UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0675

September Term, 2014

MARTIN HARRIS

v.

STATE OF MARYLAND

Meredith,
Woodward,
Friedman,

JJ.

Opinion by Woodward, J.

Filed: August 7, 2015

Martin Harris, appellant, was convicted in the Circuit Court for Baltimore City of first-degree murder and related handgun charges. Before this Court, he raises the following questions for our consideration:

> 1. Did the circuit court err in denying appellant's *Franks* [*v. Delaware*, 438 U.S. 154 (1978),] motion because, in the application for a search warrant, the detective identified his source as a "concerned citizen," when in fact the source of the information was a person who only spoke to the police four months after the crime and when he had been arrested on unrelated charges?
>
> 2. Did the circuit court err in ruling there was a sufficient basis to support the issuance of a search warrant?
>
> 3. Did the circuit court deny appellant his constitutional right to present a defense when it ruled it would not allow two defense witnesses to testify?

We answer each question in the negative and shall affirm.

I.

On April 2, 2014, appellant was convicted by a jury in the Circuit Court for Baltimore City of first degree murder and related handgun charges. The court sentenced him to a term of life imprisonment for the first degree murder, twenty years for use of a handgun in the commission of a crime of violence with the first five years to be served without the possibility of parole, consecutive to the life term, and fifteen years for possession of a handgun after having been convicted of a disqualifying crime, to be served concurrent to the other sentences.

On July 12, 2011, Jawan Weeden, nicknamed "Blaze," was fatally shot in the head in Baltimore City. Sergeant Francisco Hopkins arrived at the scene and tried to speak to people in the area, with little success. No one offered any relevant information. Detective Thomas Jackson, from the Homicide Unit, arrived and was unable also to locate any possible witnesses.

There was no break in the case until October 27, 2011, when police spoke with Terica Evans after arresting her on an unrelated criminal charge. She told police that she knew who had murdered Jawan Weeden. She selected appellant's photo from a photo array and told police that she witnessed the murder and, that she saw appellant shoot Weeden three times and then run away. She said that he was wearing red and white Adidas pants.

Thereafter, several other people told police that appellant murdered Weeden. Jacqueline Haynes was involved in a domestic dispute and during the course of that investigation, she told police that on the night of the murder, she saw appellant and Weeden arguing. She saw appellant leave and then return and shoot Weeden.

On November 15, 2011, police arrested Charles Brown for breaking and entering and a gun charge. In response to police questions as to whether Brown had knowledge of any crimes in the area, Brown told police, in a recorded statement, that a few months earlier appellant told him that he had committed a murder when he shot "Blaze" in an alley. Brown told the police also that the gun appellant had used was a .38 revolver and that, when Brown and appellant had been at appellant's mother's house, appellant asked Brown if he had a

screwdriver because appellant wanted to "mess up the [] tracings on the, on the barrel of the gun" and wanted to scrape the inside of the barrel in order to alter the gun's ballistics. In addition, Brown told the police that he believed appellant kept this gun at appellant's "baby mother[']s] house" which was located in the Yale Community. He didn't know the exact address but indicated that he could identify the house. Brown identified appellant from a photo array and wrote on the back: "Whoppy is a friend of mine" who told him "about six, seven, eight months ago" he had killed Blaze.

Brown's information is at the center of this appeal. Based on the information the police learned from Brown, Detective Jackson applied for and the court issued a search and seizure warrant for appellant's girlfriend's house. Detective Jackson seized a .38 revolver, a box of ammunition and red and white Adidas sweat pants.

After interviewing Brown, Detective Jackson confirmed where appellant lived by locating the residence and speaking with appellant's girlfriend and her grandmother, who also lived there. He applied for a warrant seeking judicial authorization to search 4407 Cedargarden Road for evidence relating to Weeden's homicide. In his affidavit supporting the warrant, Detective Jackson stated as follows:

> On November 15, 2011, a **concerned citizen** advised they had some information relative to this homicide investigation and was interviewed at the homicide office. During the interview, it was revealed that the citizen knew the identity of the person that shot and killed Mr. Jawan V. Weeden to be Mr. Martin Harris (male/black/dob: 5 Sept. 1984) of 4407 Cedargarden Rd. The citizen also advised they have carried on

