Circuit Court for Baltimore City
Case No. 122242001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 564

September Term, 2024

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DANA DAVENPORT

v.

STATE OF MARYLAND

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Tang,
Kehoe, S.,
Raker, Irma S.
(Senior Judge, Specially Assigned),

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Opinion by Raker, J.

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Filed: January 26, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Dana Davenport, was convicted by a jury in the Circuit Court for Baltimore City of first-degree murder; use of a firearm in the commission of a crime of violence; conspiracy to commit first-degree murder resulting in death; possessing a regulated firearm after a prior disqualifying crime; wearing, carrying, or transporting a handgun on his person; and wearing, carrying, or transporting a handgun in a vehicle.

Appellant presents the following questions for our review:

> 1. Did the trial court properly exercise its discretion in permitting the lead detective to respond to defense counsel's question by testifying as to his belief that appellant was not telling the truth during his interrogation?
>
> 2. Did the trial court properly determine whether a key State's witness had a Fifth Amendment privilege?

Finding reversible error, we shall reverse.

## I.

A jury for the Circuit Court of Baltimore City indicted appellant of first-degree murder; conspiracy to commit murder; use of a firearm in the commission of a crime of violence; wearing, carrying, and transporting a handgun in a vehicle; wearing, carrying, and transporting a handgun on his person; and two counts of possessing a regulated firearm after being convicted of a disqualifying crime. After a trial in January of 2024, the jury found appellant guilty of first-degree murder; use of a firearm in the commission of a crime of violence; conspiracy to commit first-degree murder resulting in death; possessing a regulated firearm after a prior disqualifying crime; wearing, carrying, or transporting a handgun on his person; and wearing, carrying, or transporting a handgun in a vehicle. The

court sentenced appellant to a life term of incarceration for first-degree murder; twenty years of incarceration for using a firearm in the commission of a crime of violence, with the first 5 years being without parole, to run consecutive to the first-degree murder sentence; a life term of incarceration for conspiracy to commit murder resulting in death, to run concurrent to the first-degree murder sentence; and 5 years of incarceration for possessing a regulated firearm after having been convicted of a disqualifying crime, to run consecutive to all other sentences. The court merged the wearing and carrying charges with the other sentences.

The police in Baltimore City found Tyrone Walker shot dead on June 5, 2022. The primary issue at trial was the identity of the person who shot Mr. Walker. In this appeal, appellant maintains that because credibility was the key issue in this case, the trial court committed reversible error in two ways: (1) by permitting Damein Jones, the State's key witness, to invoke the Fifth Amendment to the United States Constitution before the jury, and (2) by overruling his objection to the main detective answering defense counsel's question that appellant was not "forthcoming" in his pre-trial interview and conversation with the detective.

On June 5, 2022, Officer Mamoudou Diallo responded to an 8:28 p.m. call for a shooting. He responded to the scene and observed a man face up on the ground near a car and bleeding. The man was lying outside of the driver side door. The rear driver's side door was the only door of the car that was ajar. Officer Diallo observed a casing on the front passenger side of the car. Detective Marcus Smothers was assigned to investigate and arrived on the scene around 9 p.m., after the victim had been transported to Shock Trauma.

He observed a 2014 Jeep parked adjacent to 264 South Loudon Avenue. Evidence collected at the scene included multiple shell casings from a nine-millimeter caliber handgun, a pill bottle with appellant's name found near where the victim was shot, a power bank, and a tube of Neosporin. Later DNA testing revealed the presence of appellant's DNA on the Neosporin tube.

