Circuit Court for Harford County
Case No. C-12-CR-22-000350

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 137

September Term, 2024

WILLIAM YOURMAN

v.

STATE OF MARYLAND

Arthur,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: October 21, 2025

A jury in the Circuit Court for Harford County convicted appellant William Yourman of illegally possessing three guns and ammunition. Yourman defended against the charges by contending that he did not live at the address where law enforcement officers found the guns and did not know that there were guns at the address. At trial, the circuit court admitted a toll violation notice addressed to Yourman at the house where the officers found the guns, as well as statements indicating that Yourman knew that there were guns in the house.

Yourman appealed his convictions. He argues that the circuit court erred in admitting the toll violation notice because, he says, it amounts to inadmissible hearsay. He also argues that the circuit court erred in admitting his inculpatory statements because they were introduced through rebuttal witnesses who, he says, should not have been permitted to testify.

We discern no error and affirm the circuit court's judgments.

FACTUAL AND PROCEDURAL HISTORY

On January 22, 2022, a man later identified as Yourman got into an argument at a Royal Farms store in Baltimore City. Yourman ended the argument by discharging a firearm into the air and fleeing in a black Dodge Charger.

The Baltimore City police investigated Yourman. They determined, partially through Motor Vehicle Administration (MVA) records, that Yourman resided at 708 Stanford Court in Edgewood, which is in Harford County. The Baltimore City police obtained an arrest warrant for Yourman and a search warrant for 708 Stanford Court.

On February 23, 2022, law enforcement officers from Baltimore City and Harford County executed the search and arrest warrants. The officers discovered three guns in the home: a Tri-Arms Silver Eagle 12-gauge shotgun; a Ruger AR-556 automatic rifle; and a KelTec .380 caliber handgun. The officers also discovered ammunition in the house and in the Dodge Charger. Yourman is prohibited from possessing a regulated firearm, rifle, or shotgun in Maryland because he has previously been convicted of a crime of violence. *See* Maryland Code (2003, 2022 Repl. Vol.), §§ 5-133(b)(1) and 5-206 of the Public Safety Article.

The officers arrested Yourman, and the State charged him with possession of a firearm by a disqualified person, possession of a rifle or shotgun by a disqualified person, and illegal possession of ammunition. Yourman elected a jury trial.

At trial, the State called one witness in its case-in-chief: Baltimore City Police Department Detective Nicholas Wellems. Detective Wellems testified that he executed the search and arrest warrants at 708 Stanford Court and that he found the shotgun "in the closet in the upstairs bedroom." The State asked Detective Wellems if he looked through the closet to "observe the type of clothing inside." He responded that he found both male and female clothing in the closet. The State offered a photograph of the closet on the day on which Detective Wellems searched it, and the court admitted the photograph.

The State asked Detective Wellems if he found anything in the upstairs bedroom where he found the shotgun "that would indicate that [Yourman] resided at [708 Stanford Court]." Detective Wellems said that he found "a notice of a toll violation from the State

of Delaware to Mr. William Yourman of 708 Stanford Court." The State offered the toll violation notice into evidence, and Yourman objected.

Yourman argued that the notice constituted inadmissible hearsay. He contended that the State was attempting to introduce the toll violation notice to prove that "because it says he lives at this address, he lives at this address[.]" The State responded simply that the "document speaks for itself." The court remarked that the notice was admissible for the non-hearsay purpose of showing the "effect that it had on the" reader, i.e., Detective Wellems. Thus, the court overruled Yourman's objection and admitted the notice into evidence. Yourman did not request a limiting instruction.

Detective Wellems described other items that he found in the upstairs bedroom with the notice and the shotgun. He testified that he found shotgun magazines, shotgun shells, firearm ammunition, and firearm cartridges. Additionally, he testified that he found the KelTec handgun "on a shelf directly above the shotgun."

The State asked Detective Wellems if he searched a vehicle in connection with the search warrant. Detective Wellems replied that he searched a Dodge Charger registered to Yourman and recovered a magazine and ammunition for a Ruger rifle, which he had found in the living room of the house.

On cross-examination, defense counsel asked Detective Wellems about the toll violation notice. Detective Wellems agreed that the violation date on the notice was August 2021, but that the Delaware Department of Transportation issued the notice itself in December 2021.

Defense counsel also asked about the bedroom where the officers found the shotgun and the handgun. Detective Wellems testified that, in a dresser drawer where he found ammunition, he also found clothes. Defense counsel asked what kind of clothes he found. He testified that he thought that it was underwear, but that he "could not tell" defense counsel "what exact clothes were in there."

Defense counsel showed Detective Wellems the photograph of the closet in the upstairs bedroom where officers found the shotgun and handgun. Counsel noted that Detective Wellems testified on direct examination that he found women's and men's clothing in the closet. Detective Wellems agreed, upon looking at the photograph again, that in that "particular picture" he did "not see any male clothes."

