the detective's assessment, the person in the still photographs from the Coco Mart video looked like the person who was identified as Williams in the police databases. The court did not err or abuse its discretion in overruling Williams's objections based on lack of personal knowledge, improper lay testimony, or relevance.

Williams goes on to argue that, even if the detective's testimony was admissible, "its probative value [was] substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence," so that the court should have excluded it under Md. Rule 5-403. We review that decision for abuse of discretion. *See, e.g.*, *State v. Simms*, 420 Md. 705, 725 (2011). When weighing the probative value of proffered evidence against its potentially prejudicial nature, a court abuses its discretion "where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Webster v. State*, 221 Md. App. 100, 112 (2015) (alteration in original) (citations and quotation marks omitted). The decision "will not be reversed simply because the appellate court would not have made the same ruling." *King v. State*, 407 Md. 682, 697 (2009).

On this record, we can hardly say that court abused its discretion in concluding that the probative value of the detective's testimony was not "substantially outweighed" by the danger of "unfair prejudice." As the circuit court observed, the detective's generic references to "police databases" is not inherently prejudicial, because they may include

benign databases such as motor vehicle records. The two references to the "arrest viewer" stand on a different footing, but they were brief, the State did not dwell on them, and Williams did not even object to the first of them. There was no abuse of discretion.

2. Identification Testimony by Officer Waldron

Williams brings a similar array of challenges to Officer Waldron's testimony that "Roscoe was in the video, that's 100 percent." In addition to his previous arguments that the witness lacked personal knowledge of the matter in question and that the witness was offering an inadmissible lay opinion, Williams argues that the testimony was beyond the scope of cross-examination, that the State violated its discovery obligations by failing to disclose the identification before trial, and that the court should not have permitted the witness to quantify his level of certainty about the identification.

We begin with the issues of whether Officer Waldron had sufficient personal knowledge to testify about the contents of the video and whether his testimony entailed an inadmissible lay opinion.

When determining whether to admit testimony in which a witness identifies the accused as the person depicted in a photograph or video, we apply the principles announced in *Moreland v. State*, 207 Md. App. 563 (2012). In that case, the trial court admitted the testimony of Owens, a police officer who testified that he had known Moreland more than forty years, that they grew up and went to school together, and that he referred to him as his "cousin" even though he had no blood relationship. *Id*. at 567. On the basis of his familiarity with Moreland's appearance, Owens testified that in his opinion Moreland was one of the people shown in a bank surveillance video that captured

the crime. *Id*. at 568. Because of the long relationship with Moreland, Owens also testified that Moreland's appearance had recently changed (he did not look healthy, he had lost weight, and he had begun to exhibit the symptoms of paralysis). *Id.* at 567.

Answering a question of first impression, this Court relied on *Robinson v. People*, 927 P.2d 381 (Colo. 1996), where the image of a robber had been captured on surveillance video. Based on a previous encounter with him, an investigating detective was permitted to testify that the robber shown in the video was Robinson. *Id.* at 382. On appeal, Robinson argued that, because the detective was not "intimate[ly] familiar" with his appearance about the time of the robbery, he was in no better position than the jury to identify him in the video. *Id.* at 383-84.

The Colorado Supreme Court disagreed, holding that "a lay witness may testify regarding the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than the jury." *Id*. at 384. Such a witness "need only be personally familiar with the defendant, and the intimacy level of the witness' familiarity with the defendant goes to the weight to be given to the witness' testimony, not the admissibility of such testimony." *Id*. Consequently, "although the witness must be in a better position than the jurors to determine whether the image captured by the camera is indeed that of the defendant, this requires neither the witness to be 'intimately familiar' with the defendant nor the defendant to have changed his appearance. *Id.*

In *Moreland* this Court applied the reasoning of the *Robinson* court and the majority of courts in other jurisdictions in holding that the officer's "lay opinion

testimony was not based on speculation or conjecture, and did not amount to a mere conclusion or inference that the jury was capable of making on its own." *Moreland v. State*, 207 Md. App. at 573. The Colorado Court had explained that, although the detective was not "intimately" familiar with Robinson, his personal familiarity, from "previous 'face-to-face' contact with Robinson" when he had arrested him, was sufficient to be helpful to the jury. *Robinson v. People*, 927 P.2d at 384. Similarly, in *Moreland* we explained that, based on Owens's "substantial familiarity with [Moreland] and intimate knowledge of his appearance prior to the time of the robbery," over more than 40 years, he was "better able to identify [Moreland] in the video recording and still photographs than the jurors would be." *Moreland v. State*, 207 Md. App. at 573. Owens's "years of familiarity with [Moreland] also provided a basis for his testimony that [Moreland's] appearance had changed between the time of the robbery and the trial, including that he had lost weight and was exhibiting the physical symptoms of a paralysis that he had not exhibited before." *Id.* In summary, the testimony was rationally based on Owens's own perception of Moreland over four decades and was helpful to the jury for a clear understanding of the change in Moreland's appearance. *Id.*

Here, as in *Moreland*, the identifying witness testified that he recognized the accused from video recorded during the crime because he was familiar with him from previous encounters. Officer Waldron explained that he had made numerous in-person observations of Williams over the period when he patrolled the area where the attack had occurred. The officer's testimony about those observations was sufficient to establish that the identification of Williams in the Coco Mart video was premised on personal knowledge. Although Officer Waldron had not seen Williams in a couple of months, their repeated encounters made it reasonable for the trial court to conclude that Officer Waldron was "better able to identify the [defendant] in the video recording . . . than the jurors would be." *Moreland v. State*, 207 Md. App. at 573. As in *Moreland*, "'the intimacy level of the witness' familiarity with the defendant goes to the weight to be given the witness' testimony, not the admissibility of such testimony.'" *Id*. at 572 (quoting *Robinson v. People*, 927 P.2d at 384).

