Circuit Court for Baltimore City
Case No. 113322017

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1278

September Term, 2016

CHRISTOPHER GOODE

v.

STATE OF MARYLAND

Graeff,
Berger,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: December 26, 2017

On September 12, 2013, Brittany Jones was stabbed and her throat was slashed. Following a six-day trial in the Circuit Court for Baltimore City, a jury convicted Christopher Goode, appellant, of attempted second-degree murder and carrying a dangerous weapon with the intent to injure. He was sentenced to thirty years for the attempted murder and three consecutive years for the weapon offense.

In this timely appeal, Goode presents the following questions:

1. Did the motions court err in denying the motion to suppress the photographic identification made by Shirley Corbin?

2. Did the trial court err in admitting evidence of Shirley Corbin's out-of-court statement to Detective Barnes?

3. Did the trial court err in excluding relevant evidence and violate Appellant's constitutional right of confrontation?

4. Did the trial court abuse its discretion by admitting a redacted version of Appellant's jail phone call with Brittany Jones rather than the full version of the call?

We hold that the court did not err or abuse its discretion in denying Goode's motion to suppress the photo identification, admitting Ms. Corbin's recorded statement, or restricting cross-examination. Because the authenticated and unredacted version of the challenged jail recording was played for the jury, Goode's final assignment of error is without merit.

FACTS AND LEGAL PROCEEDINGS[1]

The Attack

On the night of September 12, 2013, in the 2200 block of Sydney Street in Baltimore, Brittany Jones was stabbed in the neck, and her throat was slashed. While she lay bleeding on the steps of a stranger's home, she identified her assailant as "Christopher Goode," spelling out Goode's last name.

Ms. Jones and Goode have a son. Shortly after Ms. Jones gave birth to him, Goode married another woman.[2] In April 2013, Ms. Jones ended their romantic relationship. Following the breakup, she called Goode to tell him that she "was sending the child to live with a close relative." Although Goode "cursed [her] out and told [her] no[,]" the child was adopted because Ms. Jones could not take care of him and Goode "was on drugs." Before she was attacked, Goode called Ms. Jones and asked whether she would rather be hurt by a knife or a gun.

On September 12, as Ms. Jones was traveling home from work, she felt that someone was watching or following her. When she exited the light rail train at the Westport station, she saw Goode getting off at the same stop. He brandished a box cutter at her. Unfamiliar with the area and unable to find a police officer, she ran to Sydney

[1] Because appellant does not challenge the sufficiency of the evidence supporting his convictions, our review of the record focuses on evidence that provides context for the issues addressed in this appeal. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

[2] The dates of these events are not in the record.

Street, dropping her cell phone along the way. Goode retrieved the phone, caught up with her, and broke the phone. When Ms. Jones asked to borrow a cell phone from a woman who was on the street, Goode threatened to kill the woman.

Goode then attacked Ms. Jones, slashing and stabbing her with the box cutter, inflicting injuries to her back and neck. She fled, but Goode chased her down. After she collapsed in front of a row house, Goode lifted her head, slit the box cutter across her throat two times, then ran.

After leaving the hospital, Ms. Jones, even though she was "still in love with" Goode, agreed to help police "catch him" because she was threatened with arrest. While a detective was present, she contacted Goode through Facebook and arranged to meet him. When she got into Goode's car, two of his friends were in the back seat. They drove to a fast food restaurant, where Goode and his friends went inside. Using a cell phone in the car, Ms. Jones called the detective. Goode, noticing police cars nearby, returned to the vehicle "and pulled off."

After dropping off his two friends, Goode "got on the highway." Eventually, they stayed in a hotel in Virginia Beach. Ms. Jones claimed that she did not call for help during this time because Goode "got crazy" when she tried to use his cell phone, threatening her with scissors. Police later surrounded their car and arrested them.

Baltimore City Police Department investigators interviewed Keisha Allen, the resident of Sydney Street who called 911 after Brittany Jones was attacked in front of her home. While Ms. Allen was on the phone with the 911 operator, Ms. Jones identified her

assailant as Christopher Goode, noting that his last name ends in "e." Although Ms. Allen witnessed part of the attack, she did not see the assailant well enough to identify him.

Police also interviewed Shirley Corbin, the bystander whose cell phone Brittany Jones asked to use. Six days after the attack, Ms. Corbin gave a statement about the incident and identified Goode from a photo array, as the person who "was fighting" with Ms. Jones. At a suppression hearing in November 2015, which we shall discuss in detail in Part I below, Ms. Corbin recanted her identification, claiming that that she could not see the assailant's face in the dark. At trial in February 2016, Ms. Corbin again testified that she was present during the attack but did not see the assailant well enough to identify him. She explained that at the time she selected Goode's photo from the array, she had been using drugs, was not taking medication for her bipolar condition, and was not under oath.

Over Goode's objection, an audio recording and transcript of Ms. Corbin's September 18, 2013, statement and identification of Goode were admitted into evidence. Because Goode's first two assignments of error relate to that evidence, we separately detail the contents of her recorded statement to provide context for our discussion of those issues.

Ms. Corbin's Statement and Identification

Ms. Corbin met with Baltimore City Police Detective Irvinette Barnes and another detective on September 18, 2013. Ms. Corbin explained that her "boyfriend lives in the area" where Brittany Jones was attacked. On September 12, 2013, she was at the street corner when she observed a man and a woman, whom she did not know but later identified as Goode and Brittany Jones. As the two walked from the direction of the light rail, they

argued. Although Ms. Jones attempted to retrieve her phone from the man, he threw it into the street. Ms. Jones picked up the broken phone, declared, "it's over," then headed back toward the light rail station.

When the man came after her, Ms. Jones asked to use Ms. Corbin's phone. Because the man frightened and threatened Ms. Corbin, she did not hand over her phone. At that point, the man repeatedly struck Ms. Jones. When Ms. Corbin saw blood, she realized that he was "cutting" her. While they were waiting for emergency responders, Ms. Jones asked Ms. Corbin to call her mother. Ms. Corbin also retrieved Ms. Jones's "overnight bag," later turning it over to police.

When Ms. Corbin was asked to look at a photo array, she identified Goode's photo, stating that she was "real sure" he was the man who assaulted Brittany Jones. The following excerpts from the transcript of Ms. Corbin's interview and identification of Goode are pertinent to issues raised by Goode:[3]

> [Shirley] Corbin: And he scared me you know.
>
> [Detective] Barnes: Okay.
>
> Corbin: Cause, but if that was my daughter I would want somebody to do it for my daughter.
>
> Barnes: Okay.
>
> Barnes: So that's why I'm here.
>
> Barnes: Okay.

[3] We present the transcript without typographical or grammatical changes.

Corbin: **And I am scared you know cause I got seven kids, seven grandkids and I was explaining to my daughter because we went through an incident like this for like I think three years ago.**

Barnes: Uh huh.