Defense counsel asked Detective Wellems if he learned through the court of his investigation of "any other possible owners of the guns found in the house." Detective Wellems responded that an ATF database listed the registered owner of those guns as Heather Kirchner, who lives at 708 Stanford Court and shares a child with Yourman. Detective Wellems found no registered owner of the handgun.

On redirect, the State asked Detective Wellems if he ever located Yourman's MVA record. Detective Wellems said that he had and that the record listed Yourman's address as "708 Stanford Court."

After reading a stipulation that Yourman is prohibited from possessing guns, the State rested.

Yourman moved for a judgment of acquittal. He argued that the State had not presented sufficient evidence to show that he possessed the guns at issue. He pointed to Detective Wellems's testimony that the ATF database listed Heather Kirchner as the registered owner of the shotgun and rifle and to Detective Wellems's admission that he did not see male clothing in the photograph of the closet that the court admitted into evidence. Yourman also argued that it was "a bit of a stretch" to use the toll violation notice as evidence that Yourman resided at 708 Stanford Court because "the ticket was issued in August of 2021," but the search did not occur until "February of 2022."

The State responded that it had presented "more than enough evidence" to prove that Yourman resided at 708 Stanford Court. It pointed to the address on Yourman's MVA record, Detective Wellems's testimony that he saw men's and women's clothing in the closet, Detective Wellems's testimony that he found ammunition in the Dodge (which is registered to Yourman), and the toll violation notice.

The court found that, although the registration information for two of the guns was "a significant piece of evidence," it did not "speak to possession, and the issue here is possession." With respect to the toll violation notice, the court found that, "regardless of the date of issuance," the notice was "still some evidence potentially of who was also staying" at 708 Stanford Court. Viewing the evidence in the light most favorable to the State, the court denied Yourman's motion.

In the defense case, Yourman called Heather Kirchner as his only witness. Ms. Kirchner testified that she and Yourman were married at the time of trial, but that they

were not married when the officers arrested Yourman. She testified that she and Yourman have a daughter together and that only she and the daughter were living at 708 Stanford Court on February 23, 2022, when the officers executed the search and arrest warrants. According to Ms. Kirchner, Yourman was not living at 708 Stanford Court at the time of the search and had not been living there since November 2021, because she found out that he was cheating on her. She testified that, when Yourman moved out of the house, she kept his Dodge Charger, and Yourman began driving a van.

Ms. Kirchner also testified that she received a handgun qualification license in 2021. She said that she purchased the shotgun in March 2021 and the rifle in August 2021. She testified that she had kept the guns at her grandfather's house when Yourman was still living at 708 Stanford Court. She claimed that because her grandfather had been placed in a hospice, she moved the guns from her grandfather's house to 708 Stanford Court three days before the officers searched the house. She testified that Yourman did not know that she had moved the guns to the house. She also claimed that Yourman did not know that she had the handgun, which, she said, she had ordered online. She testified that the toll violation notice came to her address because the Dodge's insurance was in her name, even though the registration was in Yourman's.

On cross-examination, the State played Ms. Kirchner a video of officers showing her the handgun that they recovered from the closet. The State commented that it appeared as though Ms. Kirchner was surprised that the handgun was in her closet. It asked: "So you didn't know there was a [handgun] in your closet." Ms. Kirchner replied:

"I had forgot [sic] that it was up there. I put [it] up there probably a while ago and never touched it."

In the video, Ms. Kirchner tells the officers that all of Yourman's belongings are upstairs in the bedroom. When asked about that statement on cross-examination, Ms. Kirchner testified that she and Yourman "never got done packing his stuff for him to take it with him." She denied that "everything" he owned was in the bedroom. She claimed that Yourman had left clothes that he wasn't wearing regularly.

The State asked Ms. Kirchner when she began driving the Dodge "exclusively." She replied that she and Yourman shared the vehicle until November 2021, when she asked him to move out of the house. She claimed that, from November 2021 until Yourman's arrest on February 23, 2022, she was the only person who drove the car.

The State asked Ms. Kirchner how much freedom Yourman had in the house after she had allegedly kicked him out. Ms. Kirchner said that Yourman came over once or twice a week to see their daughter. She testified that he did not have "access to the whole house" and that he was not permitted to go into the upstairs bedroom even though some of his belongings were up there.

After the defense rested, the State indicated that it wanted to call rebuttal witnesses. It first wished to recall Detective Wellems to testify that he had seen Yourman drive the Dodge after the date on which Ms. Kirchner testified that she began driving the car "exclusively."