Two witnesses testified at trial regarding their observations. Christopher Carter was driving in his truck with his daughter when he observed the altercation. He testified that he heard gunfire and backed up his truck and put his daughter's head down to protect her. When he proceeded back to the intersection, he saw two men standing on the right of an SUV wearing white shirts and dark pants. One had dreadlocks and the other had a short haircut. He observed another man standing on the left. Mr. Carter saw both men on the right raise their hands and fire upon the man on the left side of the vehicle. The man on the left side fell down and tried to reach the door of the vehicle when he was fired upon again first by one man and then by the other, who shot multiple times. Both men then ran away down Loudon Avenue. Mr. Carter heard multiple gunshots but could not specify the exact number. The victim was standing on the driver side of the vehicle and the two shooters were on the passenger side. Mr. Carter took his daughter home and called the police.

Donald Campbell was in his home on South Loudon Avenue when he overheard the altercation. He heard multiple gunshots and walked out on his porch, where he saw two men walking up the street. He recalled them wearing dark clothes. One of them had a white stripe on their clothing. He also heard a woman, whom he described as hysterical, on the phone. Mr. Campbell assumed she was calling 9-1-1. He did not see a gun.

The victim was identified as Tyrone Walker. Detectives identified Mr. Walker as the driver of the vehicle. Detective Smothers investigated appellant and his connection to the altercation based on the pill bottle with his name on it. Detective Smothers also searched for connections between appellant and Mr. Walker. He learned that appellant frequented the 1300 block of west North Avenue and obtained surveillance footage from the area from CitiWatch cameras and from a Burger King in the area. Detective Smothers observed appellant on the footage in the area on the date of the incident wearing the same clothing as one of the suspects. Detective Smothers showed some of the CitiWatch footage to Sergeant John Gossett, who recognized appellant. Sergeant Triston Ferguson also viewed footage and identified appellant, an individual he knew throughout the years and had various conversations with. Footage showed appellant with an unidentified person during the day of the altercation. Officers also viewed on the footage a silver SUV pull up at North Avenue and Pennsylvania, which Detective Smothers identified as the victim's vehicle.

Detective Smothers requested an examination of the fingerprints on the vehicle, and technician Ashley Cowan processed a Jeep Cherokee associated with the case. Technician Cowan submitted twelve lift cards from the vehicle. Examiner Kayla Sarette testified at trial as an expert in the field of latent print identification and examination. She analyzed the lifts, which revealed various identifications. A lift from the exterior front driver door surface, right of the window, belonged to Mr. Walker. Lifts from the interior rear passenger door handle belonged to Damein Jones. A lift from the interior front passenger door handle belonged to appellant.

Upon receiving the lift results, Detective Smothers discovered that Mr. Jones had a residence on South Loudon Avenue, a matter of feet from the crime scene. Detective Smothers responded to the location and spoke with his mother, who provided Mr. Jones's whereabouts. Detective Smothers interviewed Mr. Jones on July 1, 2022, in West Virginia, where Mr. Jones was in custody.

Trial initially began on September 20, 2023, when the court started voir dire. After that first day, however, the court was short the necessary number of jurors, and the next day, the trial was postponed to January 16, 2024. At that time, the State asked to depose Mr. Jones because the State received a body attachment for him, and he was in custody:

> "[PROSECUTOR]: In lieu of the State asking that the witness be held until January 16th, 2024 which I think that's a decision that has to be taken very seriously. I mean this—this witness was a juvenile at the time of this—well, he was 18, but he's very much attached to his mother. This is not someone—it seems a fair request at this point in time to do a deposition. It is listed in the statute as an option in lieu of holding a witness at this point for four months down the road.
>
> * * *
>
> . . . And this gives the Defense the opportunity to cross examine the witness, to testify as if we were in front of a jury. And of course, you know, the State is still going to make the efforts to have him here the date of the trial. It's not the presumption that this will be used at trial, but this making a clear record, giving the Defense an opportunity to cross examine in the event that anything happens and, you know, God forbid hopefully not anything happens to this witness or [in case] he makes himself completely unavailable on the next trial date on January 16th, 2024."

Defense counsel agreed to the deposition but noted there was no agreement as to whether the deposition testimony could be used at trial. The State noted that, at that time, Mr. Jones had "no adult convictions" that could be used for impeachment.

