Circuit Court for Charles County
Case No. 8K-15-558

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 695

September Term, 2017

RICHARD CONWAY

v.

STATE OF MARYLAND

Berger,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: June 29, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial, Richard Conway ("Conway"), appellant, was convicted of attempted first-degree murder and conspiracy to commit first-degree murder of his ex-girlfriend and the mother of his children, Krystal Mange ("Krystal"), second-degree murder of Krystal's husband, Robert Mange ("Robert"), as well as first-degree assault, two counts of unlawful use of a firearm, and four counts of reckless endangerment.[1] Conway was also charged with first-degree murder and conspiracy to commit first-degree murder of Robert, but he was acquitted of those offenses. The shootings occurred on May 20, 2015 in a McDonald's parking lot in Waldorf, Maryland. The shooter was Conway's mother, Caroline Conway ("Caroline").

Conway raises two issues in this appeal, which we have rephrased slightly as follows:

1. Whether the circuit court erred by denying Conway's motion to suppress certain statements made during a police interview on the basis that Conway did not unequivocally and unambiguously invoke his right to counsel.

2. Whether the circuit court abused its discretion in association with its response to a jury question.

For the reasons explained herein, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

We set forth the facts giving rise to this appeal in the light most favorable to the State, the prevailing party below. Prior to the events giving rise to this appeal, Krystal and

[1] Because certain individuals involved in this case share a surname, we refer to them by their first names for clarity and out of no disrespect.

Conway had been involved in an ongoing custody dispute regarding their two children. Krystal and Conway had previously resided together with their children for two years in a home they shared with Conway's parents and Conway's two sisters in Waldorf, Maryland. While Krystal and Conway lived together, Conway became a police officer with the Prince George's County Police Department. As a police officer, Conway was issued a service weapon, which he usually carried in the back of his jeans.

Krystal and Conway's relationship ended in July 2013. Krystal and the children moved in with Krystal's mother in Virginia. On October 2, 2013, Krystal filed for custody and child support in Virginia. On the same day, Conway and Krystal had a confrontation relating to child custody. Conway and Caroline drove to Krystal's mother's home. Conway got out of the car, grabbed the children, and ran to the car, where Caroline was waiting. Krystal contacted the police. Police responded to the scene, but they advised that Krystal could not stop Conway from taking the children absent a custody order. Conway took the children back to Maryland, where he filed a petition for a protective order and sought custody. Conway did not permit Krystal to visit with the children from October 2, 2013 through December 11, 2013.

On December 11, 2013, the parties reached a temporary custody agreement. The agreement provided that the children would reside primarily with Conway, while Krystal would have visitation with the children Wednesday through Sunday on alternate weeks. Pursuant to the agreement, Conway and Krystal would meet at six o'clock p.m. outside the Waldorf McDonald's to exchange the children. This agreement was in place as of May 20,

2015. Although Conway and Krystal had reached an agreement, they continued to have an acrimonious relationship. Krystal reported that Conway had threatened to kill her on multiple occasions, including when they were exchanging the children.

On Wednesday, May 20, 2015, Krystal and Robert drove their Jeep Wrangler to the McDonald's to pick up the children. At the time, Krystal was twenty-nine weeks pregnant. After Krystal and Robert parked, Caroline climbed into the back seat of their car. Krystal recognized Caroline immediately. Caroline was wearing a dark hooded sweatshirt, eyeglasses, black gloves, and dark jeans. Caroline pointed a gun at Robert, took his phone, and told Krystal to call Conway. Caroline told Krystal to tell Conway that she wanted to change the exchange to 7:30 p.m. at the courthouse. Krystal complied and telephoned Conway. Conway responded, "okay."

Robert "went after the gun" Caroline was holding. Krystal managed to get halfway out of the car when she heard the first gunshot go off. Krystal ran and ducked behind another car, where she waited for it to be quiet. Then, Krystal walked to the front of the Jeep. Krystal heard two gunshots and then fell to her knees after being shot in the upper ribs. Caroline ran away from the McDonald's. Krystal asked someone in a nearby vehicle to telephone 911. Krystal found Robert lying on the ground shortly before police and paramedics arrived. Robert had been shot three times and succumbed to his injuries at the scene. Krystal was transported to the hospital, where she recovered. Krystal delivered her child two months later.