Yourman objected. He argued that Detective Wellems's testimony about the Dodge would open the door to a discussion of the separate case in Baltimore City, which that had served as the basis for the search warrant. The court remarked that Ms. Kirchner herself had opened the door to that evidence by "testifying that nobody else ever operated the car." Yourman replied that, although Ms. Kirchner did testify to that effect, it would be improper to use that portion of her testimony as a basis for rebuttal because it "came out in cross-examination." The court noted that the testimony was "going to be very brief" and that the State agreed to question the detective only about whether he had "seen [Yourman], or someone who looks like him[,] operating the Dodge Charger [between November 2021 and February 23, 2022]." Thus, the court overruled the objection and allowed the State to recall Detective Wellems.

Detective Wellems testified that he saw Yourman, or someone who looks like him, driving the Dodge on January 22, 2022. The State asked no more questions of him, and Yourman did not ask him anything on cross-examination. The court excused the detective and adjourned for the day.

The next day, the parties and the court held an off-the-record conversation in which the State asked the court to allow it to call two additional rebuttal witnesses. The court allowed the rebuttal witnesses to testify, and Yourman objected.

First, the State called Sergeant Daniel Wood of the Harford County Sheriff's Department. Sergeant Wood had helped to serve the arrest warrant. He testified that, when Ms. Kirchner opened the door to let him into 708 Stanford Court, Yourman "was

standing at the top of the steps inside the residence." The State played the audio portion of Sergeant Wood's body-worn camera footage, in which an officer is heard telling Yourman to "[c]ome on down."

The State then called Daniel Staniewicz, the coordinator of the Harford County Sheriff's Department's body-worn camera unit. Through Mr. Staniewicz, the State played the audio portion of another officer's body worn camera footage on the day in question. The audio features Yourman telling Ms. Kirchner that the officers were "probably looking for a handgun." Yourman can also be heard telling an officer: "There's two rifles in there and my wife's got an H[QL]"—i.e. a handgun qualification license. Additionally, Yourman tells an officer, "[T]hat's my house as well."

During closing argument, the State argued that it had presented ample evidence that Yourman "had knowledge of every single thing that the detectives found, and he had control over [them]." The State pointed to Detective Wellems's testimony that he found men's and women's clothing in upstairs bedroom closet and to Yourman's statement that the officers were probably looking for a handgun. The State claimed to have shown that Yourman "really live[d] at the residence." It reiterated that the officers found the shotgun and handgun in the upstairs bedroom, and it noted that Sergeant Wood recalled Yourman coming down the stairs when he entered the house. The State also cited the toll violation notice: "mail that was found in the bedroom, his car going through a toll[;] [h]is name, 708 Stanford Court."

The jury convicted Yourman of possession of a firearm by a disqualified person, possession of a rifle by a disqualified person, possession of a shotgun by a disqualified person, and illegal possession of ammunition.

The court sentenced Yourman to a total of 46 years of incarceration, with all but 25 suspended. He must serve the first five years without the possibility of parole.

Yourman noted a timely appeal.

DISCUSSION

I. The Toll Violation Notice

Yourman argues that the circuit court erred when it admitted the Delaware Department of Transportation toll violation notice into evidence. He argues that the notice constitutes inadmissible hearsay. We afford no deference to a circuit court's ruling on whether a statement is hearsay. *State v. Young*, 462 Md. 159, 170 (2018).

"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). The Maryland Rules define the words "statement" and "declarant." A declarant is "a person who makes a statement." Md. Rule 5-801(b). A statement is "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801(a). The rules do not define the term "assertion."

In most state and federal courts, "hearsay analysis is cabined to intentional assertions." *State v. Young*, 462 Md. at 170. In Maryland, however, "an utterance or other act would be deemed hearsay if an assertion, however attenuated, could be implied

from the utterance or act." *Fields v. State*, 168 Md. App. 22, 32, *aff'd*, 395 Md. 758 (2006). In *Stoddard v. State*, 389 Md. 681, 703 (2005), the Court held that "a declarant's lack of intent to communicate a belief in the truth of a particular proposition is irrelevant to the determination of whether the words are hearsay when offered to prove the truth of that proposition."

On the same day that the Court published *Stoddard*, it also published *Bernadyn v. State*, 390 Md. 1 (2005). In *Bernadyn*, the State had charged the defendant with possession with the intent to distribute marijuana. *Id.* at 3. Bernadyn defended on the ground that he did not live at the address where the officers found the marijuana, 2024 Morgan Street in Edgewood. *Id.* at 4. As evidence that Bernadyn did, in fact, live at the address, the State introduced a medical bill from Johns Hopkins Bayview Physicians, titled: "Responsible party: Michael Berndayn, Jr., 2024 Morgan Street, Edgewood, Maryland 21040." *Id*. The court admitted the bill into evidence over a hearsay objection. *Id.*

In closing argument, the State referred to the bill as a "piece of evidence that shows who lives there." *Id.* at 5. The State argued:

> So I guess defense counsel and the defendant would have you believe that Johns Hopkins randomly picked an address of 2024 and just happened to send it there, and that's where the defendant lived. It doesn't happen, because you also—look, this is a bill, is what it is, and I am sure that any institution is going to make sure they have the right address when they want to get paid.