The State called Mr. Jones, and he provided substantive testimony regarding the events of June 5, 2022, and his interactions with appellant. During the deposition, the State played Mr. Jones's recorded police interview from July 1, 2022. Mr. Jones was also subject to cross-examination by defense counsel. At one point during redirect examination, Mr. Jones expressed some concern that something might happen to his family because of his identification of appellant.

After Mr. Jones had provided this testimony, he confessed to four unrelated burglary and theft charges. The Public Defender's Office retained a panel attorney for Mr. Jones, who represented him at trial. While Mr. Jones was brought to the courtroom from lockup, and before the jury entered, the State argued in favor of a motion *in limine* to suppress any questioning regarding Mr. Jones's recent arrests. A discussion then ensued regarding whether these prior offenses, which occurred after June 5, 2022, were impeachable offenses. Mr. Jones's counsel noted that, were a question regarding these arrests to be asked, Mr. Jones would invoke the Fifth Amendment's right to be silent. The court briefly questioned whether Mr. Jones would be entitled to invoke the 5th Amendment in that context but then returned to discussing the admissibility of his prior acts. The court concluded as follows:

> "THE COURT: All right. Under 5-608(b), the court may permit any witness to be examined regarding the witness's own prior conduct. And that doesn't mean prior to the crime. It means prior to now. That did not result in a conviction, but that the court finds probative of a character of truthfulness. Obviously upon the objection of the State which has been made, the court may permit the inquiry only if the question or outside the hearing of the jury establishes a reasonable factual basis for asserting that the conduct occurred. I think it is a reasonable factual basis that the conduct occurred. That the Baltimore City Police Department depicted evidence of those confessions

> in—I think that's a reasonable basis. It's not—it's not a—it's a reasonable basis. I mean that's what the standard is. So then the question is, first of all, is it more probative than it is prejudicial? And I think yes given—I mean he's in a jumpsuit. It can't be any question as to why; right?
>
> ***
>
> But he's charged with something. He's here in a jumpsuit. I do think that there's a reasonable factual basis for the question. Now I'm—how—and I guess I should ask just to—okay. So given everything that I've been supplied with, I do think the authority is clear that [DEFENSE COUNSEL] should be able to ask the witness about the pending charges. If he—of theft, of theft.
>
> ***
>
> If he says no, she's stuck with that answer. If he says I invoke my Fifth. I think I need to involve [MR. JONES'S COUNSEL], but the fact that he's been charged does not do anything to implicate his Fifth Amendment privilege. So I don't think it's going to be appropriate for him to try to invoke."

The court then asked Mr. Jones's counsel to explain how questioning Mr. Jones about the prior offenses would implicate the 5th Amendment:

> "THE COURT: Okay. You have already indicated to the court that Mr. Jones is going to attempt to invoke his Fifth Amendment privilege against self-incrimination if asked the question whether he has been charged with four separate charges of theft. Explain to me how his acknowledging that he has been charged does anything to implicate his Fifth Amendment privilege?
>
> [COUNSEL]: First of all, it involves a criminal act, Your Honor.
>
> THE COURT: Right. But the fact that he's been charged? I don't think it does unless you have anything to tell me that will persuade me. If asked whether he did these things, then his Fifth Amendment may apply. But as you know the Fifth Amendment is a question by question proceeding and as to whether he's been charged with four separate counts of theft, I can't think of anything that would prohibit him from answering.
>
> [COUNSEL]: I wouldn't say that there would be a prohibited—a prohibition there.

THE COURT: Okay."

The State then asked if Mr. Jones's counsel could sit in the gallery rather than next to Mr. Jones because "I just think it looks worse if the attorney is sitting up there to the jury." The court agreed.