For the same reason, Officer Waldron's identification testimony "did not amount to a mere conclusion or inference that the jury was capable of making on its own." *Id.* at 573. Officer Waldron's identification of Williams in the video was helpful to the jury because, as in *Moreland*, it was premised on his prior interactions with Williams. *See* Md. Rule 5-701.

Williams argues that Officer Waldron's description of his encounters with Williams were irrelevant and unfairly prejudicial. He is incorrect, because the testimony established the factual basis for the officer's lay opinion that the person in the Coco Mart video was Williams. Because Officer Waldron was far more familiar with Williams than

the jurors were, and because the victim was unavailable to testify, the officer's testimony was critical evidence that Williams was the person in the video. *See Odum v. State*, 412 Md. 593, 615 (2010) (stating that "[t]he more probative the evidence is of the crime charged, the less likely it is that the evidence will be unfairly prejudicial"); *accord Burris v. State*, 435 Md. 370, 392 (2013).

Williams goes on to argue that the State exceeded the scope of cross-examination, when, on redirect, it elicited Officer Waldron's testimony that "Roscoe was in the video, that's 100 percent." The scope of examination rests in the trial court's discretion (Md. Rule 5-611), and the court did not abuse its discretion in permitting Officer Waldron's testimony on redirect in this case. On cross-examination, defense counsel established that Officer Waldron had viewed both a video and the flyer that Detective Reddy had distributed. On redirect, the State asked the officer about the video that defense counsel had mentioned. In light of the question posed during cross-examination, it was far from an abuse of discretion for the court to permit that testimony on redirect.

Williams also argues that the State violated its discovery obligations under Rule 4-263(d)(7)(B), because, he says, it failed to disclose that Officer Waldron had made a pretrial identification of Williams.[1] We discern no discovery violation, because the record establishes that defense counsel had actual knowledge, before trial, that the officer could and would identify Williams in the Coco Mart video. On the scheduled trial date,

[1] Rule 4-263(d)(7)(B) states that, "[w]ithout the necessity of a request, the State's Attorney shall provide to the defense . . . (7) All relevant material or information regarding . . . (B) pretrial identification of the defendant by a State's witness."

before jury selection, defense counsel and the prosecutor told the court that they expected Officer Waldron to testify that he recognized Williams in the video. When defense counsel sought to exclude that testimony, the court ruled that Officer Waldron would be permitted to testify "that [he] viewed the video and [he] identified Roscoe Williams." Because Williams had notice that Officer Waldron might testify on that subject, but did not assert a discovery violation, the trial court could not conceivably have erred or abused its discretion in not finding one.

Finally, Williams contends that the court should have excluded Officer Waldron's testimony that "Roscoe was in the video, that's 100 percent." He argues that "[a]n eyewitness's measurement of certainty is of so little probative value that it is irrelevant under Rules 5-401 and 5-402." He cites a number of scientific studies that cast doubt on the correlation between the accuracy of an eyewitness identification and the witness's certainty about the accuracy of the identification,[2] as well as two judicial decisions that have discussed and relied on some of that research: *Brodes v. State*, 614 S.E.2d 766 (Ga. 2005); *United States v. Brownlee*, 454 F.3d 131 (3d Cir. 2006).

The State correctly responds that this claim is not properly before us, because defense counsel did not object to or move to strike the "100 percent" comment when Officer Waldron was testifying. Instead, counsel waited until a few minutes later, after the examination had ended, the witness had been excused, and the jury had been released

[2] The State observes that the studies concern the reliability of an eyewitness identification when the eyewitness is a stranger, not when the witness is familiar with the suspect, as Officer Waldron was.

for the day, before he registered an objection. As a consequence of that brief but significant delay, the trial court could not consider, much less remedy, Williams's complaint, by giving an appropriate instruction at the time when it could have been most effective.

Even if the objection had been made in a timely fashion, Williams would not have prevailed. Appellate courts have consistently held that an eyewitness's level of certainty may be relevant information for the trier of fact to consider in weighing the identification of a suspect. *See, e.g.*, *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972) (stating that "the factors to be considered in evaluating the likelihood of misidentification include . . . the level of certainty demonstrated by the witness at the confrontation"); *Small v. State*, 464 Md. 68, 84 (2019) (stating that "the factors that may be used to assess reliability" include "the witness's level of certainty in his or her identification"). Indeed, jurors in Maryland are routinely advised that when they "have heard evidence about the identification of the defendant as the person who committed the crime," they "should consider," among other factors, "the witness's certainty or lack of certainty[.]" MPJI-Cr 3:30. They were so advised in this case.[3]

In *United States v. Brownlee*, 454 F.3d 131 (3d Cir. 2006), a case on which Williams relies, the federal appellate court did not hold that the trial court erred in

[3] Ten years ago, the Court of Appeals said: "[I]t might be an appropriate time for the Maryland Criminal Pattern Jury Instruction Committee to evaluate whether its current rule on witnesses (MPJI Cr 3:10) should be modified in light of the studies about eyewitness testimony, and the scientific advances in this area." *Bomas v. State*, 412 Md. 392, 418 (2010). The Committee has not modified the instruction, but Williams neither objected to the unmodified instruction nor proposed an instruction of his own.

permitting witnesses to testify about the degree to which they were certain of their identifications of the defendant. Instead, the court held that, because the government had relied heavily upon its witnesses' confidence in their identification testimony, the trial court committed prejudicial error in excluding expert testimony concerning the unreliability of eyewitness identification, including "the lack of correlation between witness confidence in identification and the accuracy of that identification." *Id.* at 140 n.5. Williams did not attempt to introduce any such testimony in this case.