Id.

Later in rebuttal closing argument, the State asked the jurors: "Again, did they randomly pick that address? I don't think so." *Id.* at 6.

On the record in that case, the Court held that the words on the medical bill constituted inadmissible hearsay. *Id.* at 3, 23. The Court emphasized that the State's comments in closing argument influenced its holding:

> The State did not argue simply that an item bearing Bernadyn's name was found in the house and that Bernadyn probably resided at the house. Rather, the State argued that the bill itself was "a piece of evidence that shows who lives there." In particular, the State suggested that Bayview Physicians had Bernadyn's correct address because "any institution is going to make sure they have the right address when they want to get paid."

Id. at 11.

The Court explained why the State's use of the bill transformed it into inadmissible hearsay:

> In order to accept the words "Michael Bernadyn, Jr., 2024 Morgan Street, Edgewood, Maryland 21040" as proof that Bernadyn lived at that address, the jury needed to reach two conclusions. It needed to conclude, first, that Bayview Physicians wrote those words because it believed Bernadyn to live at that address, and second, that Bayview Physicians was accurate in that belief. As used, the probative value of the words depended on Bayview Physicians having communicated the proposition that Michael Bernadyn lived at 2024 Morgan Street.

Id.

Because "the probative value" of the bill "depended on Bayview Physicians having communicated . . . that . . . Bernadyn lived at 2024 Morgan Street[]" in Edgewood, the Court reasoned that under Rule 5-801(a) the bill was a "statement" that Bernadyn lived at that address. *Id.* "When used to prove the truth of that assertion," the

Court concluded, "the bill was hearsay under Md. Rule 5-801(c), because it contained 'a statement . . . offered in evidence to prove the truth of the matter asserted.'" *Id.*; *see State v. Young*, 462 Md. at 174 ("[a]ccording to the State's proffered use, the bill was an implied assertion offered for the truth of the statement that the doctor's office who sent the bill was asserting that Bernadyn lived at the address[]").

Bernadyn expressly recognized that the question of whether the bill was inadmissible hearsay depended on the use to which the State put it. In *Bernadyn* the State had not confined itself to the argument that "an item bearing Bernadyn's name was found in the house and that Bernadyn probably resided at the house." *Bernadyn v. State*, 390 Md. at 11. "Rather, the State argued that the bill itself was 'a piece of evidence that shows who lives there.'" *Id.* "In highlighting this distinction," the Court seemingly approved of "an alternate theory favoring admission—offering the statement as 'merely probative circumstantial evidence.'" *State v. Young*, 462 Md. at 174.

This Court soon received the opportunity to apply *Bernadyn*'s distinction in *Fields v. State*, 168 Md. App. 22 (2006). *Fields* involved a shooting at a bowling alley. *Id.* at 27. The defendant denied that he was at the bowling alley when the shooting occurred. *Id.* at 28.

When a detective arrived at the bowling alley after the shooting, he wrote down the names that appeared on the television screens above each lane. *Id.* at 29. One of the names was the defendant's nickname—"Sat Dogg." *Id.* The State sought to introduce the evidence that the name "Sat Dogg" was on the screen at the bowling alley shortly

after the shooting, and the court overruled the defendant's hearsay objections. *Id.* at 29-30.

On appeal, this Court held that the defendant's name on the screen did not amount to inadmissible hearsay. *Id.* at 37, 38. In reaching our decision, we framed the "core question" as follows: "whether the evidence that the appellant's nickname was on a television screen at bowling lane 22 constituted an implied assertion that the appellant was present in the bowling alley that night, and was offered by the State to show his presence; or whether it was an item of circumstantial crime scene evidence from which reasonable jurors could infer that the appellant was present in the bowling alley that night." *Id.* at 36.

We observed that, "[i]n *Bernadyn*, … the Court drew that distinction, and in doing so focused on how and for what purpose the proponent of the evidence (the State) was using it." *Id.* We noted that in *Bernadyn* the State "did not offer the medical bill merely to show that it was a thing found at the crime scene—a fact from which the jurors could infer that Bernadyn probably lived there." *Id.* "Rather," we noted, "it offered the item as proof that Bernadyn lived at the residence by showing that Bayview Hospital, an outsider, believed that he lived there, was accurate in that belief, and acted on that belief." *Id.* We concluded that in *Bernadyn* "[t]he State was using the bill to show that its author, who would have reason to know Bernadyn's address, sent it there, impliedly asserting that Bernadyn lived there." *Id.* at 37. Thus it was hearsay. *See id.*

By contrast, in *Fields*, "the evidence that the appellant's nickname was found on a television screen in the bowling alley on the night of the shootings [fell] into the category of non-assertive circumstantial crime scene evidence." *Id.* at 37. We explained:

> The prosecutor did not attempt to use the evidence of the words "Sat Dogg" on the screen at the bowling alley to show that a known declarant believed the appellant was present there, had reason to accurately hold that belief, and therefore was impliedly asserting that factual proposition by entering his nickname on the screen. Unlike the probative value of the medical bill in *Bernadyn*, *supra*, the probative value of the evidence that the appellant's name was on the television screen did not depend upon the belief of the person who typed the name on the screen, or upon the accuracy of that person's belief. The prosecutor did not argue that the person who entered the name "Sat Dogg" on the screen only would have done so if he or she believed that the appellant was present in the bowling alley. Indeed, there was no evidence about that person's belief, because the person was not identified. The prosecutor argued only that the crime scene included a bowling lane with the name "Sat Dogg" written above it.