Soon after, the court brought in the jury and the State began direct examination of Mr. Jones. A few questions into the examination, Mr. Jones invoked the 5th Amendment:

> "THE STATE: And describe to us—well, first of all tell us who—who you were with around that time.
>
> MR. JONES: I provoke (sic) my rights.
>
> THE STATE: Who were you with at that time, Mr. Jones?
>
> [MR. JONES'S COUNSEL]: Your Honor, he's invoked his rights.
>
> THE STATE: No. I object to counsel–
>
> THE COURT: Okay, folks. I want—I want everybody up here please. Folks, bear with us. Everybody."

A bench conference ensued:

> "THE STATE: We just had this discussion.
>
> THE COURT: No, no. We had a different discussion.
>
> THE STATE: We—but—
>
> THE COURT: Let me finish. We had a discussion about whether if he tried to invoke his Fifth Amendment privilege as to whether he had been charged that he planned to invoke and then I instructed him that he probably couldn't. Why is he invoking as to who you were with?
>
> [MR. JONES'S COUNSEL]: He was involved in a murder that happened that day. Obviously he's going to invoke.
>
> THE COURT: You're saying he was involved in a murder?

[MR. JONES'S COUNSEL]: I'm saying that anything he said could be used as evidence against him in an upcoming trial.

THE STATE: And I object. That's—

THE COURT: Do you have—

THE STATE: —this was one of my points before because counsel knew he was going to get up and do this and yet he still was able to do it in front of the jury.

THE COURT: Okay. We're in front of the jury now.

THE STATE: Yeah.

THE COURT: So let's try and be fast.

THE STATE: There's no evidence of that. I mean there is no evidence that he committed this crime. There's no evidence that he was involved. Defense counsel is the first one–

THE COURT: I need to know what the facts alleged in this whole—like I don't know. Is it your contention that he was just a witness to–

THE STATE: He was—he was just a witness to this. He was seated in the backseat and gets out, sees the defendant pull a bag out with what he believes to be a gun and then the shooting starts as he's going into his house.

[MR. JONES'S COUNSEL]: They're alleging a crime right now, Your Honor. If he's watching all that stuff he's an accessory and that is a crime. They could charge it.

THE COURT: No.

THE STATE: No.

THE COURT: They can't.

[MR. JONES'S COUNSEL]: Your Honor, yes, they could."

The conference continued, with the parties discussing whether Mr. Jones could be charged with anything and whether the State would immunize Mr. Jones. Mr. Jones's counsel indicated that he would not allow Mr. Jones to testify without immunity. When the conversation continued, the court announced a break:

> "[MR. JONES'S COUNSEL]: Your Honor, I just want to make it clear on the record too.
>
> THE COURT: Mr. Owens, we're right in front of the jury.
>
> [MR. JONES'S COUNSEL: Okay.
>
> THE COURT: I'm going to give them a break.
>
> [MR. JONES'S COUNSEL]: Okay.
>
> THE COURT: You can address anything you want to in their absence. Okay.
>
> [MR. JONES'S COUNSEL]: Yes, yes, Your Honor.
>
> THE COURT: Thank you."

The State indicated no plans to immunize Mr. Jones. The court then questioned the State regarding whether the State intended to charge Mr. Jones with any crime:

> "THE COURT: Can you think of a theory under which the State would ever charge Mr. Jones with any of the substantive crimes for which Mr. Davenport is on trial right now?
>
> THE STATE: No."

The court also confirmed that defense counsel would not ask Mr. Jones about testimonial immunity and that the State would not charge Mr. Jones with Mr. Walker's murder. The court then ordered Mr. Jones to answer the State's questions:

> "THE COURT: So what that means is when you are asked about the substance of the deposition that you previously gave about this case, it is this

> court's belief that you do not have a Fifth Amendment privilege and it is going to be my order that you answer those questions. If at any point you want a break to speak to [counsel] I will give you that break, but at this point I am going to instruct you that if you don't answer you can held in contempt which would put your liberty at issue separate and apart from what—what you're already in jail for, okay. You could add time to what you're already in jail for. Do you understand that?
>
> MR. JONES: Yes, ma'am."