Similarly, in *Brodes v. State*, 614 S.E.2d 766 (Ga. 2005), the other case on which Williams relies, the Georgia court did not hold that the trial court erred in permitting witnesses to testify about the degree to which they were certain of their identifications of the defendant. Instead, the court disapproved of an instruction that directed jurors to consider the witness's certainty about the identification as a factor to be used in deciding the reliability of the identification. *Id.* at 771. Williams did not object when the court gave the similar pattern jury instruction in this case.

The scientific observations cited by Williams may bear upon the reliability of a particular identification in certain cases. *See generally Bomas v. State*, 412 Md. 392, 418 (2010) (pointing out that "the vagaries of eyewitness testimonies" may be guarded against by expert testimony and "other trial components such as cross-examination, closing arguments, and jury instructions[]"). Nonetheless, we find nothing in the cited authorities to *mandate* the exclusion of testimony like Officer Waldron's. To the contrary, the Court of Appeals has long recognized that the weight to be afforded a particular identification is a matter for the finder of fact after consideration of relevant

factors that include the certainty expressed by the identifying witness. *See Small v. State*, 464 Md. at 84.

For all of the foregoing reasons, we hold that the court did not err or abuse its discretion in permitting Officer Waldron to testify that "Roscoe was in the video, that's 100 percent."

II. Other Crimes, Wrongs, or Acts

Williams challenges Detective Reddy's testimony that he obtained information about Williams from an "arrest viewer" and "police databases." He also challenges Officer Waldron's testimony that he observed Williams on multiple occasions from a "covert" location in the "drug shop" where the victim was attacked. Williams argues that both pieces of testimony were inadmissible under Md. Rule 5-404(b).

Rule 5-404(b) governs the admission of evidence concerning "crimes, wrongs, or acts" other than those for which a defendant is on trial. At the time of Williams's trial, the rule provided, in pertinent part:

> **Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

This rule "is designed to protect the person who committed the 'other crimes, wrongs, or acts' from an unfair inference that he or she is guilty not because of the evidence in the case, but because of a propensity for wrongful conduct." *Winston v. State*, 235 Md. App. 540, 563 (2018).

A. Detective Reddy's Testimony

Before the State questioned Detective Reddy about his database searches, defense counsel sought to exclude the testimony, on the ground that it was "not proper . . . if it's indicating showing [sic] that he's got a history and he's on the streets . . . and he's a bad guy." The trial court overruled the objection, pointing out that "[i]f he says database . . . it could be the MVA[.]"

When the direct examination resumed, the following colloquy occurred:

> [PROSECUTOR]: Detective Reddy, based upon your conversation with Officer Waldron, were you given a name in relation to the seeking-to-identify?
>
> [DET. REDDY]: Yes.
>
> [PROSECUTOR]: And, based upon the name you were given, what if anything did you do at that point?
>
> [DET. REDDY]: At that point, I used various police databases **such as our arrest viewer**, and at that point I entered the name and a date range for his actual age, and my suspect popped up.
>
> [PROSECUTOR]: And do you recall the name of the suspect that popped up based off your investigation?
>
> [DET. REDDY]: Yes, Roscoe Williams.
>
> [PROSECUTOR]: And –
>
> **[DEFENSE COUNSEL]: I still object, Your Honor.**
>
> THE COURT: All right, overruled.

(Emphasis added.)

Detective Reddy continued to testify, making an in-court identification of Williams as the person whose photo he retrieved from "the database system." When the

prosecutor asked the detective what he "notice[d]" after retrieving "the photograph" and "compar[ing] that to your seeking-to-identify flyer[,]" Detective Reddy testified, without objection, that the "suspect" in the photo he "pulled up from the arrest viewer" was "the same[.]"

In this Court, Williams contends that the trial court erroneously failed to recognize that his objections implicated Rule 5-404(b). As a consequence, he argues, the court abused its discretion by failing to exercise discretion.

The record refutes Williams's argument. In the initial colloquy, which occurred before Detective Reddy testified that he searched "various police databases such as our arrest viewer," the court explained that defense counsel's stated concern about the negative implication from a database search would not arise if the detective merely testified generically that he searched a "database," because the jury could understand that to mean a database that did not implicate criminal or other bad conduct, such as "the MVA" database.

Perhaps because he was not privy to the bench conference, however, Detective Reddy proceeded to testify that he searched "police databases such as our arrest viewer[.]" Yet, at that point, when defense counsel's concern about negative implications materialized, he did not object. Instead, he waited until after the prosecutor asked for "the name of the suspect that popped up[,]" and the detective answered, "Roscoe Williams." At that point, defense counsel stated that he "still objects," but did not specify whether he was objecting to the witness's identification of Williams from the

database photo (as discussed in Part I), or whether he was belatedly renewing his opposition to the testimony about finding Williams's photo in a "police database."