Multiple witnesses saw a gray-haired or elderly woman shoot Krystal and Robert before running away toward a wooded area near the McDonald's. Firearm casings recovered from the scene and were subsequently determined to have come from Conway's service firearm.

After the shooting, Detective Chris Shankster went to the Conways' home to attempt to locate a female suspect. No one was home when Detective Shankster arrived. A crime scene perimeter was established around the property. Conway approached the crime scene perimeter at the end of the street and identified himself as a police officer. Conway told the officer standing at the perimeter that his agency had told him that police were looking for him. Shankster asked Conway why his mother might have been involved in a shooting at the McDonald's. Conway responded, "My ex is trying to kill me." Conway told Shankster that Caroline and his children were at a friend's house, where he had previously dropped them off. Conway told Shankster that he had seen Caroline walking along Post Office Road at Copley Avenue and that he had picked her up. Subsequently, Conway told Shankster that Caroline was standing in a nearby crowd. Shankster approached her and arrested her.

Conway also spoke with another police officer near the crime scene perimeter. Conway told Corporal Juan Morales that he and Caroline had taken the children to a park that morning, then to a meeting at school, before returning home at 4:30 p.m. Conway told Morales that he took a nap while Caroline took a walk. Conway told Morales that he then went to meet his ex-girlfriend at the McDonald's, but then he corrected himself, saying that

he meant to say at the courthouse. Conway reported that he left the house at 5:30 p.m. and picked up Caroline at the corner of Post Office Road and Copley Avenue. Conway reported receiving a telephone call from Krystal at 5:45 p.m., changing the location for the custody exchange to the courthouse. Conway told Morales that he and Caroline arrived at the courthouse at 7:38 p.m., but Krystal was not there.

Later that evening, Conway was interrogated at the police station by Detective Jack Austin.[2] This interrogation forms the basis for the motion to suppress which was denied by the circuit court and is at issue in this appeal.

At the beginning of the interrogation, Detective Austin informed Conway that he "at this point [was] not under arrest" but that he was not free to leave and advised him of his *Miranda* rights. *See Miranda v. Arizona*, 384 U.S. 436, 479 (1966). Conway told Austin about what he had done that day, explaining that he and Caroline accompanied his son's class on a field trip to a park until approximately 2:00 p.m., when he and Caroline took Conway's son to an appointment. Conway told Austin that the appointment ended at 4:00 p.m., after which they returned home.

According to Conway, Caroline took a walk through the neighborhood at around 4:30 p.m., while Conway remained at home with the children. Conway said that Caroline was still out for her walk when he left with the children to head toward McDonald's for the custody exchange. Conway explained that he picked up Caroline, who was walking on

[2] The transcript of the interrogation refers to the interrogator as "Detective Boston," but the parties agree that this is a transcription error and that the interrogator's last name is actually "Austin."

Copley Street, on the way to drop off the children. Conway told Austin that he received a telephone call from Krystal while he was driving towards the McDonald's, asking him to meet her at 7:30 at the courthouse instead of at the McDonald's. Conway said that he turned around to head to the courthouse. Conway explained that when they arrived at the courthouse, Krystal was not there. He said that he texted Krystal and waited for eight or nine minutes before leaving to return home. Conway explained that he was unable to get to the house because the area was "taped off" with police tape and he saw police cars in the area. Conway told Austin that Caroline took the children to a neighbor's house, after which Conway received a telephone call from his supervisor instructing him to identify himself to the police on the scene. Conway identified himself to a police officer on scene.

At this point during the interrogation, Detective Austin told Conway that he knew Conway was "not being truthful." Detective Austin told Conway various reasons he believed Conway was being untruthful, explaining that video surveillance cameras and cell phone tracking technology would show Conway and Caroline's locations. Austin asked Conway to be honest with him and asked Conway, "[d]id you know [Caroline] was going to do this?"

Conway made multiple comments during the interrogation relating to an attorney. The specific portion of the interrogation that forms the basis of Conway's *Miranda* claim is set forth below:

> CONWAY: Can I ask a question?
>
> DETECTIVE AUSTIN: Uh-huh.