Corbin: You know they had to wind up putting my daughter in Witness Protection.

Barnes: Okay.

Corbin: And was scared the same way you know.

Barnes: Well hopefully that's why, hopefully we won't have any issues with you. But I really appreciate you coming in today.

[Detective] Benton:[4] So you didn't know her prior to this incident?

Corbin: And I didn't even know her prior to this incident and **I did get you know to get a good look at him and everything.**

Barnes: You said you did?

Corbin: Yeah.

Barnes: Okay.

Corbin: You know what I'm saying. . . .

Barnes: How long do you think they were sitting out on the steps before . . .

Corbin: All this happened?

Barnes: . . . they started to arguing, yeah?

Corbin: I mean it was like right after they got there and she realized that he had her phone, you know you could tell like

[4] Detective Benton's first name is not in the record.

when they first walked up like she really didn't want to be with him.

Barnes: Okay. . . . And what made you think that?

Corbin: His, his demeanor.

Barnes: Okay.

Corbin: You know like him, he looked you know like he was a real nasty, he had . . . his demeanor. You know how somebody, you can tell a person by their demeanor like his attitude. She didn't really didn't want to be with him.

Benton: So were they arguing, walking and talking?

Corbin: Its like they were already mad at each other when they walked up.

Barnes: Okay, so how long you think before . . .

Corbin: Before all that stuff happened like after, I think like five minutes, like at 10 times after they got there.

Barnes: Okay, okay so they were loud. Is that what brought your attention to them?

Corbin: Yeah.

Barnes: Okay.

Corbin: What made, what really brought my attention to them is because she was like Ms., can I use your phone? Can I use your phone?

Barnes: Uh huh.

Corbin: And I went to pass it to her and he said "Ms. Mind your damn business."

Barnes: Okay.

Corbin: So you know I'm scared right there and I seen that he was digging in his pocket. I didn't see what he had you know.

Barnes: Okay.

Corbin: But I was getting scared to I say I'm glad I got a phone and I can call the police. I hope he don't hurt her. . . .

Barnes: Okay, you remember what he had on?

Corbin: He had on a white t-shirt.

Barnes: Uh huh.

Corbin: And a pair of blue jeans.

Barnes: Okay.

Corbin: And he dark skin and you know his head, don't you know how they have their cut like them temps.

Barnes: Okay, kind of like tapered on the side.

Corbin: You know, right tapered on the side but you know a little light side bush.

Barnes: Okay, so since you be around in that area had you even seen him before?

Corbin: I have never seen him before. . . .

He look like he around like he look like he in his 30's or something like that.

Barnes: Was he heavy, slim?

Corbin: He was on the slim side like.

Barnes: Okay.

Corbin: Not skinny but you know he not big. He like ah in between like guy.

Barnes: Okay.

Corbin: I know he short. He not real tall or nothing. . . .

Barnes: Okay, I'm going to read this to you Ms. Corbin. It says the six photographs on this form may or may not contain the picture of the subject in connection with this investigation. When looking at the photographs keep in mind that the individuals may not appear exactly as they did on the date of the incident because features such as hairstyles and facial hair, beards and mustaches maybe [sic] changed. Photographs may not always depict the true complexion of the person and can be affected by the quality of the photographs. After viewing each photograph, please indicate whether you have made any identification in connection with this investigation. Do you understand what that means?

Corbin: Yes.

Barnes: Okay, I just need you to put your initials right there where it says viewers initials.

Corbin: Right here.

Barnes: Uh huh.

Corbin: Okay.

Barnes: And when you're ready you can lift the page up.

Corbin: Uh huh.

Barnes: And let me know if you see anyone on the, on there that . . .

Corbin: That's him right here.

Barnes: Okay, and just to point out, are you sure?

Corbin: Yeah, I'm real sure.

Barnes: Okay, and can you read that SID number that's over top of his picture please?

Corbin: On top its 2590225.

Barnes: Okay, where it says signature can you please put your signature, the date and today's date is September 18th. No over top of the picture.

Benton: Over top of the picture.

Corbin: Oh, over the top.

Barnes: Yes. And today's date is September 18th, 2013 and its [sic] now 2:50 PM.

Corbin: I'm making sure I . . .

Barnes: Take your time.

Corbin: . . . that's him though.

Barnes: Okay, I just need you to . . .

Corbin: Cause he just got his hair shorter you know and you know he probably like now he's grown up. You know.

Barnes: Okay.

Corbin: But that's him.

Barnes: Okay, I just need you right here in those lines . . .

Corbin: Uh huh.

Barnes: Just to give me a brief . . . summary of the person that you picked out, who that person is.

Corbin: I can print?

Barnes: Yes, ma'am, and just read out loud what you wrote.

Corbin: I wrote my name is Shirley Corbin and the guy that I identified is the guy I see with Brittany the night of the incident.

Barnes: Okay, anything else? Is he just the guy that you saw with Brittany?

Corbin: **And he's the guy that you know was fighting her.**

Benton: You have to write it.

Barnes: Okay.

Corbin: Ah you want me write that and he the guy that was fighting her.

Barnes: And just for the record did you see her with any other guy that evening?

Corbin: No ma'am

Barnes: Okay, so read it for me.

Corbin: Okay, ah **my name is Shirley Corbin and the guy that I identified is the guy I see with Brittany the night of the incident. He is the guy that she was fussing with and then he began cutting her with something. I'm not sure, I'm not to sure what it was.**

Barnes: Okay.

Corbin: Does that sound okay?

Barnes: Yes ma'am. We just need you to say exactly who you know who you identified him as being that's all.

Corbin: Okay.

Barnes: I'm going to put a line here and I just want you to put your signatures across here so nothing else can be added from what you wrote.

Corbin: Alright. Date?

Barnes: Just put the date yes ma'am. Alright, has everything been the truth best to your knowledge that you can recollect?

Corbin: Yes.

Barnes: Has this recording, before that have you been promised anything or threatened in exchange for talking to me today?

Corbin: No ma'am.

Barnes: Has the recording been stopped in order to influence what you said on it?

Corbin: No ma'am.

Barnes: Is there anything else that I may didn't ask you that you want to add in reference to this investigation that you may find, may be helpful?

Corbin: I mean I know ya'll have to catch (inaudible).

Barnes: Uh huh.

Corbin: You know I am scared. You know I'm letting ya'll know that I am scared because I do goes over my boyfriend house a lot, you know. And that's where I usually stay. I stay home. We stay back and forth cause he stay with his mom and me and my daughter stay together.

Barnes: Right, and that's why I didn't ask you any of your personal information.

Corbin: Yeah.

Barnes: As far as your address or anything.

Corbin: Right, but I'm just . . .

Barnes: To put that on the recording.

Corbin: . . . but everything is . . . I think you, you know filled in everything.

Barnes: Okay.

Corbin: And I think I did, I think I did the right thing. I'm sure I did.