If counsel meant to say that he "still object[ed]" on the basis of Rule 5-404(b), the trial court did not have an opportunity to remedy his concerns. Given the belated timing and vague nature of the objection, we cannot say the trial court erred or abused its discretion in failing to exclude the challenged testimony under Rule 5-404(b). When objectionable evidence is offered, counsel must object immediately, or the objection is waived. *See* Md. Rule 4-323(a).

In any event, Detective Reddy made a second reference to the "arrest viewer[]" only a few moments later, and defense counsel failed to object again. For that reason, his claim of error is waived. *See DeLeon v. State*, 407 Md. 16, 31 (2008) ("[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection"); *Williams v. State*, 131 Md. App. 1, 24-25 (2000) (finding waiver, despite timely objection to the admissibility of evidence, where the same evidence was otherwise received into evidence without objection).

C. Officer Waldron's Testimony

Williams challenges Officer Waldron's testimony that he observed Williams in a "drug shop," that Williams frequented an alleyway in the area of the "drug shop," and that he observed Williams from a "covert" location. In Williams's view, "the same inference" that he "is a criminal, specifically, a drug dealer[,]" arises "perhaps with a bit more specificity" and more prejudice from Officer Waldron's testimony.

The pertinent record shows the following exchange on this subject:

[PROSECUTOR]: [W]ithin your tenure at the Southeast District, how often do you patrol or visit the 2400 block of Jefferson Street?

[OFC. WALDRON]: As part of the drug unit – before on patrol, if I was assigned Sector, I would, but as part of the drug unit we're there all the time. It's an active drug shop that we're there all the time at.

[PROSECUTOR]: So all the time? And within your time in and out of the Jefferson . . . area, did you have an occasion to come in contact with an individual by the name of Roscoe Williams?

[OFC. WALDRON]: I did.

[PROSECUTOR]: And approximately how many times have you come into contact with Mr. Roscoe Williams?

[OFC. WALDRON]: Numerous times I've come into contact with Roscoe. He was always at 2300 –

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[OFC. WALDRON]: I've come into contact with Mr. Williams a couple times, the 2300 – between 2300 and Jefferson, there was this little alleyway he would always stay at. He was always around Montford Street, he was always there. Every time he'd pass, we'd go, "Roscoe," because we just remember his name. It's a unique name. So it was always, "Roscoe."

[PROSECUTOR]: And I know you said several times, approximately what time frame would you say you've seen him from within the last year or so?

[OFC. WALDRON]: I haven't seen him in a while, but before that we – I mean, I don't know the exact time frame. It was quite a few months he was there all the time, every day. I watched him when I was in covert, watching the shop, I always saw him on cameras. We have –

[DEFENSE COUNSEL]: Your Honor, I object to this.

THE COURT: Overruled. . . .

[DEFENSE COUNSEL]: I just would like to put it on the record, if I could –

THE COURT: You may.

[DEFENSE COUNSEL]: -- why.

(Counsel approached the bench, and the following occurred:)

[DEFENSE COUNSEL]: The reason I objected is he's talking about drug shops; he knows him, he's watching him come out of alleys. I mean, he's saying he's a bad guy, he's a drug dealer, and that's not appropriate in this case. I mean, it's just not relevant, in fact it's quite prejudicial and it's not probative of anything. All they're trying to elicit is he's a bad guy, this guy's met him – seen him on many occasions during drug stops and this and that. I just think it's inappropriate.

[PROSECUTOR]: Your Honor, I would object to him saying that we're trying to portray him as a bad guy, that is not the State's intention here. It is simply to elicit his contacts with the . . . Defendant in this matter, Mr. Roscoe Williams. However, if the Defense believes that it is sufficient at this point that – the contact that was made, I can curtail the question.

THE COURT: No, don't worry about what he – he's not going to agree that the guy can identify his client. There's nothing wrong with your line of questioning . . . as far as I'm concerned. . . .

You're not going to agree that he knows him by sight, are you?

[DEFENSE COUNSEL]: No, no. . . .

He said he's seen him when he's in covert locations . . . – the insinuation is obvious.

THE COURT: -- he could see me in covert if I'm walking in that area.

[DEFENSE COUNSEL]: Judge –

THE COURT: But the thing is he cannot – no, I'm serious. They have to do that to show the contacts and the fact that he's able to identify him as part of their case. Now, I will caution him that he can't say anything about any illegal activity when –

[PROSECUTOR]: That's what I was going to say, if defense thinks that that is where it's going, I will make sure I curtail the questions to make sure he doesn't get to that.

THE COURT: Oh, . . .

> Officer Waldron, I just want to make sure that you don't say anything about any illegal activity . . . you have observed with respect to the Defendant.
>
> [OFC. WALDRON]: Okay, that's fine.
>
> THE COURT: You hadn't said anything, I just want to make sure that -- . . . .
>
> **[DEFENSE COUNSEL]: I disagree; I think he has and I object.**
>
> THE COURT: Okay, and you made your record. Overruled.

(Emphasis added.)