> CONWAY: Is there any way I can talk to an attorney before I say anything further?
>
> DETECTIVE AUSTIN: That's your right, man.
>
> CONWAY: But I want to talk to you guys about this. I just want to make sure I am not getting myself in any kind of trouble because I am being, for the most part, honest with you.
>
> * * *
>
> DETECTIVE AUSTIN: You are a police officer. You know what your rights are, man.
>
> CONWAY: Yeah.
>
> DETECTIVE AUSTIN: You know you have a right to an attorney. You know you have --
>
> CONWAY: You going to do one? Will one come up here?
>
> DETECTIVE AUSTIN: No. We're going to continue on with the investigation. You know this.
>
> CONWAY: No, No, I mean along the lines that I be able to talk to one up here and then have him -- and then once I talk to the attorney, keep talking to you guys, because I --

This is the point at which Conway claims that he had invoked his right to counsel and Detective Austin should have ended the interrogation. The interrogation continued.

Conway never confessed to being involved in the shooting, but he did change his story about where he had picked up Caroline. Conway acknowledged that he had lied earlier about where he picked her up. Conway also told Detective Austin that he had a bad feeling that Caroline had done "something" because Caroline refused to talk after getting into the car. Conway also told Austin additional details about where they had driven and

said that Caroline had changed clothes at a gas station. Conway also brought up the fact that Caroline had used his service weapon in the following exchange:

> CONWAY: I could easily get access to weapons. I'm a police officer. Why would I give her my own gun?
>
> DETECTIVE AUSTIN: I didn't say she used your gun.
>
> CONWAY: You did.
>
> DETECTIVE AUSTIN: No, I didn't -- I don't -- I said where is your duty weapon? I don't know what gun she used.
>
> CONWAY: I thought you guys said that she used by duty weapon.
>
> DETECTIVE AUSTIN: I have no idea.

Throughout the interrogation, Detective Austin told Conway that he believed he was more involved in the shooting than he was admitting.

Conway was ultimately arrested and charged with the murder of Robert, attempted murder of Krystal, and associated offenses. At trial, the jury heard testimony from various witnesses who were present at the McDonald's at the time of the shooting. The jury also heard from various law enforcement witnesses, expert witnesses, and fact witnesses. The jury also saw various video recordings from surveillance cameras and a red light camera. Some of the evidence is summarized below in order to provide context.

Jacob Braden, who was sixteen years old at the time of the murder, testified on behalf of the State. Braden and his family were close friends of the Conway family. Braden described the relationship as "[v]ery close, you know, almost like blood, you know?" Conway was like a big brother to Braden. Braden testified that in April 2015,

Conway took him to Walmart and asked him to purchase a prepaid mobile telephone for him. Braden testified that Conway explained that he needed the prepaid mobile telephone because he was working on an undercover case involving a drug dealer from New York who was coming into Maryland. Conway told Braden that he needed the phone because he "didn't want to use his personal number to jeopardize the safety of him or his family." Conway told Braden that he was prohibited from purchasing the telephone himself.[3] Braden purchased the phone for Conway as requested.

The State presented testimony from FBI Special Agent Richard Fennern, an expert in cell detail record analysis and cellular technology. Agent Fennern analyzed the records for Conway's phone, Caroline's phone, and the prepaid phone. He testified that the prepaid phone called Conway's phone at 5:50 p.m. and 5:52 p.m. The calls lasted for fifty-four seconds and 142 seconds, respectively. Both Conway's phone and Caroline's phone were using the same tower in the general vicinity of the courthouse at around 7:40 p.m., and both used a tower close to their home between 8:00 and 8:40 p.m.

Crystal Costa and her parents, Bob and Linda Gale, testified for the State about Conway and Caroline's behavior after the shooting. Costa knew Conway from childhood and played in an adult soccer league with Conway's sisters. Costa explained that she sometimes saw other members of the Conway family at soccer games, but did not socialize

[3] At trial, Prince George's County Police Corporal Jeff Erler, who had worked in a patrol squad with Conway for six months, testified that they did not investigate any high-level drug dealers and that they were not prohibited from buying prepaid mobile phones.

with Conway or Caroline. Costa testified that she was at home with her parents and two sons at approximately 6:00 p.m. on May 20, 2015 when Conway, Caroline, and two children pulled into the driveway. None of the Conways had been to Costa's home in the ten years prior. Caroline was acting in a manner that made Costa have "a sense of urgency that I thought something might be wrong." Caroline asked to use the bathroom and asked Costa for a shirt. Crystal gave Caroline a shirt. Conway also came into the home and washed his hands at the kitchen sink. Costa and Conway did not speak to each other.