Id.

We recognized that "the probative value of the name-on-the-screen evidence was that it had a tendency to show that the appellant was a bowler at the bowling alley that night, and therefore was present at the location of the shootings." *Id.* at 38. Yet "any item at the crime scene that could be connected to the appellant in some way, regardless of the veracity of its source, also would have that probative value." *Id.* In *Fields*, the name on the screen "was circumstantial evidence that could be probative" of whether Sat Dogg "was present at the bowling alley" when the shootings occurred, but it "was not an implied assertion of the factual proposition that [he] was present at the bowling alley[.]" *Id.* Therefore, it was not an "assertion" under Rule 5-801(a), not a "statement" under

Rule 5-801(a), and not "hearsay" under Rule 5-801(c). *Fields v. State*, 168 Md. App. at 38. Instead, "[i]t was admissible non-hearsay evidence." *Id*.[1]

Yourman argues that his case is "on all fours with *Bernadyn*[.]" This is so, according to Yourman, because "[t]he toll citation, like the medical bill in *Bernadyn*, was issued by an institution," and the citation "was being offered to prove that Yourman, like Bernadyn, lived at the address on the citation." Yourman also argues that the State "used the citation for precisely the inadmissible purpose identified in *Bernadyn*[.]" Although Yourman's case resembles *Bernadyn* in some respects, we disagree that those surface-level similarities compel us to reach the same result in both cases.

The *Bernadyn* Court reached its decision that the medical bill was inadmissible hearsay because the State used the imprimatur of a hospital system to convince the jury that if Bayview Physicians—the "declarant," in hearsay parlance—sent the bill in the defendant's name to 2024 Morgan Street, the defendant *must* live there. The State argued to the jury, in essence, that Bayview's interest in getting paid was so strong that Bayview must have believed that Bernadyn lived at that address and that Bayview's belief must have been accurate. In short, in *Bernadyn*, "the probative value of the evidence . . . depend[ed] upon the belief" of the Bayview billing agent "or upon the accuracy of that person's belief." *Fields v. State*, 168 Md. App. at 37.

[1] On certiorari, Maryland's highest court declined to reach the issue of whether this Court erred in holding that the words "Sat Dogg" were not hearsay. *Fields v. State*, 395 Md. 758, 759 (2006). Instead, the Court held that "even if the court erred with respect to the evidentiary issue, the error was harmless beyond a reasonable doubt." *Id*.; *see Garner v. State*, 183 Md. App. 122, 146-50 (2008), *aff'd*, 414 Md. 372 (2010).

The State made no such argument in Yourman's case. Here, the State sought to prove that Yourman lived at 708 Stanford Court, but also that he had the use of and access to the upstairs bedroom where the officers found the shotgun, handgun, and ammunition. To convince the jury of that proposition, the State offered several pieces of circumstantial evidence that tended to show that Yourman was able to use the upstairs bedroom. Detective Wellems testified that he saw both men's and women's clothing in the upstairs closet where the shotgun and unregistered handgun were found. Sergeant Wood testified that Yourman was upstairs when the officers entered 708 Stanford Court to execute the search and arrest warrant. The court admitted body-worn camera footage, in which Ms. Kirchner tells officers that "everything of [Yourman's] is" in the upstairs bedroom. The State submitted the toll violation notice as one more piece of evidence consistent with the rest of its evidence that Yourman probably lived at 708 Stanford Court or at least had ready access to the upstairs bedroom where some of the weapons were found.

Furthermore, the State's comments in closing argument differed significantly from the comments in *Bernadyn*. In closing in this case, the State grouped the violation notice together with Yourman's MVA record, the discovery of his clothing in the upstairs closet, and his presence upstairs when the officers arrived, all of which is circumstantial evidence of Yourman's access to the place where the weapons and ammunition were found:

> Now, the final hurdle is going to be did he really live at the residence? Well, he was present when they came to serve the arrest warrant. The

> shotgun and the handgun were found upstairs in the closet and the bedroom. He was coming from upstairs. That's what Detective Wood said. We have mail that was found in the bedroom, his car going through a toll. His name, 708 Stanford Court. Detective Wellems also stated he looked at the defendant's MVA file. That's the address that was on file in February of 2022. State has presented evidence and testimony to prove that the defendant lived at the residence, knew about the guns, knew about the ammo, had control, was in possession, and because he is prohibited, he's guilty of all the counts you're looking at today.