Barnes: Okay, do you have any questions Detective Benton?

Benton: No.

Barnes: Okay, we're going to end now. The time is 2:54 PM.

(Emphasis added.)

We shall add facts in our discussion of the issues raised by Goode.

DISCUSSION

I. Photo Identification

Goode contends that the suppression court erred in denying his motion to suppress Shirley Corbin's out-of-court identification of him from the photo array. For the reasons that follow, we disagree.

A. Standards Governing Review of Photographic Identifications

"Identification of a suspect from a photograph has been 'used widely in the United States, and when conducted properly, has been held to be admissible in evidence.'" *In re Matthew S.*, 199 Md. App. 436, 447 (2011) (quoting *Jones v. State*, 395 Md. 97, 107 (2006)). The Court of Appeals has established safeguards "'against the introduction of evidence of, or tainted by, unreliable pretrial identifications obtained through unnecessarily suggestive procedures.'" *Id*. (internal quotation marks and citations omitted).

> The admissibility of an extrajudicial identification is determined in a two-step inquiry. "The first question is whether the identification procedure was impermissibly suggestive." If the procedure is not impermissibly suggestive, then the inquiry ends. If, however, the procedure is determined to be impermissibly suggestive, then the second step is triggered, and the court must determine "whether, under the totality of circumstances, the identification was reliable." If a *prima facie* showing is made that the identification was

> impermissibly suggestive, then the burden shifts to the State to show, under a totality of the circumstances, that it was reliable.

Smiley v. State, 442 Md. 168, 180-81 (2015) (citation omitted).

In determining whether a particular photo array was impermissibly suggestive,

> [w]e view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, and will uphold the motions court's findings unless they are clearly erroneous. We must make an independent constitutional evaluation, however, by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

Gatewood v. State, 158 Md. App. 458, 475-76 (2004) (quotation marks and citations omitted). "A factual finding cannot be clearly erroneous if there is any competent evidence to support the finding below." *Darling v. State*, 232 Md. App. 430, 445-46, *cert. denied*, 454 Md. 655 (2017).

Because our sole source of evidence in evaluating the constitutionality of a photo identification is the suppression hearing record, we shall examine that next. *See Wallace v. State*, 219 Md. App. 234, 243 (2014).

B. The Suppression Record

At a suppression hearing in November 2015, conducted more than two years after the incident, Goode challenged the identification made by Shirley Corbin from the photo array presented to her six days after Brittany Jones's assault. The "Photographic Array Form," which was completed on September 18, 2013, at 2:50 p.m., contains two pages. The first page contains six color photographs. Ms. Corbin's signature, the date, and the time of the identification are handwritten in the top right position, above a photo of Goode.

On the second page is the following written advisement, with Ms. Corbin's initials appearing below this text:

> The six photographs on this form may or may not contain a picture of the subject in connection with this investigation. When looking at the photographs, keep in mind that individuals may not appear exactly as they did on the date of the incident because features such as hairstyles and facial hair (beards and mustaches) may be changed. Photographs may not always depict the true complexion of the person and can be affected by the quality of the photographs. After viewing each photograph, please indicate whether you have made any identification in connection with this investigation.

In the "Comments" section beneath that notice, Ms. Corbin printed:

> My name is Shirley Corbin and the guy that identify is the guy I see with Brittany the night of the incident, He is the guy that she was tussing with and then he begin stab cutting her with something, I'm not to sure what it was.

Ms. Corbin's signature and the date appear across the unused lines in the Comments section.

At the suppression hearing, Shirley Corbin gave a description of Ms. Jones but claimed that she did not see the assailant well enough to describe him.

> [DEFENSE COUNSEL]: Were they direct – or was the young lady directly across from you, across the street?
>
> [MS. CORBIN]: Yes, she was.
>
> [DEFENSE COUNSEL]: You said the evening was dark?
>
> [MS. CORBIN]: Yes, it was dark. . . .
>
> [DEFENSE COUNSEL]: Were you able to see this young lady? Could you make out her description?

[MS. CORBIN]: I can make out the lady description, yes, I can.

[DEFENSE COUNSEL]: Describe her.

[MS. CORBIN]: She was a light-skinned young lady. She had short hair and I think it was blonde. I know she had a short cut. . . .

[DEFENSE COUNSEL]: Was she alone?

[MS. CORBIN]: Not that I know of.

[DEFENSE COUNSEL]: Who was she with?

[MS. CORBIN]: I don't know who she was with.

[DEFENSE COUNSEL]: Male or female? Was she with a man or was she with a woman?

[MS. CORBIN]: She – I guess she was with a man. I'm not too sure.

[DEFENSE COUNSEL]: Were you able to make out this person in your description?

[MS. CORBIN]: It was dark, so I really couldn't make out the description of – only reason why I could description the lady is because she was light and she hollering out Miss, can you help me.

[DEFENSE COUNSEL]: The person she was with, tall or short, do you know?

[MS. CORBIN]: I really couldn't tell you, it was dark.

[DEFENSE COUNSEL]: Dark-skinned, light-skinned, could you tell?

[MS. CORBIN]: I guess it was – it was dark, I really couldn't see, actually, what, you know – it was dark.

[DEFENSE COUNSEL]: Now, there came a time when you talked to the police about this case, correct?

> [MS. CORBIN]: Yes.
>
> [DEFENSE COUNSEL]: Do you remember how many days after the incident you talked to the police?
>
> [MS. CORBIN]: I really can't remembers, ma'am. . . .
>
> [DEFENSE COUNSEL]: Ms. Corbin, I'm showing you what has been marked for the motions as Exhibit 1 . . . . Does that look familiar to you, Ms. Corbin? . . .
>
> [MS. CORBIN]: None of these look familiar to me. . . .
>
> THE COURT: They look familiar or they don't?
>
> [MS. CORBIN]: They don't . . . .
>
> It was so dark. None of these look familiar to me.

After defense counsel asked whether Ms. Corbin recalled viewing the photo array, Ms. Corbin answered that she did not "even remember" going to the police station, noting "I mean, there's a lot of stuff – this is 2013, so I don't – there's a lot of stuff I don't remember." Eventually, she did recall going to the police station on her own. When defense counsel asked why she picked out the photo of Goode, she replied: "I don't even remember. You know, I don't even remember back then, it – I could have been – you know it was like – I was under so much [life] pressure so I don't even remember all that." Although Ms. Corbin subsequently recalled Detective Barnes's name and writing a statement on the photo array, she reiterated that she could describe only Ms. Jones "because she was the one calling for . . . help."

On cross-examination, Ms. Corbin confirmed that she did not "want to be here today" and complained that she "was at the wrong place at the wrong time." She claimed

that she saw "a man" who was "running away" but did "know how he actually really, really looked." Although Ms. Corbin recalled giving a taped statement to Detective Barnes at police headquarters, she did not "remember giving the recall of how [the male] looked."