Mr. and Mrs. Gales also testified. Mr. Gale testified that he went outside and saw Conway, Caroline, and two children get out of a vehicle in the driveway. Caroline told Mr. Gale "I did it." and "I shot [Conway's] ex. And I don't know if I killed them or not, but I shot them." Mr. Gale did not know what Caroline was talking about, but allowed Caroline to use the bathroom in the house. Mr. Gale asked Crystal to turn on the television to see if there was anything on the news relating to what Caroline was talking about. Caroline asked Mr. Gale for a garbage bag, which he provided to her. Caroline went outside and Mr. Gale followed. Mr. Gale saw Conway put a gun on top of the bag on the ground. Mr. Gale heard Conway say, "That's what she did it with." Mr. Gale also heard Conway say that Caroline shot "my wife's husband, my ex's husband." Mr. Gale told Conway, "Get that shit out of here. Pick it up and get [that] shit out of here." Conway picked up the gun and the bag, put it in the vehicle, and left with Caroline and the two children.

Linda Gale provided similar testimony, although she did not recall seeing a gun. The Gales had outdoor security cameras on their property. Security camera footage was played for the jury and corroborated the testimony provided by Costa and the Gales.

During deliberation, the jury sent a note asking the court to clarify the instruction for accomplice liability. The prosecutor, defense counsel, and the court discussed how to appropriately respond to the note. Additional details relating to the jury note and the court's response thereto are discussed *infra* in Part II.

The jury acquitted Conway of first-degree murder of Robert and conspiracy to commit first-degree murder as to Robert. The jury returned guilty verdicts as to the remaining counts. The circuit court imposed a total sentence of life imprisonment plus fifty years for the various offenses.

DISCUSSION

I.

Following the fourth day of trial, Conway filed a motion to suppress the majority of Conway's statement to Detective Austin, arguing that Detective Austin unlawfully continued questioning him after he had invoked his right to counsel. Defense counsel acknowledged that the motion was untimely, but explained that while reviewing the statement in preparation for Detective Austin's testimony, he had realized that Conway had asked for an attorney approximately one-and-one-half hours into the interrogation. Prior to resuming the State's case on the fifth day of trial, the circuit court permitted the parties

to argue the motion to suppress.[4] After reviewing the video recording of the interrogation and hearing argument from the parties, the circuit court denied the motion to suppress, concluding that Conway's statements were not "clear enough . . . to be an unambiguous request of the right to counsel."

In reviewing the grant or denial of a motion to suppress, we consider the evidence in the light most favorable to the party who prevails on the motion, and we accept the suppression court's factual findings unless they are clearly erroneous. *Thomas v. State*, 429 Md. 246, 259 (2012). In determining whether a constitutional right has been violated, however, "we make an independent, de novo, constitutional appraisal by applying the law to facts presented in a particular case." *Williams v. State*, 372 Md. 386, 401 (2002).

The Fifth Amendment to the United States Constitution provides: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." U.S. CONST. AMEND. V. In *Miranda*, *supra*, the United States Supreme Court observed that a "police-dominated atmosphere" can potentially "undermine [an] individual's will to resist and . . . compel him to speak where he would not otherwise do so freely." 384 U.S. at 467. The *Miranda* Court imposed a requirement that an accused must be "effectively apprised of his rights" "[i]n order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination." *Id.* The Court of Appeals has described the warnings required by *Miranda* as follows:

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[4] The State argued that the motion was untimely. The court commented that it "underst[oo]d the government's position as to the timeliness of the motion" but continued, "I want to hear about the merits of the motion."

> The prophylactic measures developed in *Miranda* are the now-familiar warnings that law enforcement personnel are required to convey to a suspect before embarking on any custodial interrogation:
>
>> [A suspect] must be warned prior to any questioning that he has the 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.

Gonzalez v. State, 429 Md. 632, 650 (2012) (alteration in original) (quoting *Miranda*, *supra*, 384 U.S. at 470). "The requirements of *Miranda* only apply when a defendant is both (1) in custody; and (2) subject to interrogation." *Norwood v. State*, 222 Md. App. 620, 634 (2015).

The opportunity to exercise the rights expressed in the *Miranda* warning must be afforded to the accused throughout the interrogation. *Ballard v. State*, 420 Md. 480, 488 (2011) (citing *Miranda*, *supra*, 384 U.S. at 479). "If the individual indicates in any manner at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease . . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present." *Miranda*, *supra*, 384 U.S. at 473-74. The United States Supreme Court has explained:

> [W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights . . . [He] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.