Notably, the State did not argue that the Delaware Department of Transportation believed that Yourman lived at 708 Stanford Court and had reason to hold that belief. Therefore, the State did not argue that Delaware Department of Transportation made the implied assertion that Yourman lived at 708 Stanford Court when it sent a toll violation notice to that address. "Unlike the probative value of the medical bill in *Bernadyn*," the probative value of the toll violation notice "did not depend upon the belief of" the Delaware state employee who sent the notice "or upon the accuracy of that person's belief." *Fields v. State*, 168 Md. App. at 37. The State did not argue that the persons who sent the notice would have done so only if they believed that Yourman resided at that address. "Indeed, there was no evidence about that person's belief, because the person was not identified." *Id.*

We hold that Yourman's case is aligned more closely with *Fields* than *Bernadyn*. As offered by the State, the toll violation notice in Yourman's case was "non-assertive circumstantial crime scene evidence" (*Fields v. State*, 168 Md. App. at 37) that Yourman probably resided at 708 Stanford Court or, at a minimum, that he had access to the

upstairs bedroom and the closet where some of the guns were found. The court did not err in admitting the notice.

But even if the court erred—which it did not—we would find the error to be harmless beyond a reasonable doubt. *See Dorsey v. State*, 276 Md. 638, 659 (1976).

"An appellate court undertaking harmless-error analysis must 'be satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict.'" *Walter v. State*, 239 Md. App. 168, 191-92 (2018) (quoting *Dove v. State*, 415 Md. 727, 743 (2010)). "In considering whether an error is harmless, we also consider whether the evidence presented in error was cumulative evidence." *Dove v. State*, 415 Md. at 743. "[C]umulative evidence tends to prove the same point as other evidence presented during the trial[.]" *Id.* at 744.

In this case, there was an abundance of evidence, other than the toll violation notice, that tended to prove that Yourman lived at 708 Stanford Court or, at the very least, had access to the upstairs bedroom where two of the weapons were found. When the officers arrived to execute the warrants, Yourman himself told them that it was "his house." The MVA records listed 708 Stanford Court as Yourman's address. Yourman was on the second floor, at the top of the stairs, when the officers arrived. An officer saw men's clothing in the closet where he found two of the guns, and Yourman's wife told the officers that his clothes were in the upstairs bedroom. Yourman knew that the officers were looking for guns, and he told them that there were two rifles in the house—one of

which was in the upstairs closet. Finally, his wife, who claimed to own the rifle and the shotgun, was surprised when the officers found the unregistered handgun in the closet, which suggests that he may have put it there without her knowledge.

In summary, the toll violation notice was cumulative of many other pieces of evidence, all of which tended to prove that Yourman lived at 708 Stanford Court or had access to the upstairs bedroom. Therefore, even if the notice was hearsay, which it was not, any error in admitting it would have been harmless beyond a reasonable doubt. The court did not err, much less commit reversible error, in admitting the toll violation notice.[2]

II. Rebuttal Witnesses

Yourman argues that the court improperly allowed the State to call witnesses to testify in rebuttal. He contends that the witnesses should have testified in the State's case-in-chief and that, once they did not, the court should have prevented them from doing so altogether. We disagree.

"'[O]rdinarily, an orderly conducted criminal trial anticipates the State adducing all of its evidence in chief and resting its case. The defense follows by producing its evidence tending to establish the accused's non-culpability[.]'" *Wright v. State*, 349 Md.

[2] The toll violation notice was not only cumulative, but, as the State argues, it was not entirely at odds with Yourman's defense: the notice concerns a violation that occurred in August 2021, when, by all accounts, Yourman was still living at 708 Stanford Court. Yourman himself minimized the notice by suggesting that it did not prove whether he was living at 708 Stanford Court six months later, when the officers executed the warrant.

334, 341 (1998) (quoting *Mayson v. State*, 238 Md. 283, 288 (1965)). "A contrary practice . . . 'would not only greatly prolong trials, but would frequently lead to surprise and injustice.'" *Id.* (quoting *Bannon v. Warfield*, 42 Md. 22, 39 (1875)).

The general rule is, however, subject to exceptions, including an exception for rebuttal evidence. Rebuttal evidence is "any competent evidence which explains, or is a direct reply to, or a contradiction of 'any new matter that has been brought into the case by the defense.'" *Wright v. State*, 349 Md. at 342 (quoting *Mayson v. State*, 238 Md. at 289) (emphasis omitted). "[T]he question of what constitutes rebuttal testimony rests within the sound discretion of the trial court[.]" *State v. Hepple*, 279 Md. 265, 270 (1977). "[T]he court's ruling should be reversed only where shown to be both 'manifestly wrong and substantially injurious.'" *Id.* (quoting *Mayson v. State*, 238 Md. at 289).