Williams has not preserved a challenge to Officer Waldron's testimony about seeing him in an "active drug shop" or a "little alleyway" in or near the "drug shop," because defense counsel failed to lodge a timely objection to either of those statements. *See* Md. Rule 4-323(a). On the other hand, defense counsel did lodge a timely objection to Officer Waldron's references to seeing Williams from "covert locations" in the "shop," on the ground that this information inferentially implicated Williams in drug dealing and other criminal activity. We shall assume, without deciding, that defense counsel's comments were sufficient to preserve a Rule 5-404(b) objection to that testimony.

On the merits, however, we agree with the trial court that Officer Waldron's testimony provided highly relevant information that allowed the jury to evaluate the credibility of the officer's identification of Williams as the person in the Coco Mart video. As Officer Waldron explained, he "talk[ed] to people on the street all the time" in the course of his patrol duties. More specifically, Officer Waldron testified that, in the "2300 block of Jefferson where Mr. Williams was a fixture[,]" he and other officers

frequently "talk[ed] to him." When relating his prior encounters with Williams, the officer complied with the court's instructions and did not directly implicate Williams in a crime. As the trial judge observed, the officer might have observed her "in covert" if she lived, worked, or walked along the 2300 block of Jefferson Street.

Collectively, the officer's testimony undercut Williams's defense that Waldron erroneously identified him as the person in the Coco Mart video. Based on this record, we are satisfied that the challenged testimony was both relevant and not unfairly prejudicial for purposes of Rule 5-404(b). Accordingly, the trial court did not err or abuse its discretion in failing to exclude the challenged testimony.

III. Hearsay Challenge

Invoking the rule against hearsay, *see* Md. Rule 5-802, Williams argues that the trial court erred in admitting the following testimony by Detective Reddy concerning the flyer that he circulated in his effort to identify the person shown on the Coco Mart video:

> [PROSECUTOR]: Now, Detective Reddy, once you disseminated the seeking-to-identify flyer, did anyone respond to you in regards to the flyer?
>
> [DET. REDDY]: Yes, Officer Waldron gave me a call.
>
> [PROSECUTOR]: And, upon speaking with Officer Waldron, were you able to develop a suspect?
>
> [DET. REDDY]: Yes.
>
> [PROSECUTOR]: And who was that suspect that was developed?
>
> [DETECTIVE REDDY]: He said his name was Roscoe.
>
> **[DEFENSE COUNSEL]: Objection.**
>
> THE COURT: All right –

[DEFENSE COUNSEL]: May we approach?

THE COURT: Yes, you may.

(Counsel approached the bench, and the following occurred:)

[DEFENSE COUNSEL]: That's pretty much hearsay, Judge.

THE COURT: Yeah, I was going to sustain the objection.

[DEFENSE COUNSEL]: All right.

THE COURT: But you objected after he said it, so do you want me to strike the last response?

[DEFENSE COUNSEL]: Yes.

(Emphasis added.)

The State argued that it was eliciting the suspect's name for the non-hearsay purpose of showing "the effect on the listener" – i.e. of showing that Detective Reddy used that name in searching the police databases. The trial court ruled that the State could elicit Detective Reddy's testimony that he used a name given by Officer Waldron to conduct the database search, but that the State could not elicit Williams's name.

When the direct examination resumed, the court struck "the last answer, 'Roscoe,' from the record" and instructed the jury to "disregard the question and the answer." The prosecutor continued:

[PROSECUTOR]: Detective Reddy, based upon your conversation with Officer Waldron, were you given a name in relation to the seeking-to-identify?

[DET. REDDY]: Yes.

[PROSECUTOR]: And, based upon the name you were given, what if anything did you do at that point?

> [DET. REDDY]: At that point, I used various police databases such as our arrest viewer, and at that point I entered the name and a date range for his actual age, and my suspect popped up.
>
> [PROSECUTOR]: And do you recall the name of the suspect that popped up based off your investigation?
>
> [DET. REDDY]: Yes, Roscoe Williams.
>
> [PROSECUTOR]: And –
>
> **[DEFENSE COUNSEL]: I still object, Your Honor.**
>
> THE COURT: All right, overruled.

(Emphasis added.)

The detective went on to testify that that database produced additional information, such as Williams's date of birth, his height and weight, and photographs of him. He identified Williams as the person in the photographs from the database. He testified that the photographs from the database depicted the same person who was shown in his flyer (which contained a still photograph from the Coco Mart video). On the basis of that observation, he obtained an arrest warrant for Williams.

Williams appears to contend that the court admitted inadmissible hearsay when it permitted Detective Reddy to testify that his search of the databases led him to Roscoe Williams. His contention has no merit.

"Maryland Rule 5-802 prohibits the admission of hearsay, unless it is otherwise admissible under a constitutional provision, statute, or another evidentiary rule." *Wallace-Bey v. State*, 234 Md. App. 501, 536 (2017). "Unlike many rulings on the admissibility of evidence, which are reviewed for abuse of discretion, the issue of

'[w]hether evidence is hearsay is an issue of law reviewed *de novo*.'" *Id.* (quoting *Parker v. State*, 408 Md. 428, 436 (2009)); *see also Gordon v. State*, 431 Md. 527, 533 (2013).

Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." "'The threshold questions when a hearsay objection is raised are (1) whether the declaration at issue is a "statement," and (2) whether it is offered for the truth of the matter asserted.'" *Wallace-Bey v. State*, 234 Md. App. at 536 (quoting *Stoddard v. State*, 389 Md. 681, 688-89 (2005)). "'If the declaration is not a statement, or it is not offered for the truth of the matter asserted, it is not hearsay and it will not be excluded under the hearsay rule.'" *Id*. at 536 (quoting *Stoddard v. State*, 389 Md. at 689).