The court then brought back in the jury, and the State proceeded with direct examination, which was followed by a cross-examination, redirect examination, and re-cross-examination.

Mr. Jones testified at trial that he was hanging out in the North Avenue area in the afternoon and early evening of June 5, 2022. Around 8:15 pm, he caught a hack from the North Avenue area with two other people. Mr. Jones testified that he did not know these people, but he identified appellant as one of the people in the car. During Mr. Jones's July 1 interview with the police, he told officers that he had seen appellant around once a week. Mr. Jones testified that appellant sat in the front passenger seat, Mr. Jones sat directly behind him, and the unidentified man sat in the back behind the driver. Mr. Jones told the hack to go to 272 South Loudon Avenue, which was where he lived. He did not remember where appellant and the other man asked to go. The hack driver made a stop at a store along the way, where Mr. Jones exited the vehicle to purchase cannabis and get change to pay the hack driver. Mr. Jones said the atmosphere in the vehicle did not feel right. During his July 1 interview, Mr. Jones said that appellant acted aggressively toward the driver. Mr. Jones testified that once the car arrived at his address, he exited the car, put his key in the door, and heard a couple gunshots. He testified that he did not see anyone exit the car.

During his July 1 interview, Mr. Jones said that appellant and Mr. Walker exited the vehicle, appellant looked like he was going into a bag to grab something like a gun, and that appellant had a gun when he exited the car. Mr. Jones testified at trial that he did not really see anyone step out of the car but felt pressured by the detective he was speaking to into saying that. Mr. Jones had told police that he saw sparks from the gun, though he testified that he felt pressured by police, who kept asking him over and over.

After hearing the shots, Mr. Jones ran into his house and called his mother. His sister ran outside and called an ambulance.

During the July 1 interview, the police showed Mr. Jones various photographs from the surveillance videos. Mr. Jones identified himself in the photos with appellant and the man he did not know. Mr. Jones was also shown a group of photographs in folders and instructed to separate out photos of people he recognized. Mr. Jones selected a photo of appellant but refused to sign the photo.

Mr. Jones testified that, during his July 1 interview, he felt afraid that he might be arrested for murder. Mr. Jones initially told the police that he heard the shots when he was already inside the house. The police told Mr. Jones to do the right thing and tell the truth, and that good things would come to those who tell the truth. Mr. Jones believed the police had evidence that would hurt him and later told the police he saw a gun.

At the time of trial, Mr. Jones had recently been charged with four different thefts that occurred in 2023 and was in custody for those offenses.

Doctor Donna Vicenti, an assistant medical examiner at the Office of the Chief Medical Examiner, testified as an expert at trial. She performed an autopsy on Mr. Walker.

Mr. Walker had seven gunshot wounds: three to the head, one to the right upper chest, one to the left back, one to the right buttock, and one to the right wrist. Dr. Vicenti observed stippling on the head wounds, which suggests the shooter was between half an inch to three feet away from Mr. Walker.

Appellant testified at trial. He said that on June 5, 2022, he was hanging around the North Avenue area, where he frequently hung around and where he used to live. Appellant indicated that he was familiar with Mr. Jones, whom appellant knew by the nickname Mo, and whom the appellant often saw in the neighborhood. He identified the previously unidentified man as Ant.

On June 5, appellant saw and spoke with Mr. Jones. Appellant mentioned he was going home, and Mr. Jones asked if he could get a ride with him. The two agreed to catch a hack together. Ant was walking behind them and when the car pulled up, Ant asked if he could ride with them. Appellant sat in the front passenger seat, Mr. Jones sat directly behind him, and Ant sat behind the driver.

Appellant gave the driver, Mr. Walker, two $5 bills. Appellant was on the way to his girlfriend's house and Mr. Jones was heading home. While appellant had wanted to be dropped off first, it was decided that Mo would be dropped off first since his home was on the way to appellant's destination.