After refreshing Ms. Corbin's recollection with a transcript of her interview with Detective Barnes, the prosecutor asked why she selected the photo of Goode:

> [PROSECUTOR]: You did give a description of the male to Detective Barnes; isn't that correct?
>
> [MS. CORBIN]: I didn't give a description of his face. I said, you know, he – because he was like running. I couldn't see like – actually it was dark.
>
> [PROSECUTOR]: After reviewing your transcript, do you recall giving a description of the male that you saw at S[y]dney Avenue to Detective Barnes?
>
> [MS. CORBIN]: I really don't, no.
>
> [PROSECUTOR]: Okay. And – that's fine. During the course of that taped statement, isn't it true that you were asked to look at six photographs that I believe was marked as Defense Exhibit No. 1?
>
> [MS. CORBIN]: Yes.
>
> [PROSECUTOR]: And at that time, you did select a photo, correct?
>
> [MS. CORBIN]: Yeah. I mean, my signature right there, but it's just I don't even remember. . . .
>
> [PROSECUTOR]: Okay. And no one suggested to you which photo to select?
>
> [MS. CORBIN]: No, they did not.
>
> [PROSECUTOR]: And you indicated your selection by writing your signature above that photo, correct? . . .

> [MS. CORBIN]: Yes.
>
> [PROSECUTOR]: Okay. And were any of those photos shown to you prior to that taped statement?
>
> [MS. CORBIN]: I'm not sure. I don't even remember. I just don't remember. . . .
>
> [PROSECUTOR]: And, Ms. Corbin, you did also write a paragraph in that same block; isn't that true?
>
> [MS. CORBIN]: Yeah. . . .
>
> [PROSECUTOR]: No one told you what to write, did they?
>
> [MS. CORBIN]: No, no, no, he didn't.

On re-direct, defense counsel elicited that at the time of the incident, Ms. Corbin was taking medication prescribed to her for treatment of bipolar depression, but on the day she identified Goode, she did not take her medication. Ms. Corbin testified that if she does not take her medication, she "forget[s] things[.]"

On re-cross, the prosecutor played the photo array portion of Ms. Corbin's statement.

During further redirect examination, defense counsel elicited testimony supporting Goode's theory that Ms. Corbin was coached to identify him, as follows:

> [DEFENSE COUNSEL]: So, Ms. Corbin, do you feel like you were coached during this process?
>
> [MS. CORBIN]: Yes. . . .
>
> [DEFENSE COUNSEL]: A few times I heard you – the detective say just sign right here. Is that where she was showing you where to sign?
>
> [MS. CORBIN]: Yes. . .

[DEFENSE COUNSEL]: She even said that to put the guy that was fighting, were those your words or her words? . . .

[MS. CORBIN]: They were her words. . . .

[DEFENSE COUNSEL]: Is that what she told you to put on that paper?

[MS. CORBIN]: She told me where to sign it. . . .

[DEFENSE COUNSEL]: Okay. And she told you to sign above Mr. Goode's photo?

[MS. CORBIN]: Yes. . . .

[DEFENSE COUNSEL]: Was that before you actually picked out his photo?

[MS. CORBIN]: Yes. . . . after I picked, she told me to sign right there. . . .

[DEFENSE COUNSEL]: Now, before you talked to Detective Barnes, did you have . . . a conversation with her before the photos were given to you?

[MS. CORBIN]: No, ma'am. . . .

[DEFENSE COUNSEL]: Now, you said in your statement I'm sure I'm doing the right thing. . . .

The detective – did Detective Barnes say anything to you about doing the right thing? . . . .

During the course of showing you these photos?

[MS. CORBIN]: She said I would be doing the right thing by helping somebody . . . . because it could have been my child. . . .

[DEFENSE COUNSEL]: And you felt like you were being helpful by being there? . . .

[MS. CORBIN]: I didn't actually want to be there.

> [DEFENSE COUNSEL]: So how – did you go there by yourself willingly or did she call and say have to be there?
>
> [MS. CORBIN]: They said I had to be there.
>
> [DEFENSE COUNSEL]: Did you have a choice not to be there?
>
> [MS. CORBIN]: No, because if I didn't go – just like if I wouldn't have came to court today, I would go to jail. . . .
>
> [DEFENSE COUNSEL]: At any point in time did you tell her you didn't want to be there?
>
> [MS. CORBIN]: Yes, I said I didn't want to be involved with it at all.
>
> [DEFENSE COUNSEL]: And what did she say to you?
>
> [MS. CORBIN]: That I had to be, I had to be a witness.

Under further cross-examination, Ms. Corbin acknowledged that she had not been "promised or threatened in exchange for talking to Detective Barnes," that the "recording had not been stopped to influence" her, and that she stated, "I think I did the right thing," but claimed that she "also heard" from the detective that she was doing the right thing. The prosecutor then asked to play the rest of the recording, citing the allegations that Ms. Corbin had been coached. The court granted that request.

When the suppression hearing continued that afternoon, Baltimore Police Detective Irvinette Barnes, the primary officer assigned to investigate the assault of Brittany Jones, testified that she and another detective interviewed Shirley Corbin on September 18, 2013, six days after the incident. After several attempts to arrange an appointment, Ms. Corbin came to their "office," where she made a statement and was presented with a photo array.

Detective Barnes used the "Arrest Viewer" database to create an array of six photos featuring "characteristics that were similar as far as age, height, weight," based on information provided by Brittany Jones's mother. "Pretty much immediately," Ms. Corbin identified a photograph of Goode as the assailant.

At the conclusion of the hearing, the court denied Goode's motion to suppress evidence of Ms. Corbin's identification, explaining:

> The Court has had an opportunity to look at the photographic array. The array presents six individuals who are African American males. All appear, based on the photographs, to be very close to the same skin tone or type. Their haircuts are about the same. They have small amount of facial hair except for one appears – the one, number 4, may have some facial hair but it's sort of difficult to tell. But there's nothing remarkable about any of these photographs to cause one individual to stand out over the other.
>
> **The Court has had an opportunity to listen to Ms. Corb[i]n's testimony. It's abundantly clear that she does not want to be here and it's an understatement to say she vacillated on the witness stand. While her position of not wanting to be here was abundantly clear from the beginning of her testimony, she at least started out indicating that no one told her who to pick out, no one coached her in any way. And certainly I'm paraphrasing at this point. And no one did anything to lead her into her suggestion.**
>
> **As her testimony continued, she vacillated to the point of agreeing with the defense that she had been coached to agreeing with the defendant she had been – with the defense that she had been told who to select**, agreeing with the defense that that she was somehow informed that she had to do her duty as if to place some degree of coercion on her.