In this case, it is not entirely clear what the hearsay statement even was, or (for that matter) who the hearsay declarant was. After the court struck Detective Reddy's initial reference to what Officer Waldron had told him, Detective Reddy did not repeat anyone's out-of-court statement. Instead, he testified that he received a name from Officer Waldron, that he conducted a search by entering that name and other information into various databases, and that the search yielded the name "Roscoe Williams." Unless the result of the search is supposed to be the hearsay statement and the inanimate database is supposed to be the hearsay declarant, it is hard to see how the hearsay analysis can even begin.[4]

[4] Because a "statement" must be "intended" as an "assertion" (Md. Rule 5-801(a)), it is debatable whether a mechanical database could ever generate a "statement."

But assuming for the sake of argument that Williams has identified a "statement" that might count as hearsay, he must also establish that the "statement" was offered for the truth of the matter asserted. This is because "'a statement that is offered for a purpose other than to prove its truth is not hearsay at all.'" *Ashford v. State*, 147 Md. App. 1, 76 (2002) (quoting *Hardison v. State*, 118 Md. App. 225, 234 (1997)). For example, an out-of-court statement is not hearsay when "it is offered for the purpose of showing that a person relied on and acted upon the statement and is not introduced for the purpose of showing that the facts asserted in the statement are true." *Graves v. State*, 334 Md. 30, 38 (1994).

Here, the State used the results of the search to show that Detective Reddy relied upon them as a basis to obtain an arrest warrant for Williams. Hence, the State used the results for a recognized and legitimate non-hearsay purpose. The court did not err in permitting the State to use the results for that purpose.

In arguing for a contrary conclusion, Williams relies prominently on *Parker v. State*, 408 Md. 428 (2009). In that case, a confidential informant tipped off a police officer "that a black male wearing a blue baseball cap and a black hooded sweatshirt was selling heroin at a particular intersection." *Id.* at 431. Traveling to that location, the officer saw Parker, "a black male wearing a blue baseball cap and a black hooded sweatshirt[.]" *Id.* When the police stopped and searched Parker, they found several gel caps of heroin on him. *Id.* at 432. Appealing his conviction for possession of heroin, Parker argued that the trial court erred in allowing the officer to testify about the hearsay information provided by the informant, in violation of his Sixth Amendment

confrontation rights. *Id.* at 434. The State countered that such testimony was not hearsay, because it was not offered for its truth, but to explain why the officer was at that location and why Parker was stopped and searched. *Id.* at 435.

The Court of Appeals held that the trial court erred in admitting the informant's statement. *Id.* at 431. Although an extrajudicial statement may sometimes be relevant and admissible to prove why a police officer took action against a suspect, the *Parker* Court reasoned that such a statement should be excluded when, as in that case, the officer "'*becomes more specific by repeating definite complaints of a particular crime by the accused*[.]'" *Id.* at 440 (quoting *Graves v. State*, 334 Md. at 39-40) (emphasis in original). In those circumstances, the statement is inadmissible hearsay because it "*is so likely to be misused by the jury as evidence of the fact asserted*[.]" *Id.* (emphasis in original) (citations omitted).

In *Parker* the extrajudicial statement was inadmissible because it "contained too much specific information about [Parker] and his criminal activity to be justified by the proffered non-hearsay purpose of establishing why the detective was at the intersection." *Id.* at 431. The Court explained that "when the hearsay provides contemporaneous and specific information about the defendant's clothing, location, and activity, it can be highly persuasive as to the defendant's actual guilt of the crime charged even without a name." *Id.* at 443.

Parker is inapposite because the "statement" that Williams challenges in this appeal – the name generated by Detective Reddy's database search – contained no information, let alone any "specific information," about Williams and his "criminal

activity." Unlike the "definite complaints of a particular crime by the accused" that were shared with the jury in *Parker*, Detective Reddy testified only that the name that popped up in his investigation was Roscoe Williams. *See Parker v. State*, 408 Md. at 440. Unlike the informant's tip in *Parker*, Detective Reddy's testimony did not specify that Williams engaged in any particular criminal activity. His testimony certainly did not contain anything remotely comparable to the level of detail in *Parker*. It was, therefore, not inadmissible hearsay.[5]

IV. Post-Arrest Silence

Williams contends that the trial court "erred in admitting testimony regarding [his] post-arrest silence and abused its discretion in denying [his] motion for mistrial." This claim arises from the following colloquy during the direct examination of Detective

[5] In addition to *Parker*, Williams relies on a number of similar cases in which Maryland courts have held that statements by an informant or an accomplice were inadmissible for the non-hearsay purpose of explaining why the law enforcement officers did what they did when the statement contained prejudicial detail about the defendant's involvement in a crime. *See, e.g.*, *Graves v. State*, 334 Md. at 42-43 (holding that trial court erred in admitting testimony about an extrajudicial statement made to a police officer that the defendant was an accomplice in an assault because the probative value of that statement in showing that the officer relied upon it in arranging the photographic array was substantially outweighed by its unfair prejudice, given the danger that the jury would misuse the information); *Zemo v. State*, 101 Md. App. 303, 306 (1994) (holding that trial court erred in admitting police officer's testimony that information from a confidential informant regarding an armed robbery led him to the defendant); *Purvis v. State*, 27 Md. App. 713, 724-25 (1975) (holding that trial court erred in admitting police officer's testimony that he made undercover purchase of heroin from defendant based on informant's statement giving specific description of defendant by his clothing). Those cases are distinguishable from this one for the same reason that *Parker* is distinguishable: this case does not involve comparably detailed descriptions of other crimes.