Appellant testified that on the way to Mr. Jones's house, they stopped for about 5 minutes so Mr. Jones could purchase some cannabis. Once they stopped, appellant decided to exit the car and purchase some cannabis himself. Appellant and Mr. Jones returned to the car, and they continued to Mr. Jones's house. During the drive, appellant was playing

a video game on his phone. Appellant heard Mr. Jones have a conversation with Mr. Walker, but appellant could not discern the subject matter over the music in the car. He said that he was not really paying attention because he was on his phone. After the conversation, appellant noticed that Mr. Walker began to speed and drive erratically, running red lights, as if he wanted them out of the car. Appellant became nervous.

Appellant testified that, when they arrived at 264 Loudon Avenue, appellant was the first to get out of the car because he did not want to be in the car anymore given the way Mr. Walker was driving. He decided to walk the rest of the way to his girlfriend's house. Appellant testified that, once he was walking down the street, he heard gunshots. Appellant believed that, not too long after he exited the car, Ant got out of the car. The two ended up walking up Loudon together. He testified that he did not find out until the next day that someone had been shot.

Appellant was arrested in August of 2022 on the street and was interviewed in the homicide office. He was not told why he was being arrested. It had begun to rain when appellant was arrested and the back window of the police car was rolled down, so appellant got drenched with rain. Appellant said that he was cold in the interview room. At the beginning of the interview, appellant was vomiting and provided with a trash can. Appellant indicated that he had eaten or drunk something bad.

Appellant was provided with his *Miranda* warnings. He said he did not know why he was there and was told he would not be informed until he signed the *Miranda* form. Appellant testified that he believed he was being interviewed for not paying a rail or bus ticket. He signed the waiver of his rights because he thought it was the only way to find

out what was happening. Detective Smothers testified at trial over defense counsel's objection that he felt that appellant was not willing to answer questions during the interview:

> "[DEFENSE COUNSEL]: Okay. Now it would be fair to say that Mr. Davenport was evasive when you were questioning him; correct?
>
> THE STATE: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Was he forthcoming in answering your questions?
>
> DETECTIVE SMOTHERS: I don't think he—he told the truth.
>
> [DEFENSE COUNSEL]: Well, I'm going to object to that answer and move to strike.
>
> THE COURT: It's your question. That's overruled.
>
> [DEFENSE COUNSEL]: Well, I mean you don't think he told the truth, but do you—did—did he seem like he was willing to answer the questions?
>
> DETECTIVE SMOTHERS. No."

Appellant testified that he answered the questions truthfully "to an extent." He testified that he had never seen Mr. Walker before that day and did not have a conversation with him other than regarding where they were going and how much it would cost. Appellant testified that he was reluctant to tell police he was in the car because he got the sense during the interview that the police were trying to make it seem like he had something to do with Mr. Walker's death. Appellant denied shooting Mr. Walker and denied carrying a gun on June 5, 2022. He denied seeing a gun on that date.

The jury found appellant guilty of the above articulated charges.

II.

Before this court, appellant argues that the trial court erred by permitting Detective Smothers to testify as to his belief that appellant was not telling the truth during his interrogation. Appellant asserts that the trial came down to a credibility contest, and that the jury should be the only voice to decide credibility. Allowing Detective Smothers to question appellant's credibility was improper and highly prejudicial.

Appellant argues that the trial court erred by following an improper procedure to determine whether Mr. Jones had a Fifth Amendment privilege. Appellant asserts that, because it was not readily apparent whether Mr. Jones's refusal to testify would be protected by the Fifth Amendment, the court had an obligation to conduct an inquiry outside the jury's presence to determine why Mr. Jones refused to testify and determine if the privilege applied. Even though the trial court had notice that Mr. Jones would refuse to testify on Fifth Amendment grounds, the court did not conduct this inquiry and allowed him to be sworn in to testify in front of the jury, where he then invoked his Fifth Amendment rights. Rather than conduct this inquiry, appellant argues, the court relied on the State's assertion that Mr. Jones would not be charged with a crime. Appellant argues this error was not harmless; appellant asks this Court to exercise plain error review. It was improper and prejudicial, appellant maintains, for the trial court to allow Mr. Jones to invoke a testimonial privilege in front of the jury.