In Yourman's case, the circuit court allowed three witnesses to rebut three pieces of Ms. Kirchner's testimony. Yourman argues that the State elicited the three pieces of testimony during the cross-examination of Ms. Kirchner and, thus, that the court abused its discretion in allowing the State to rebut them. He also argues that the State could have (and thus was required to have) elicited some of the testimony during its case-in-chief. We will analyze each piece of testimony in turn.

A. The Dodge Charger

The State asked to recall Detective Wellems in response to Ms. Kirchner's testimony that she was the only person who drove the Dodge Charger, where officers

found ammunition, between November 2021 and February 23, 2022. In objecting, defense counsel initially expressed concern that allowing Detective Wellems to testify that he had seen Yourman, or someone who looked like him, operate the Dodge would open the door to a discussion of the separate incident at the Royal Farms in which Yourman allegedly fired a gun into the air. Later, however, defense counsel argued that the State should not be able to recall Detective Wellems because the testimony about Ms. Kirchner's exclusive operation of the Dodge came out only in cross-examination.

Yourman is correct that, in cross-examining Ms. Kirchner, the State asked: "Were you driving [the Dodge] exclusively?" It would be a mischaracterization of Ms. Kirchner's testimony, however, to say that the State "adduced" or "elicited" the testimony about the Dodge, as Yourman argues. On direct examination, Ms. Kirchner testified that before November 2021 she and Yourman shared the Dodge and a van. Defense counsel then asked Ms. Kirchner several questions about what happened to the two cars once Ms. Kirchner allegedly kicked Yourman out of the house:

> [DEFENSE COUNSEL]: So who drove the Dodge Charger?
>
> [MS. KIRCHNER]: I did.
>
> * * *
>
> [DEFENSE COUNSEL]: And during the breakup, during the time you guys were broken up, why did you keep the Dodge Charger?
>
> [MS. KIRCHNER]: It was a more reliable car for me to have my daughter in.

> [DEFENSE COUNSEL]: So, because of the daughter . . . he allowed you to keep that car?
>
> [MS. KIRCHNER]: Yes.
>
> [DEFENSE COUNSEL]: All right. On February 23, 2022, how did Mr. Yourman get to the house, your house?
>
> [MS. KIRCHNER]: In a van, that his dad had given him.

In view of the foregoing testimony, it is beyond any serious dispute that Ms. Kirchner, through questions posed by Yourman's own counsel, first informed the jury that she was the person who drove the Dodge while she and Yourman were allegedly separated. That defense counsel never used the word "exclusive" in his questions to Ms. Kirchner is unimportant. The State's question to Ms. Kirchner on cross-examination about whether she was "exclusively" operating the Dodge during the alleged separation was merely a clarification of Ms. Kirchner's direct testimony that Yourman allowed her to "keep" the Dodge while they were separated.

The State asked two and only two questions of Detective Wellems. It asked whether he had "ever seen [Yourman], or a person who looks like him[,] operating the Charger that's registered to him." When Detective Wellems replied that he had, the State asked: "On what date?" After Detective Wellems answered that question, the State asked no more questions. The circuit court did not abuse its discretion by allowing the State to

recall Detective Wellems for the limited purpose of rebutting Ms. Kirchner's avowal that she alone drove the Dodge while she and Yourman were allegedly separated.[3]

B. Yourman's Access to the Bedroom

The State sought to call Sergeant Wood to testify that he saw Yourman on the top of the stairs on the second floor when the officers arrived to execute the warrants. According to the State, the purpose of the testimony was to rebut Ms. Kirchner's testimony that, while she and Yourman were allegedly separated, she did not allow Yourman to use or enter the upstairs bedroom where the officers found the unregistered handgun and the shotgun. Yourman argues again that, because the State elicited Ms. Kirchner's testimony that she did not allow Yourman to use the upstairs bedroom, the State should not have been able to rebut that testimony.

Once again, we disagree with Yourman. Although the State elicited the testimony in question on cross-examination, Ms. Kirchner certainly informed the jury on direct examination that she had limited Yourman's access to 708 Stanford Court beginning in November 2021. Ms. Kirchner testified on direct that Yourman needed her permission before he came over to the house. She also testified on direct that she took away Yourman's key to the house in November. It was not manifestly wrong for the circuit

[3] In his reply brief, Yourman argues that the circuit court erroneously allowed evidence to explain, reply to, or contradict "any *inferences* that may be taken from defense evidence." (Emphasis added.) This Court, however, has approved of the use of rebuttal (and sur-rebuttal) evidence to reply to or contradict inferences that one could draw from certain portions of testimony. *See, e.g.*, *Kulbicki v. State*, 102 Md. App. 376, 386 (1994) ("the jury, by drawing inferences from the testimony of the rebuttal witnesses, may have received a message that went beyond their words[]").

court to determine that Sergeant Wood's testimony, that Yourman was upstairs when the officers arrived to execute the search warrant, would contradict Ms. Kirchner's testimony about Yourman's limited access to the house.