> The Court had the opportunity to listen to the recorded statement not only of her selection of the defendant as the person she observed. [Sic] And the record does reflect that during her testimony, the witness was consistent in saying she never saw the defendant's face or enough of him to recognize him. She claimed that she recognized the victim in this case because the victim was, in fact, light-skinned.
>
> In any respect, the audio recording of her statement to the detective and the audio recording of her selection of the defendant contradicted her testimony here today.
>
> Under all of the circumstances, **this Court finds that the defense has failed to establish suggestibility** and even if the Court would reach reliability, the Court would find that the identification of the defendant by Ms. Corb[i]n is, in fact, reliable. But the Court believes it has no reason to go that far under all of the circumstances. So the motion to suppress the photographic array is denied.

(Emphasis added.)

B. Goode's Challenges

Goode contends that the suppression court erred in denying his motion to exclude evidence of Shirley Corbin's pre-trial identification of Goode from the photo array. In support, he argues that the court (1) erroneously failed to make specific findings regarding the reliability of the identification procedure, and (2) committed clear error in finding that the identification procedure was not unduly suggestive. We are not persuaded by either contention.

With respect to adequacy of the suppression court's findings, Goode acknowledges that the suppression court "laid out all of the inconsistencies within the testimony of Ms. Corbin," but he complains that the court "did not make any findings that resolved the

various discrepancies." In his view, this was reversible procedural error because, "[w]hen presented with a factual dispute, a fact-finding body must resolve it."

The State responds that "[t]his argument is transpicuous," because Goode "offers no authority in favor of the proposition that a motions judge must make pronouncements on the record about how it resolves inconsistencies in the evidence." In any event, the State continues, "the motions court *did* explain . . . why it declined to credit [Ms.] Corbin's testimony, where that [testimony] contradicted the testimony of Det. Barnes."

We reject Goode's contention that the suppression court was required to explain how it was resolving conflicts in the evidence. "[I]n reaching a decision as to admissibility of evidence or any other subject, a trial judge is not required 'to spell out in words every thought and step of logic' taken to reach a conclusion." *Dickens v. State*, 175 Md. App. 231, 241 (2007) (quoting *Beales v. Stat*e, 329 Md. 263, 273 (1993)). *Cf. also McClain v. State*, 425 Md. 238, 252 (2012) ("The court's comments certainly indicate, even if not expressly, that the court admitted the statement . . . under the Rule. We presume, moreover, that the court recognized its obligations to satisfy itself of the existence of the two prerequisites for admission of the statement under that Rule."); *Wisneski v. State*, 169 Md. App. 527, 555-56 (2006) ("Nor must a trial court spell out every step in weighing the considerations that culminate in a ruling.").

In denying Goode's motion to exclude Ms. Corbin's photo identification, the suppression court clearly resolved conflicts in the evidence. In particular, the court observed that after Shirley Corbin "started out indicating that no one . . . coached her in

any way" or "did anything to lead her[,]" she "vacillated to the point of agreeing with the defense that she had been coached" and "told who to select[.]" The court then credited the earlier portion of Ms. Corbin's hearing testimony and her recorded statement.

Moreover, the hearing record supports the suppression court's determination that the identification was not suggestive. "Suggestiveness can arise during the presentation of a photo array when the manner itself of presenting the array to the witness or the makeup of the array indicates which photograph the witness should identify." *Smiley*, 442 Md. at 180. To be fair, however, a photo array does not have to "'be composed of clones.'" *Id*. (quoting *Bailey v. State*, 303 Md. 650, 663 (1985) (citation omitted)). In *Bailey*, for example, the defendant challenged a photo array on the ground that it

> was impermissibly suggestive, because the men in four of the six photographs did not resemble him. [The Court of Appeals] concluded that the array was not impermissibly suggestive, because the mug shots that comprised the array reflected a number of similarities, to include: each man was photographed from the same camera angle; each man had the same photo card around his neck, the text of which had been blacked out; each individual was a young black male; each individual had close-cropped hair; several of the men had slight mustaches, though none was bearded; the men wore different styles of casual shirts; and none of the individuals had any unusual features.

Smiley, 442 Md. at 181.

In this case, Goode tacitly concedes that the content of the photo array was not suggestive. Detective Barnes chose five other photographs for the array, after using the impartial "Arrest Viewer" database to find individuals with similar physical appearances and biographical information. As the court noted, all six photos depict African-American

men with similar features, skin tones, short haircuts, and close-cropped facial hair (either a mustache or goatee, but no beards). All are photos from the same angle in which the individual is wearing either a black or white collarless t-shirt. None of the suspects has visible markings, such as a scar, tattoo, or piercing. As the suppression court found, therefore, nothing in the content of the photo array itself "tipped off" Shirley Corbin that she should select Goode's photo.

Nor are we persuaded by Goode's contention that the procedure used to present the array was suggestive. Before viewing these photos, Ms. Corbin was advised, both orally and in writing, "that the suspect may or may not be in the photo array." *Cf. Rustin v. State*, 46 Md. App. 28, 33 (1980) (identification procedure was impermissibly suggestive where witness was told the defendant was involved in the crime). After acknowledging that notice, she "immediately" identified Goode's photo, stating she was "real sure" that he was Ms. Jones's assailant. As Ms. Corbin continued to look at the photos, stating she wanted to "be sure," Detective Barnes told her to take her time. Ms. Corbin confirmed her selection, saying, "that's him." When the detective then asked her to write down "what happened," Ms. Corbin described Goode as the man who "was fighting" with Ms. Jones. Before concluding the interview, she affirmed that the recording had not been stopped and that she had not been coerced or influenced. The audio recording of Ms. Corbin's interview and identification corroborates Detective Barnes's suppression hearing testimony that there was no coaching, prompting, or coercion leading up to Ms. Corbin's selection of Goode's photo.

Moreover, the record also supports the suppression court's finding that Ms. Corbin "vacillated" when giving her account of the identification because "she [did] not want to be" in court testifying against Goode. As Ms. Corbin explained, she frequented the area where the assault occurred, was afraid of Goode, and worried that she would have to go into "Witness Protection" like her daughter.

Determining which evidence to credit, to discount, and to disregard is the role reserved for the suppression judge, as finder of fact. *See, e.g., Longshore v. State,* 399 Md. 486, 499 (2007) ("Making factual determinations, i.e. resolving conflicts in the evidence, and weighing the credibility of witnesses, is properly reserved for the fact finder. In performing this role, the fact finder has the discretion to decide which evidence to credit and which to reject.") (citations omitted). In this instance, the suppression judge credited Detective Barnes's testimony, the recorded interview, and the initial portion of Shirley Corbin's hearing testimony. In turn, that evidence established a substantial factual and legal basis for the court's determination that the identification was not tainted by suggestiveness, either in the content of the array or in the way it was presented to Ms. Corbin.

As a result of that ruling, the suppression court was not obligated to address whether the identification was reliable. *See Smiley*, 442 Md. at 181. Nevertheless, the court, relying on the same evidence, made that alternative ruling, which is not clearly erroneous for the same reasons.

Based on this record, the court did not err or abuse its discretion in denying Goode's motion to suppress evidence of Ms. Corbin's photo identification.