Reddy, after he testified that he matched Williams's database photos to the images in the Coco Mart video:

> [PROSECUTOR]: And, upon observing that, what if anything did you do at that point?
>
> [DET. REDDY]: At that point I went and obtained an arrest warrant.
>
> [PROSECUTOR]: And did there come a point in time when you spoke with the Defendant, Roscoe Williams?
>
> [DET. REDDY]: Yes, yes, I did.
>
> [PROSECUTOR]: And do you recall what date that was?
>
> [DET. REDDY]: That was on the arrest date – but the Court's indulgence so I can look at my notes?
>
> THE COURT: You may –
>
> [DET. REDDY]: Thank you.
>
> THE COURT: -- to refresh your recollection.
>
> **[DEFENSE COUNSEL]: I'm going to object.**
>
> THE COURT: To him using his notes to refresh his recollection?
>
> **[DEFENSE COUNSEL]: No, I'm objecting to the question and the answer.**
>
> THE COURT: All right, overruled.
>
> [DET. REDDY]: So the arrest date would be March 23rd, 2018.

(Emphasis added.)

Williams contends that "Reddy's testimony that he spoke to Mr. Williams was inadmissible," because, he says, it violated constitutional and evidentiary prohibitions against evidence of a criminal defendant's post-arrest silence. *See generally Doyle v. Ohio*, 426 U.S. 610, 617-18 (1976) (holding that, when a person exercises the right to

remain silent after receiving *Miranda* warnings, due process prohibits the prosecution from using the silence for purposes of impeachment); *Weitzel v. Stat*e, 384 Md. 451, 456 (2004) (holding that pre-arrest silence is inadmissible as substantive evidence of guilt); *Kosh v. State*, 382 Md. 218, 232 (2004) (holding that post-arrest, pre-*Miranda* silence is not admissible as substantive evidence of guilt); *Grier v. State*, 351 Md. 241, 258 (1998) (holding that, as both an evidentiary and a constitutional matter, "[e]vidence of post-arrest silence, after *Miranda* warnings are given, is inadmissible" in Maryland "for any purpose, including impeachment"); *Wills v. State*, 82 Md. App. 669, 678 (1990) (holding that, as a matter of Maryland law, a trial court may not "admit evidence of a criminal defendant's post-arrest, pre-*Miranda* warning, silence for impeachment purposes").

Although Detective Reddy never actually testified about what occurred when he spoke to Williams, Williams argues that the "reasonable inference" drawn from his testimony is that Williams "remained silent in the face of the accusation that he committed the crime for which he was arrested." The inference is not immediately apparent to us. Detective Reddy said that he spoke to Williams. He did not say that Williams failed to respond. Nor did he say that Williams made any effort to invoke his right to remain silent. In fact, as Williams tacitly acknowledges in his brief, the detective did not even say whether he advised Williams of his right to remain silent. Instead, after consulting his notes and waiting for the court to rule on an objection to a question about when he spoke to Williams, the detective said that he spoke to Williams on the date of the arrest, March 23, 2018. On the basis of what Detective Reddy said, it is hard to see how the jury would have inferred that Williams invoked his right to remain silent.

In any event, in a subsequent bench conference, defense counsel admitted that he did not object until "about three questions" after the allegedly objectionable question or answer. Moreover, when counsel did object, the objection followed the detective's inquiry about whether he could consult his notes to identify the date when he spoke with Williams. At that point, the court understandably thought that counsel was objecting to the detective's "using his notes to refresh his recollection." Counsel did not make matters any clearer when he responded that he was "objecting to the question and the answer," when the question was simply, "[D]o you recall what date that was?," and the answer would presumably be the date of the conversation. The objection came too late.

Furthermore, the record shows that the trial court considered defense counsel's belated objection, recognized that evidence of Williams's silence would be inadmissible, and proposed a number of remedies to address his concerns. At the end of a lengthy bench conference, the court told defense counsel, "[I]f you want me to do something, I will." Counsel responded, "[T]he only thing I can do is ask for a mistrial[.]"[6]

The trial court persisted, offering to give "an appropriate" curative instruction, to the effect that Williams had the right to remain silent or that the jury should disregard the allegedly objectionable question. In addition, because Williams had not remained silent in his conversation with the detective, but had denied being at the scene of the stabbing,

[6] During the bench conference, the prosecutor disclosed that she had asked Detective Reddy whether he "spoke" to Williams not because she wanted to elicit the substance of their conversation, but because she wanted to establish that Williams was dressed as he was in the video. The court observed that the prosecutor could have elicited that testimony through the use a verb other "to speak."

the court offered to admit his denial. Again, defense counsel declined, instead demanding the maximalist remedy of a mistrial.