In a separate attack on Sergeant Woods's rebuttal testimony, Yourman argues that earlier in the proceedings the State had indicated that it might call the Sergeant during its case-in-chief. He suggests that the State could have called Sergeant Woods in its own case to establish that Yourman had access to the second floor of the house, where some of the guns were found. Thus, he concludes that the court abused its discretion in permitting the State to elicit that evidence on rebuttal.

We are unpersuaded that the circuit court abused its discretion in allowing Sergeant Woods to testify briefly in rebuttal. Yourman's access to the second floor certainly has some bearing of whether he also had access to the bedroom closet where the guns were found, but, in itself, it is not highly probative of that point. By contrast, Yourman's access to the second floor is quite probative of whether Ms. Kirschner testified truthfully when, on cross-examination, she claimed to have limited Yourman's access to the second floor of the house. In these circumstances, it was not "manifestly wrong and substantially injurious" for the court to allow Sergeant Woods to testify, briefly, in rebuttal that he saw Yourman on the top of the stairs on the second floor when the officers arrived to serve the warrants.

C. Yourman's Knowledge of the Guns

The court allowed the State to admit the audio portion of an officer's body-worn camera footage in which Yourman remarks that the officers "are probably looking for a handgun" and tells one of the officers that Ms. Kirchner has "two rifles in there." The State used the footage to rebut Ms. Kirchner's testimony that she had brought the shotgun and rifle to 708 Stanford Court only three days before officers searched the home and that Yourman did not know that any of the guns, including the handgun, were in the house.

Yourman contends that the State elicited Ms. Kirchner's testimony about Yourman's knowledge of the guns. His argument is unconvincing for several reasons. First, on direct examination, defense counsel asked Ms. Kirchner, "Had you called [Yourman] and told him you were bringing those guns to the house?," and she replied, "No." Second, on direct examination, defense counsel asked Ms. Kirchner, "Did [Yourman] know that [the handgun] was present in your house on the date that the police came to execute a search warrant?," and she replied, "No."

Yourman alleges that his primary defense—that he had no knowledge of the guns—had been "well-known to the State since the inception of the case." For that reason, Yourman contends that the State should have gotten out in front of the defense by offering the officer's body-worn camera audio in its case-in-chief. Yet nothing in the record indicates that the State had advance knowledge that Yourman would attempt to establish his defense through Ms. Kirchner's testimony that he was completely unaware of the guns at the house.

In support of his contention that the State had notice of the substance of his defense, Yourman relies exclusively on defense counsel's opening statement, in which he asserted that Yourman did not live at 708 Stanford Court when Ms. Kirchner acquired the guns. The opening statement alone did not obligate the State to present the audio recording of Yourman's comments before Ms. Kirchner made an impeachable statement on the witness stand. The State need not engage in a pre-rebuttal of all possible defenses in its case-in-chief.

Yourman claims that because the court allowed the jury to hear the officer's body-worn camera audio in rebuttal, he did not have "the opportunity to meaningfully cross-examine [the officer] or question Ms. Kirchner in response to the rebuttal video[.]" Yourman argues that, had the jury heard from Ms. Kirchner after the State played the audio, "the jury might have learned that Ms. Kirchner had just informed Mr. Yourman, at that very moment, that there were firearms in the house." The record, however, contains no proffer to that effect.

In any event, Yourman could have asked the court for surrebuttal, which "'should be permitted when it explains, directly replies to, or contradicts a new matter brought into the case on rebuttal.'" *Holmes v. State*, 119 Md. App. 518, 524-25 (quoting *Kulbicki v. State*, 102 Md. App. 376, 386 (1994)). Assuming without deciding that the court should have permitted Yourman to recall Ms. Kirchner, nothing in the record indicates that Yourman asked the court's permission to do so. Yourman cannot complain to this Court

that he did not have the opportunity to question Ms. Kirchner further when he did not seek to do so.[4]

* * *

The State put on a minimal case-in-chief, but the circuit court could reasonably have perceived that the State did so because of its uncertainty about what evidence Yourman would elicit in his defense: the State was not lying in wait with evidence that it should had adduced in its case-in-chief. Once Yourman introduced Ms. Kirschner's testimony in his defense, the State exposed her falsehoods through the brief rebuttal testimony of the three officers. In these circumstances, Yourman's real complaint is that he was impaired in his ability to curate Ms. Kirschner's testimony because he did not have advance notice of what the officers would say. This is not a legitimate basis to attack a court's discretionary decision about whether to permit rebuttal testimony.

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

[4] As stated previously, the argument about the last two rebuttal witnesses occurred off the record. Yourman does not contend that he asked the court's permission to recall Ms. Kirchner during that argument.