II. Prior Inconsistent Statement

Goode next challenges the admission, at trial, of Ms. Corbin's recorded statement to Detective Barnes, under the hearsay exception for a prior inconsistent statement, claiming that it violated his constitutional right of confrontation. We again disagree and explain.

A. Prior Inconsistent Statements and Cross-Examination

Under Md. Rule 5–104(a), preliminary questions concerning the admissibility of evidence are determined by the trial court. At issue here is whether, under hearsay, Confrontation Clause, and relevance principles, the trial court erred or abused its discretion in admitting Ms. Corbin's recorded interview with Detective Barnes.

"'Hearsay' is 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." Md. Rule 5-801(c). Unless the out-of-court statement in question fits within an established exception to the rule against hearsay, it "is not admissible." Md. Rule 5-802. This Court determines *de novo* whether evidence constitutes inadmissible hearsay. *See Parker v. State*, 408 Md. 428, 436 (2009).

The hearsay exception at issue in this case applies to a previous statement, "made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement," when the prior statement "is inconsistent with the declarant's

testimony, if the statement was . . . recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement." Md. Rule 5-802.1(a)(3). The purpose of this exception is to provide redress for a "turncoat witness" whose trial testimony contradicts an earlier statement. *Nance v. State,* 331 Md. 549, 565-66, 573-74 (1993).

"Inconsistency includes both positive contradictions and claimed lapses of memory." *Id*. at 564 n.5 (citation omitted). As the Court of Appeals has recognized, "[w]hen a witness's claim of lack of memory amounts to deliberate evasion, inconsistency is implied." *Id*. Because "[t]he tendency of unwilling or untruthful witnesses to seek refuge in forgetfulness is well recognized[,] [w]hen witnesses display such a selective loss of memory, a court may appropriately admit their prior statements." *Id.* at 572.

Under this principle, a prior statement may be inconsistent if the witness "has the ability to testify fully but is unwilling," rather than unable, "to do so." *Corbett v. State*, 130 Md. App. 408, 425 (2000). We have explained that

> when a witness truthfully testifies that he does not remember an event, that testimony is not "inconsistent" with his prior written statement about the event, within the meaning of Rule 5–802.1(a). A witness who professes not to remember an event in an effort to avoid testifying about it in fact remembers it. He is able to testify about the event, but is unwilling to do so. Logic dictates that inconsistency may be implied in that testimony because by claiming that he does not remember an event that he does remember, the witness is denying, albeit indirectly, that the event occurred. Indeed, we previously have applied this reasoning to hold that inconsistency may be implied from a witness's failure to testify about a matter entirely when under the circumstances he reasonably would be expected to do so. Inconsistency may be implied from partial

> testimony, *i.e.*, an omission, because it is reasonable to infer from the witness's ability to testify partially that he has the ability to testify fully but is unwilling to do so.
>
> By contrast, a witness who truly is devoid of memory of an event lacks the ability to testify fully and accurately about it, not the willingness to do so. His avowal of no memory of the event is not an implied denial; rather, it is a true statement of lack of memory. When a witness actually lacks memory of an event he once knew about, and thus is unable to testify about it, the past recollection recorded exception to the rule against hearsay will apply, if it is established through the witness that when the writing was made, the events were fresh in his mind, and that the written statement is authentic and accurately reflects the knowledge he once had.

Id. at 425-26 (citation omitted).

"When determining whether inconsistency exists between testimony and prior statements, 'in case of doubt the courts should lean toward receiving such statements to aid in evaluating the testimony.'" *McClain v. State,* 425 Md. 238, 250 (2012) (citation omitted). Although factual findings pertinent to a prior inconsistent statement generally "are assessed under a 'clearly erroneous' standard," *Brooks v. State*, 439 Md. 698, 708 (2014), "the decision [about] whether a witness's lack of memory is feigned or actual is a demeanor-based credibility finding that is within the sound discretion" of the court as fact-finder. *Corbett,* 130 Md. App. at 426. "A trial court abuses its discretion only when 'no reasonable person would take the view adopted by the court, or when the court acts without reference to any guiding rules or principles." *King v. State*, 407 Md. 682, 697 (2009) (internal quotation marks and citations omitted). A recording of an oral statement made

by a trial witness during a police interview may qualify for admission under this provision. *See McClain*, 425 Md. at 249.

In addition to hearsay restrictions, there are constitutional limits on such out-of-court statements. Both the Confrontation Clause of the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights "guarantee a criminal defendant the right to confront the witnesses against him." *Martinez v. State*, 416 Md. 418, 428 (2010). As the Court of Appeals has explained,

> "[t]he right of confrontation includes the opportunity to cross-examine witnesses about matters relating to their biases, interests, or motives to testify falsely." That principle is incorporated in Maryland Rule 5–616(a)(4), which provides that "The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at: . . . Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely." To comply with the Confrontation Clause, a trial court must allow a defendant a "threshold level of inquiry" that "expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses."

Peterson v. State, 444 Md. 105, 121-23 (2015) (citations omitted).

B. Goode's Challenges

In this Court, Goode tacitly concedes that Ms. Corbin's trial testimony that she did not see Brittany Jones's assailant well enough to identify him was inconsistent with her prior recorded statement to Detective Barnes that she got a "good look" at the person who attacked Brittany Jones and was "real sure" it was Goode when she selected his photo from the array. Overruling defense counsel's objection that there was no inconsistency because

"it's a genuine memory loss[,]" the trial court found that Ms. Corbin's memory loss was feigned, then admitted the recording as a prior inconsistent statement.

Goode challenges the finding that Ms. Corbin feigned lack of memory at trial, arguing that it is clearly erroneous because

> [i]t is hardly uncommon for a person who was present at the scene of a crime to remember some, but not all, of what he or she heard and saw at the time of the crime. Similarly, it is not uncommon for a person not to remember what he or she told the police in the days following the crime. The incident in which Ms. Jones was injured took place on September 12, 2013. Ms. Corbin did not testify at trial until February 8, 2016, some two-and-a-half years later. There was evidence that Ms. Corbin had been using drugs at the time of the incident in 2013, which may have affected her memory. In addition, Ms. Corbin testified that she suffered from depression and bipolar disorder, she had not been taking her medication at the time of the incident or when she was shown the photo array, and that when she did not take her medication she was forgetful. At the same time, **the record contains no evidence pointing to any specific reason why Ms. Corbin would feign lack of memory. On this record, the finding that Ms. Corbin's lack of memory was feigned rather than actual could be based on nothing more than speculation[.]**

(Emphasis added.)

We conclude that the trial court did not abuse its discretion in finding that Ms. Corbin feigned lack of memory because the record refutes Goode's contention that there is "no evidence pointing to any specific reason why Ms. Corbin would feign lack of memory." *See Corbett*, 130 Md. App. at 426. Shirley Corbin was a reluctant witness for the State, who sought to avoid involvement, expressing concerns for her safety.