The State argues that the trial court properly exercised its discretion in declining to strike Detective Smother's answer regarding appellant's truthfulness. The State maintains

the answer was responsive to defense counsel's question, and that defense counsel was not entitled to have the answer stricken. The State urges that we hold that the court exercised its discretion properly in declining to strike the witness's answer. The State asserts that appellant's cited cases are inapposite, mainly because those cases generally revolve around prosecutors eliciting officer testimony, not questions asked by defense counsel that elicit the objected to answer. Here, Detective Smothers's statement was a response to defense counsel's question. In the alternative, the State argues that any error was harmless.

The State argues that this Court should decline to exercise plain error review of appellant's claim that the trial court followed improper procedure when Mr. Jones invoked his protection under the Fifth Amendment to the United States Constitution. The State asserts that they had no reason to believe Mr. Jones would invoke the Fifth Amendment protection as to the events he witnessed on the night of the murder, as he had provided sworn deposition testimony 4 months before trial. When it became clear that Mr. Jones would invoke his rights unexpectedly, the court dealt with it properly. The State argues that there was no error, and, in the alternative, appellant's claim does not meet the required factors to warrant plain error review.

## III.

We address first Detective Smothers's testimony and whether the trial court should have sustained defense counsel's objection to Detective Smother's response that appellant was untruthful during his pre-trial interview. We turn first to the standard of review. The State suggests in its brief that our standard of review is an abuse of discretion standard,

citing Maryland Rule 5-611,[1] which addresses the trial court's control over the mode and order of interrogating witnesses and presenting evidence. On the other hand, there is authority that whether evidence of a witness's opinion as to the credibility of another witness is admissible is a question of law and reviewed *de novo. See e.g., State v. Sperou*, 442 P.3d 581 (Ore. 2019). The closer applicable rule is Maryland Rule 5-401, addressing relevancy.[2] Although the question appears to us to be more a question of law, and not a matter of controlling the mode or order of testimony, we need not decide that question, because under either standard, the trial court either abused its discretion or erred as a matter of law in overruling the objection or declining to strike the answer of the witness.

It is well-settled law in Maryland that the investigating officers' opinion as to the truthfulness of the defendant's statement is inadmissible.[3] *Casey v. State*, 124 Md. App. 331, 339 (1999), citing Maryland Rule 5-401; *see also Bohnert v. State*, 312 Md. 266, 277

[1] Maryland Rule 5-611(a) provides as follows:

> "The court shall 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."

[2] Rule 5-401. Definition of 'relevant evidence' provides as follows:

> "Relevant evidence" means evidence having 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.

[3] We are not concerned here with any exception to the general rule under Maryland Rule 608(a), which states that evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(1988). And it is also well settled that an attorney interrogating a witness is entitled to a responsive answer to the question presented, and a judge may strike that part of a witness's answer which was nonresponsive to the question asked the witness. *Ingoglia v. State*, 102 Md. App. 659, 666 (1995). However, an attorney has no cause to complain or object to an answer to a question the attorney poses simply because he or she does not like the response. *See id*. (noting that questioning counsel has the right to object on the ground solely that an answer is nonresponsive).

In trying to get Detective Smothers to agree to the statement that appellant was being evasive during the interview, defense counsel asked Detective Smothers if appellant was *forthcoming* in answering questions. As the State notes in its brief, defense counsel appeared to be trying to get Detective Smothers to say that Davenport would not give straight answers. Instead, the detective answered that he did not think Davenport was being truthful.