The declaration of a mistrial is "'an extraordinary act which should only be granted if necessary to serve the ends of justice.'" *Cooley v. State*, 385 Md. 165, 173 (2005) (quoting *Jones v. State*, 310 Md. 569, 587 (1987), *vacated on other grounds*, 486 U.S. 1050 (1988)); *accord Rutherford v. State*, 160 Md. App. 311, 323 (2004) (recognizing that declaring a mistrial is "an extreme sanction that courts generally resort to only when no other remedy will suffice to cure the prejudice" to the defendant) (internal quotation marks and citations omitted). We will not reverse a conviction based on the denial of a mistrial motion absent an abuse of discretion. *See Simmons v. State*, 436 Md. 202, 212 (2013); *Browne v. State*, 215 Md. App. 51, 57 (2013). A trial court abuses its discretion when its mistrial ruling is "'clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,' when the ruling is 'violative of fact and logic,' or when it constitutes an 'untenable judicial act that defies reason and works an injustice.'" *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

Here, defense counsel's decision to forgo the lesser remedies suggested by the trial court can fairly be viewed as a double-or-nothing gamble that does not warrant the windfall of either a mistrial or appellate reversal. *See Walls v. State*, 228 Md. App. 646, 674 (2016) (remarking that the "decision to decline the offered curative instruction was a tactic to box the court into granting a mistrial unnecessarily"). As the State points out, Williams declined a curative instruction that would have obliterated any imaginable

prejudice stemming from the testimony that Detective Reddy "spoke" to him. In the State's words: "Admitting Williams's exculpatory statement was a win-win for the defense: it would rebut any inference that Williams was silent, and it would put otherwise inadmissible, but helpful, evidence before the jury." Counsel expressed no reason for declining the proposed instruction, Williams has not advanced one on appeal, and we are unable to conceive of one (or at least, a legitimate one). Accordingly, the court did not abuse its discretion in denying the request for a mistrial. "To hold otherwise would create a perverse incentive for defendants to refuse instructions that would otherwise cure prejudice." *Walls v. State*, 228 Md. App. at 675.

V. Relevancy Challenge to Evidence of Police Efforts to Locate the Victim

Williams argues that the trial court "erred in admitting testimony regarding police efforts to locate the victim." In his view, that evidence was irrelevant, because it did not bear on whether the video depicted Williams or, if it did, on whether Williams had acted in defense of others, as he weakly claimed.

In its opening statement, the State told the jury that the victim would not testify because he "is homeless and goes house to house, and is therefore hard to track down." When Detective Reddy testified, the prosecutor asked about the attempts to locate the victim:

> [PROSECUTOR]: Now, after you were able to confirm Mr. Roscoe Williams as the suspect, did there come a point in time where you spoke with the victim again?
>
> [DET. REDDY]: To the victim again, no.
>
> [PROSECUTOR]: Did you attempt to locate the victim?

[DET. REDDY]: Yes, yes, I did.

[PROSECUTOR]: And what exactly did you do to locate the victim?

[DET. REDDY]: Uh –

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

(Emphasis added.)

When the direct examination resumed, the prosecutor again asked Detective Reddy whether he "attempt[ed] to make contact with the victim." The following colloquy ensued:

> [DET. REDDY]: Yes, by also contacting his family to see if they knew his whereabouts.
>
> [PROSECUTOR]: And when did you make contact with his family?
>
> [DET. REDDY]: Probably several months ago. . . .
>
> [PROSECUTOR]: And did you make attempts to locate the victim after the incident?
>
> [DET. REDDY]: Yes, but he also stated that he was homeless when I talked to him.
>
> **[DEFENSE COUNSEL]: Objection and ask that that be stricken.**
>
> THE COURT: All right, please disregard the statement, he stated he was homeless.

(Emphasis added.)

According to Williams, the trial court erred in overruling his initial objection. He argues that evidence was irrelevant, because, he says, its effect "was to suggest to the jury that Mr. Fenner was afraid of [Williams] because it was [Williams] who stabbed him"

and to allow "an identification of [Williams] by Mr. Fenner without [Williams] having an opportunity to confront and cross-examine Mr. Fenner." The State responds that, to the limited extent that Williams's objections are preserved, the challenged testimony "was relevant to the thoroughness of the investigation undertaken by the State, which had the burden of proof."

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." Md. Rule 5-401. "A court may admit relevant evidence, but it has no discretion to admit evidence that is irrelevant." *Walter v. State*, 239 Md. App. 168, 198 (2018). "A ruling that evidence is legally relevant is a conclusion of law, which we review de novo." *Id.*

In this case, Williams challenges the relevance of Detective Reddy's testimony that he reached out to Fenner and his family, but was unable to locate Fenner. In our view, the testimony was relevant, because it anticipated the missing witness argument that defense counsel made in closing, when he told the jury that it was "the State's obligation to bring him [i.e., the victim] here" and that Fenner may be absent because "maybe he's got something to hide."

VI. Merger

In his final assignment of error, Williams asserts that the sentencing court "erred in refusing to merge the sentence for reckless endangerment into the sentence for attempted involuntary [sic] manslaughter." The State concedes that the ten-year sentence for attempted voluntary manslaughter and a concurrent sentence for reckless

endangerment "are based on the same conduct," so "the sentences should merge." (State.45) *See, e.g.*, *McClurkin v. State*, 222 Md. App. 461, 489-90 (2015) (merging sentences for reckless endangerment and attempted first-degree murder). Because we agree, we shall vacate the concurrent sentence for reckless endangerment.

JUDGMENTS OF CONVICTION AFFIRMED. SENTENCE FOR RECKLESS ENDANGERMENT VACATED. COSTS TO BE PAID 5/6THS BY APPELLANT, 1/6TH BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.