On the day of the attack, Ms. Corbin did not help Ms. Jones because she feared Goode would hurt her. She repeatedly told Detective Barnes that she was afraid of Goode but thought she "did the right thing" by making the identification. In the safety of the police station, while in the presence of two detectives, she described what she saw and immediately identified Goode in the photo array, saying she was "real sure" that he was the man she saw "fighting" Ms. Jones. Explaining that she still frequented the street where the assault occurred, Ms. Corbin worried about having to go into "Witness Protection" like her daughter. Detective Barnes noted that, as a protective measure, she had not asked for Ms. Corbin's address and expressed her hope that would not be necessary. But at both the suppression hearing and trial, when Ms. Corbin was required to give her address and to testify in Goode's presence, she retreated from her recorded statement, claiming that she did not see the assailant well enough to identify him and could not recall why she identified Goode's photo.

The trial court did not abuse its discretion when it attributed Ms. Corbin's inconsistency to her desire not to testify against Goode and inferred that she contrived her inability to identify Goode in order to avoid doing so. We reject Goode's contention that deciding between two possible conclusions about Ms. Corbin's credibility as to why she identified Goode's photo amounts to impermissible speculation. To the contrary, that is a decision that we require the fact-finder to make, based on the testimony of the witness, her demeanor on the stand, and the existence of conflicting and corroborating evidence. *Cf. Smith v. State*, 415 Md. 174, 185 (2010) ("Because the fact-finder possesses the unique

opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence."); *Corbett*, 134 Md. App. at 426 ("the decision whether a witness's lack of memory is feigned or actual is a demeanor-based credibility decision that is within the sound discretion of the trial court to make"). Because the evidence supports the determination that Ms. Corbin feigned her inability to identify Goode, the trial court did not err or abuse its discretion in admitting her recorded statement under the hearsay exception for a prior inconsistent statement. *See* Md. Rule 5-802.1(a)(3).

Nor did the admission of that evidence deny Goode his constitutional right of confrontation. Defense counsel had ample opportunity to question Ms. Corbin about her recorded statement. Indeed, counsel elicited her testimony that she could not see the assailant's face in the dark, that she was not taking her bipolar medication at the time Detective Barnes interviewed her, and that the detectives instructed her to write her name over Goode's photo and to identify him as the man she saw "fighting" with Ms. Jones. This was sufficient to expose to the jury facts and argument pertinent to Ms. Corbin's identification of Goode. *See Peterson*, 444 Md. at 122.

III. Restriction on Cross-Examination

Brittany Jones testified that, despite Goode's opposition, their son had been adopted. Goode contends that "the trial court erred in excluding relevant evidence and violated [his] constitutional right to confrontation[,]" by sustaining the State's objection, on re-cross-

examination, to a question seeking to impeach Ms. Jones's testimony about the adoption. We agree with the State that the trial court's restriction of cross-examination about the child's presence in the courtroom was an appropriate limitation regarding a collateral matter.

A. Standards Governing Limitation of Cross-Examination

As we observed in Part II, "[t]o comply with the Confrontation Clause, a trial court must allow a defendant a 'threshold level of inquiry' that 'expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.'" *Peterson v. State*, 444 Md. 105, 122 (2015) (citations omitted). After that constitutional threshold is satisfied, however,

> trial courts may limit the scope of cross-examination "when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant." As Maryland Rule 5-611 provides, a trial court is to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Therefore, although the defendant has "wide latitude . . . the questioning must not be allowed to stray into collateral matters which would obscure the trial issues and lead to the factfinder's confusion."

Id. at 123 (citations omitted).

B. The Record

The State's prosecution theory was that Ms. Jones's unilateral decision to allow the child fathered by Goode to be adopted motivated Goode to assault Ms. Jones. In opening,

the prosecutor told the jury that "days prior to this incident, Ms. Jones had further angered the Defendant when she told him that she intended to give their child up for adoption because she didn't believe that they could take care of a child." On direct, Brittany Jones testified that Goode objected and "cursed [her] out" when she informed him that she "was sending the[ir] child to live with a close relative." During cross-examination, she confirmed that she talked to Goode "about placing the child . . . up for adoption" and that the adoption had occurred because she could not take care of the child and Goode "was on drugs."

After the State's re-direct examination, which did not address the adoption, defense counsel attempted to undermine the adoption motive on re-cross-examination, leading to the ruling challenged by Goode:

> [DEFENSE COUNSEL]: [Y]ou talked to my client about adopting out the child that you two have in common; is that correct?
>
> [BRITTANY JONES]: Yep.
>
> [DEFENSE COUNSEL]: And you told him that it was a decision that you were going to make alone?
>
> [BRITTANY JONES]: Yep.
>
> [DEFENSE COUNSEL]: And in fact you made that decision on your own.
>
> [BRITTANY JONES]: Yes, I did.
>
> [DEFENSE COUNSEL]: But that wasn't true, was it?
>
> [BRITTANY JONES]: It was true.
>
> **[DEFENSE COUNSEL]: Is your child with you today?**

[PROSECUTOR]: Objection.

THE COURT: Can you be more specific in that question?

BY [DEFENSE COUNSEL]: The child that they have in common, is he with you today?

THE COURT: Sustained.

[DEFENSE COUNSEL]: Your Honor, may we approach?

THE COURT: Sure, come on up.

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

[DEFENSE COUNSEL]: It's, Your Honor, it's relevant because it goes –

THE COURT: You're asking if the child is with her here in court today?

[DEFENSE COUNSEL]: Because if a child is adopted, the child would not be with her.

THE COURT: Sustained.

[DEFENSE COUNSEL]: What – but, Your Honor, if the child was adopted, then a child wouldn't be with her, it would – he or she would be with their –

THE COURT: Not necessarily.

[DEFENSE COUNSEL]: – parent.

THE COURT: Her sister adopted the child or whatever else is not relevant; totally collateral.

(Emphasis added.)

C. Goode's Challenges

Goode maintains that the trial court's ruling "prevented him from cross-examining Ms. Jones on the adoption," resulting in both the erroneous exclusion of relevant evidence and a violation of Goode's constitutional right to confrontation. We are not persuaded by either claim of error.

1. Relevance

Evidence is relevant if it has "any tendency 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. Under Maryland Rule 5-402, "[e]vidence that is not relevant is not admissible." Generally, "all relevant evidence is admissible." Md. Rule 5-402. Even relevant evidence may, however, be inadmissible, if its probative value is substantially outweighed by the danger of unfair prejudice. Md. Rule 5-403. An appellate court conducts a de novo review of a trial court's determination of relevance. *State v. Simms*, 420 Md. 705, 724-725 (2011).