Edwards v. Arizona, 451 U.S. 477 484-85 (1981).

In the present case, there is no dispute that Conway was advised of his *Miranda* rights prior to the interrogation. Nor is there any dispute that Conway initially waived his *Miranda* rights. The issue before this Court on appeal is whether certain statements made by Conway during the interrogation constitute an invocation of the right to counsel such that the interrogation should have ceased.

Conway argues that the following three statements, which he made during the interrogation, were requests for counsel after which questioning should have ceased:

- Is there any way I can talk to an attorney before I say anything further?
- You going to do one? Will one come up here?
- No, No, I mean along the lines that I be able to talk to one up here and then have him -- and then once I talk to the attorney, keep talking to your guys, because I --

As we shall explain, the circuit court properly determined that these statements were not sufficient to constitute an unambiguous assertion of the right to counsel.

"The accused's invocation of the right to counsel . . . cannot be equivocal or ambiguous." *Ballard*, *supra*, 420 Md. at 490. The determination of whether the accused actually invoked his right to counsel is an objective inquiry. *Id.* An accused "must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Id.* (quoting *Davis v. United States*, 512 U.S. 452, 459 (1994)). "[I]f a suspect makes an ambiguous reference to an attorney, it would be 'good police practice' to ask

clarifying questions to determine the suspect's desire in that regard, but police are not required to do so." *Id.* (quoting *Davis*, *supra*, 512 U.S. at 461). "[I]f, from the perspective of a reasonable officer, the suspect's statement is not an unambiguous or unequivocal request for counsel, then the officers have no obligation to stop questioning him." *Id.* at 491.

The issue before the Court in *Ballard* was whether the statement, "You mind if I not say no more and just talk to an attorney about this," constituted "a sufficiently clear articulation of [the petitioner's] desire to have counsel present during the remainder of the interrogation, such that a reasonable police officer in the circumstances of [the questioning detective] would understand the statement to be a request for an attorney." *Id.* (internal quotation and citation omitted). The Court compared the petitioner's statement to the statement at issue in *Davis*, observing that the United States Supreme Court held in *Davis* that the statement "Maybe I should talk with a lawyer" was an ambiguous invocation of the right to counsel. *Id.* (quoting *Davis*, *supra*, 512 U.S. at 462). The *Ballard* Court also discussed this Court's opinions in *Matthews v. State*, 106 Md. App. 725 (1995), and *Minehan v. State*, 147 Md. App. 432 (2002). In *Matthews*, we held that the defendant's statement, "Where's my lawyer?" was an ambiguous assertion of the right to counsel. 106 Md. App. at 737-38. In *Minehan*, we commented, in dicta, that the statement, "Should I get a lawyer" was similarly an ineffective invocation of the right to counsel. 147 Md. App. at 444.

The *Ballard* Court contrasted the statement, "You mind if I not say no more and just talk to an attorney about this," with the statements at issue in *Davis*, *Matthews*, and *Minehan*, explaining that "[n]one 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. The Court continued:

> When Matthews asked "Where's my lawyer?" a reasonable officer could and likely would infer either that Matthews was wondering about his lawyer's whereabouts or, perhaps, whether a lawyer had been provided for him. The questions "Maybe I should talk to a lawyer," and "Should I get a lawyer" suggest that the suspect might want a lawyer, which, under *Davis*, is insufficient to require the officer to cease questioning. 512 U.S. at 461, 114 S. Ct. 2350.
>
> Petitioner's words, by contrast, even if understood to be phrased as a question, as the suppression court evidently found them to be, transmit the unambiguous and unequivocal message that he wanted an attorney. A speaker who begins a statement with the phrase, "you mind if . . ." suggests to his or her audience that the speaker is about to express a desire, whether to do something or have something occur. The phrase "you mind if . . ." in this context is a colloquialism; it is reasonably assumed that the speaker is not actually seeking permission to do the thing desired or to have the desired thing occur. *Cf. Prioleau v. State*, 411 Md. 629, 645, 984 A.2d 851, 861 (2009) (agreeing with the analysis that the phrase "what's up," is "a general term of salutation" that could not reasonably be viewed as designed to elicit an incriminating response from the suspect (citation omitted)).