The question becomes: was the detective's response to defense counsel responsive to counsel's question. The question is resolved by defining "forthcoming." The answer is that "forthcoming" and "untruthful" are two different, although related concepts. And defense counsel's question in this case was clear and unambiguous. He asked whether his client had been forthcoming in response to the detective's interview questions, not whether the detective thought the defendant was truthful or untruthful.

In *Heagney v. Wong*, 915 F.3d 805, 814 (2019), the court defined "forthcoming" as follows:

> "*See Oxford Living Dictionaries*: English, https://en.oxforddictionaries.com /definition/forthcoming (defining "forthcoming" as "willing to divulge info rmation"); Merriam-Webster Dictionary (2005) (defining "forthcoming" as "characterized by openness, candidness, and forthrightness")."

Similarly, in *United States v. Jones*, 74 F.4th 1065, 1071 (10th Cir. 2023), the United States Court of Appeals discussed the meaning of the word "forthcoming," explaining as follows:

> "The most common definition of 'forthcoming' concerns an individual's willingness to divulge information. *See, e.g.*, *Forthcoming*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (3d ed. 1993) ('readily available' and 'affable, approachable, sociable'); *Forthcoming*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003) ('being about to appear or to be produced or made available' or 'responsive, outgoing'); *Forthcoming*, THE OXFORD ENGLISH DICTIONARY (2d ed. 1989) ('[R]eady to make or meet advances. Also, informative, responsive.'). *See also Heagney v. Wong*, 915 F.3d 805, 814 (1st Cir. 2019) (applying the ordinary construction of 'forthcoming' as 'willing to divulge information'). To say that someone is 'forthcoming' therefore means that he or she is willing to speak, not that he or she is being truthful. Indeed, if 'forthcoming' meant 'truthful,' then to say that someone is 'not forthcoming' would mean that they are not truthful. But it is perfectly sensible to refer to someone who refuses to speak as 'not forthcoming,' and this would not mean that the silent individual is a liar. To the contrary, it simply means that they are not willing to talk."

Detective Smothers's response, that he did not believe appellant was telling the truth, was unresponsive to the question posed by defense counsel. Counsel was entitled to an answer to his question—was appellant evasive or forthcoming in his responses—not whether the officer believed appellant was telling the truth. The trial court erred in not sustaining counsel's objection to the detective's answer and taking corrective action. The court committed clear error in not sustaining defense counsel's objection to the detective's stated opinion as to appellant's truthfulness. Appellant argues that this error was highly prejudicial, reversible and not harmless error. We agree.

The State argues harmless error. The State argues as follows:

> "It was apparent from the fact that Davenport was arrested and charged with Walker's murder that, to the extent he declined to answer or professed ignorance, the detective did not think he was being truthful. It would have come as no surprise for the jury to hear that he thought Davenport was lying—the very point of the interview was that police were treating Davenport as a suspect, and his denials would have been considered untruthful given that prosecutors ultimately charged him with Walker's murder. This single line of testimony could not have affected the verdict, and so this Court should affirm."

This lame argument hardly satisfies the *Dorsey* harmless error test in Maryland: Whether this Court can declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict. Credibility, believability is a question for the jury, not a witness.

Credibility was a key issue in this case. Appellant denied shooting the decedent, Mr. Walker, although he admitted his presence at or near the scene of the crime. The State's evidence was all circumstantial and while sufficient to support a conviction, the conviction depended upon inferences and credibility determinations. The detective's opinion as to appellant's truthfulness in his pre-trial interview was clearly inadmissible. *Bohnert*, 312 Md. at 277. In *Hunter v. State*, 397 Md. 580, 596 (2007), the Supreme Court of Maryland reiterated the principle that testimony violating the *Bohnert* rule will "almost always … risk reversal."

We need not address appellant's Fifth Amendment argument, arguably not preserved for our review, because we hold that the trial court's error in overruling defense counsel's objection to the detective's response was reversible error.

**JUDGMENTS OF CONVICTION IN THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.**