Here, the "fact of consequence" was the adoption, which the State cited as a motive for Goode to attack Ms. Jones. Seeking to undermine that theory by impeaching Ms. Jones's testimony that the child had been adopted, defense counsel proffered that the boy's presence in the courtroom indicated that he had not been adopted. His flawed reasoning was that "if the child was adopted, then [he] wouldn't be with her, . . . he or she would be with their adopted [parent.]" As the court recognized, the presence of the child in the courtroom was of little or no relevance because it did not make it less likely that he had

actually been adopted, given Ms. Jones's indication that "[h]er sister adopted the child[.]"[5] Moreover, further inquiry into the circumstances under which the boy was in the courtroom likely would have diverted the jury from the question of whether Ms. Jones's authorization of the child's adoption motivated Goode to attack her. The trial court did not err in sustaining the State's objection, because the proffered evidence related to a collateral matter with little or no relevance, at a substantial risk of confusing and/or distracting the jury.

2. Confrontation Clause

Nor did the challenged ruling violate Goode's right of confrontation by preventing him from questioning Ms. Jones about the adoption. Here, the court sustained a general objection to a single question – whether the child of Goode and Ms. Jones was present in the courtroom – without foreclosing Goode's inquiry about the adoption in any other way.

Defense counsel remained free to challenge not only Ms. Jones's testimony that the child had been adopted by a relative, but also the State's theory that the adoption provided the animus for Goode to assault Ms. Jones. Indeed, defense counsel continued his cross-examination, as follows:

> [DEFENSE COUNSEL]: The real reason behind this [adoption] is because you didn't want Mr. Goode to have access to the child that you two had in common; is that correct?

[5] As the State points out, an "open" adoption permits contact between a child and his or her biological parents. *See In re Adoption of Cadence B.*, 417 Md. 146, 154 n.9 (2010). In Maryland, an open adoption may be facilitated by a Department of Social Services, when "it is in the child's best interest not to sever all ties with the child's birth parents or relatives." *Id*. (quoting Md. Code Regs. 07.02.12.12–1 (2010)).

[BRITTANY JONES]: No.

[DEFENSE COUNSEL]: In fact, you said that you made sure you had a closed adoption so that they wouldn't find out who the father was, correct?

[BRITTANY JONES]: No.

[DEFENSE COUNSEL]: You never said that?

[BRITTANY JONES]: I don't recall saying it, but –

[DEFENSE COUNSEL]: Court's indulgence. May I approach the witness?

THE COURT: You may.

BY [DEFENSE COUNSEL]: At the top of page 17, Ms. Jones. You wanted a closed adoption, correct?

[BRITTANY JONES]: It's not closed though, but yep.

[DEFENSE COUNSEL]: It's not closed anymore?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

BY [DEFENSE COUNSEL]: Your Honor, she testified that it's not closed.

THE COURT: Sustained.

BY [DEFENSE COUNSEL]: Is that what you told the detective though, that it was going to be a closed adoption?

[BRITTANY JONES]: That was –

[PROSECUTOR]: Objection.

THE COURT: Overruled at this point. Go ahead.

[BRITTANY JONES]: That's what we discussed.

[DEFENSE COUNSEL]: You were also upset that . . . [Goode's wife] and Mr. Goode were trying to take your child?

[BRITTANY JONES]: No.

[DEFENSE COUNSEL]: Are – you were not concerned that at some point they – that Mr. Goode was seeking custody of the child that you had in common?

[PROSECUTOR]: Objection.

THE COURT: Overruled.

[BRITTANY JONES]: I mean, that's what I was told, so. . . .

[DEFENSE COUNSEL]: Do you remember saying "They tried to take me to court for custody"?

[BRITTANY JONES]: That's what I was told, so I told that to the people.

[DEFENSE COUNSEL]: You said that you were – that Mr. Goode was upset because he saw you in court with your other children's father?

[BRITTANY JONES]: Yes. . . .

[DEFENSE COUNSEL]: And in fact when the detective asked you why Mr. Goode would have done this allegedly, you said because he saw you in court with the other children's father, right?

[BRITTANY JONES]: Yes.

Based on this record, we are satisfied that Goode was permitted to expose facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences regarding the reliability of Ms. Jones's testimony regarding adoption of the child she shares with Goode. *See Peterson*, 444 Md. 123.

IV. Recording of Jail Call

Goode's final complaint is that the trial court abused its discretion by admitting an unauthenticated and "redacted version of Goode's jail phone call with Brittany Jones[,] rather than the full version of the call." He contends that the State did not "lay the proper evidentiary foundation for the tape" because it "failed to have Ms. Jones listen to this particular phone call and verify that she and [a]ppellant had actually been discussing the events of September 12, 2013, before he offered her an apology." Furthermore, Goode maintains, he was entitled to play the entire recording "based on the rule of completeness," Maryland Rule 5-106, in order "to provide the jury with the proper context of the apology offered by [a]ppellant."

We agree with the State that defense counsel failed to challenge the recording on the ground that it was not properly authenticated through Ms. Jones, thereby waiving that objection. *See* Md. Rule 4-323; Md. Rule 8-131(a). *See generally Gutierrez v. State,* 423 Md. 476, 488 (2011) ("when an objector sets forth the specific grounds for his objection . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified"); *see, e.g., Walls v. State*, 228 Md. App. 646, 689 (2016) (challenge to recording of jail call on ground that voice of caller was defendant was waived because argument below "was that the custodian of records needed to testify about the manner in which the calls were made and recorded"). In any event, Goode himself confirmed that the recording captured his call with Brittany Jones, which was sufficient to authenticate it. *See* Md. Rule 5-901(b)(1) (evidence may be authenticated by "[t]estimony

of a witness with knowledge that the offered evidence is what it is claimed to be"); *see generally Dickens v. State*, 175 Md. App. 231, 239 (2007) (Under this rule, "the burden of proof for authentication is slight, and the court 'need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence that the *jury* ultimately might do so.'") (citation omitted).

Accordingly, the contested fact was whether the apology during the recorded call related to the attack on Ms. Jones, not whether the apologizer was Goode. Indeed, Goode testified that his apology to Ms. Jones related to his unfulfilled promise to leave his wife. In these circumstances, there was sufficient authentication to admit the recording. *Cf. Walls*, 228 Md. App. at 689 ("the substance of the phone call itself, in which the caller describes the night of the murders in great detail and uses . . . nicknames . . . was strong circumstantial evidence that the caller was Walls and was sufficient to support its admission").

Nor does Goode have any redress under Maryland Rule 5-106, the rule of completeness, which provides that "[w]hen part . . . of a . . . recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part . . . which ought in fairness to be considered contemporaneously with it." Although the court granted the State's request to play a redacted version of the call, the prosecutor ultimately played the entire recording for the jury. Because Goode was not actually prejudiced by the court's ruling, we need not address whether the court erred in approving a redacted version of the recorded call. *See generally* Md. Rule 5–103(a)(1)

("Error may not be predicated upon a ruling that admits . . . evidence unless the party is prejudiced by the ruling").

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