Ballard, *supra*, 420 Md. at 492-93. The *Ballard* court further emphasized that even if the petitioner's "you mind if . . ." statement was deemed ambiguous or equivocal, his second

statement, "I'd feel more comfortable with one," clarified that he desired an attorney. *Id.* at 494.

In our view, Conway's statements ("Is there any way I can talk to an attorney before I say anything further?," "You going to do one? Will one come up here?" and "No, No, I mean along the lines that I be able to talk to one up here and then have him -- and then once I talk to the attorney, keep talking to your guys --") are similar to those that have been considered too equivocal and ambiguous to constitute an invocation of the right to counsel. *See Davis*, 512 U.S. at 455, 459 ("Maybe I should talk to a lawyer"); *Porter v. State*, 230 Md. App. 288, 434 (2016), *rev'd on other grounds*, 455 Md. 220 (2017) ("I guess I need to speak to an attorney then, right?"); *Malaska v. State*, 216 Md. App. 492, 529 (2014) ("maybe I need an attorney"; "possibly I need an attorney"); *Wimbish v. State*, 201 Md. App. 239, 255-57 ("What about my lawyer?"; "Can I get a lawyer?"). Unlike in *Ballard*, Conway's statements did not begin with a deferential colloquialism paired with a demand. Conway asked questions about his right to counsel and the circumstances under which he might speak to an attorney, but did not express a desire to speak to counsel at that time. Conway's statements indicated that perhaps Conway was considering asking to speak to an attorney, but they were not unequivocal and unambiguous assertions of the right to counsel.

Furthermore, the context of Conway's statements further supports a conclusion that the statements were far too ambiguous to constitute invocations of the right to counsel. After Conway asked, "Is there any way I can talk to an attorney?," Detective Austin

reassured Conway that he had the right to speak with an attorney if he chose to do so, responding, "That's your right man." Conway immediately volunteered, "But I want to talk to you guys about this." This response from Conway would have led a reasonable police officer to conclude that Conway did not actually intent to assert his right to counsel at that time. *See Malaska*, *supra*, 216 Md. App. at 529 ("[W]hen an officer properly inquires into the intentions of a suspect and receives an answer with two directly conflicting sub-parts, it is proper, as was done here, for the interrogating officer to inquire further into the matter in order to clarify the suspect's intentions . . . upon further inquiry, [the suspect] made it clear that he wanted to give a statement, and that he did not need an attorney 'yet.'"). Indeed, Detective Austin asked clarifying follow-up questions after Conway indicated that he was considering asking to speak with an attorney. These questions are the type of "good police practice" referenced in *Ballard*, *supra*, 420 Md. at 490, and *Davis*, *supra*, 512 U.S. at 461. Because Conway's statements were equivocal and ambiguous invocations of his right to counsel, the circuit court did not err in denying Conway's motion to suppress.

II.

Conway further asserts that the circuit court abused its discretion by declining to give Conway's requested instruction in response to a jury note. The jury note focused on the circuit court's accomplice liability instruction. The court had instructed the jury that "[i]n order to convict the defendant as an accomplice of" the first-degree murder, second-degree murder, attempted first-degree murder, first-degree assault, and firearm

offenses, "the State must prove that "the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to a participant in the crime that he was ready, willing, and able to lend support if needed." The court further instructed the jury that "[a] person need not be physically present at the time and place of the commission of the crime in order to act as an accomplice."[5] The jury was provided with a written copy of the instructions for reference during deliberation.

On the second day of deliberations, the jury submitted the following note:

> Accomplice Liability
>
> Speak to aid, counsel, command or encourage, the crime, communicate to be a participant in the crime. That he was ready, willing, and able to lend support, if needed.
>
> Is it appli[c]able if this only occurred after the crime?

Defense counsel argued that the jury had asked "a clear legal question" that "has a clear legal answer, which is no." Defense counsel continued, "I think the sufficient answer back to them is simply that, just, no." The prosecutor responded that the question was not as simple as defense counsel had characterized, emphasizing that the jury asked "about all of the different types of actions for accomplice liability, the counseling, aiding, being ready to offer, or communicating that you [are] ready and willing to render that aid." The circuit court declined to instruct the jury as requested by defense counsel, explaining that to do so would introduce a new legal theory into the case:

[5] This instruction was a verbatim reading of the Maryland Criminal Pattern Jury Instruction on accomplice liability. *See* MPJI-Cr. 6:00 (2nd Ed., 2013 Supp.).

> Okay, so let me stop you and just throw something out. What you're saying, [defense counsel], I think, injects something new to this. In other words, it would require me to inject a new legal theory or decision.
>
> So, what I would be willing to do in this is, if you want, and I'll let you all think about it, I would be willing to bring them in and re-instruct them on accomplice liability using the same instruction, or I would be willing to essentially put on there that, you have the instructions.
>
> So, but I'm not prepared to create a new quasi-instruction, you know, on something that we, you know, that's not already been given to them. So . . . and I understand your point, and I note your exception.
>
> So, which would you all like me to do? I can re-instruct them, or I can put, "You have the instructions," because they do have the instructions in writing?

The prosecutor responded by asking the court to refer the jury to the written instructions, while defense counsel asked that the jury be brought in and reinstructed. The circuit court had the jury brought into the court room and reinstructed the jury as to accomplice liability. The circuit court provided the instruction on the intended crimes aspect of accomplice liability.[6] This instruction includes an element missing from the jury note, namely, that the defendant must act "with the intent to make the crime happen."

Maryland Rule 4-325(a) permits the court to supplement jury instructions "when appropriate." The trial court's decision to give a supplemental jury instruction is within the discretion of the trial court and will not be disturbed except on a clear showing of an

[6] During jury instructions, the circuit court separately instructed the jury as to when a defendant may be convicted as an accomplice for crimes that he did not assist in or even intend to commit. This portion of the accomplice liability instruction was not referenced in the jury's question and is not at issue in this appeal.

abuse of discretion. *Appraicio v. State*, 431 Md. 42, 51 (2013) (citations omitted). The trial court's decision will not be disturbed unless it is "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.* Any supplemental instruction must, like all jury instructions, correctly state the applicable law. *Bazzle v. State*, 426 Md. 541, 449 (2012).

Conway asserts that the circuit court should have given defense counsel's requested instruction of "no" in response the jury's question. Conway characterizes the jury's question as asking whether someone who only acted after a crime could be held criminally culpable for the completed crime on an accomplice liability theory. Conway asserts that repeating the pattern jury instruction did not clearly answer the question submitted by the jury. As we shall explain, the circuit court did not abuse its discretion by declining to propound the instruction requested by Conway and instead reinstructing the jury on accomplice liability.

First, the instruction submitted by the jury was ambiguous. The jury note included the phrase "speak to aid," which is not a part of the actual jury instruction for accomplice liability. The jury note further included the phrase "communicate to be a participant," which could have been a misstatement of the phrase "communicated to a participant" which is found in the actual instruction. In addition, the jury note did not include the portion of the jury instruction on encouraging the commission of a crime.

Furthermore, the question portion of the jury note was additionally ambiguous. The jury asked, "Is it appli[c]able if *this* only occurred after the crime?" (Emphasis supplied.)

It is unclear what the antecedent of "this" was in the sentence. There is no way to know whether the jury intended to ask whether accomplice liability existed only if *all* of the listed acts occurred after the crime, or if one or more acts occurred after the crime. The jury instruction on accomplice liability sets forth various different methods by which an accomplice can be held liable for the acts of a principal, but the commission of *all* of the listed acts are not required for liability to attach. Given all of the ambiguities within the jury note, a simple answer of "no," as requested by defense counsel, would have been inappropriate and an inaccurate statement of law.

We further observe that the circuit court appropriately recognized the potential to inject an additional issue into the case by answering the jury's question in the manner suggested by defense counsel. "[T]rial courts have a duty to answer, as directly as possible, the questions posed by jurors." *Appracio*, *supra*, 431 Md. at 53. In addition, a "court must respond to a question from a deliberating jury in a way that clarifies the confusion evidenced by the query when the question involves an issue central to the case." *State v. Baby*, 404 Md. 220, 263 (2008). In responding to jury questions, the court must "walk a fine line," because "[a]ny answer given must accurately state the law and be responsive to jurors' questions without invading the province of the jury to decide the case." *Appraicio*, *supra*, 431 Md. at 44. The circuit court's instruction as to what the State was required to prove in order for the jury to find Conway guilty as an accomplice was an accurate statement of the law and did not suggest any particular conclusion. Answering the jury's ambiguous question with the one word response "no" could have confused the jury further

and led the jury to apply the law to the evidence incorrectly. Accordingly, we hold that the circuit court did not abuse its discretion by reinstructing the jury on accomplice liability in response to the jury question.

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