> multiple conversations with Mr. Martin Harris where Mr. Harris spoke about committing the murder of Mr. Jawan Weeden; where Mr. Harris provided great detail about how he shot and killed Mr. Jawan Weeden in the alley within the 1800 blk N. Pulaski St. Along with numerous conversations, the citizen advised Mr. Martin Harris has also talked about the handgun he used to commit the murder of Mr. Weeden and the citizen has also seen Mr. Harris with the handgun within the dwelling that he lives at 4407 Cedargarden Rd. The citizen was presented with a photographic array where they positively identified Mr. Martin Harris' photograph as the person that has talked directly to them about being the person that shot and killed Mr. Jawan Weeden and is still in possession of the handgun used to shoot and kill Mr. Weeden. The citizen advised that they have seen the handgun which Mr. Harris has described as the one he used to kill Mr. Weeden as recent as Tuesday, November 8, 2011 within 4407 Cedargarden Rd. Mr. Harris has been residing at 4407 Cedargarden Rd. for the past four months with his live in girlfriend, Ms. Melodie Chisholm (female, black, 18yoa, dob: 3/27/1993). Your Affiant along with uniformed patrol units responded to 4407 Cedargarden Rd. and spoke with the tenants at the address. Upon speaking the tenant that included Ms. Melodie Chisholm and her grandmother, Ms. Loreta Ray (female, black, 57yoa, dob: 3/27/1954); they both advised that Mr. Martin Harris has resided at the dwelling along with them for the past 3 months and he does have clothing among other belongings within the dwelling.
>
> Patrol units are standing by the dwelling 4407 Cedargarden Rd. in wait of the acquisition of a search and seizure warrant for the dwelling. The concerned citizen's identity will remain anonymous to ensure their safety; however, they will/can be made available for any proceedings.

(Emphasis added).

Appellant was arrested, indicted and proceeded to trial by jury before the Circuit Court for Baltimore City. He filed a motion to suppress the evidence seized pursuant to the search

warrant. Based on *Franks v. Delaware*, he requested the court to "conduct an evidentiary hearing to determine whether the affidavit for search and seizure warrant . . . provided sufficient probable cause to search the residence of 4407 Cedargarden Road . . . on November 16, 2011." As a basis for a *Franks* hearing, he alleged that the detective was "reckless . . . dishonest and disingenuous" by stating in his affidavit supporting the warrant application that Brown was a "'concerned citizen,' who came forward simply to advise police that he possessed information" regarding the homicide, and because certain facts within the affidavit were "an outright lie" as they were not contained in Brown's recorded statement nor the detective's handwritten notes. The trial court granted appellant a *Franks* hearing.

At the *Franks* suppression hearing, appellant argued that the affidavit contained several lies and that the detective's affidavit referred to Brown as a "concerned citizen" in order to mislead the warrant-issuing judge as to the informant's credibility. The State argued that the detective's characterization of Mr. Brown "was done in good faith in recognition of the fact that he needed to protect somebody who may be sought for intimidation or targeting for other reasons . . . ." Additionally, the State contended that the phrase "concerned citizen" "does not affect the way a judge would have looked at the warrant."

Detective Jackson testified at the hearing, explaining that, after completing Brown's recorded interview, he obtained the home address of appellant's girlfriend, then corroborated the fact that appellant did, indeed, reside at 4407 Cedargarden Road. The detective saw no discrepancies that would suggest Brown was not credible. While Detective Jackson

prepared the search warrant application on the same night as the recorded interview, Brown sat in the back at the police station, and the detective would periodically ask him follow-up questions, placing relevant answers in the affidavit. Detective Jackson explained each disputed fact in the affidavit that was not contained in the recorded interview or the detective's notes. Detective Jackson stated that the reason he characterized Brown as a "concerned citizen" was "[b]ecause I didn't want Mr. Brown to be the subject of any kind of witness intimidation or for any harm to be brought to Mr. Brown." When asked why he had not used the term "confidential source" or "confidential informant," he stated that Brown was not registered as a confidential informant, so he "didn't want to label him as such." The detective testified that he did not use the characterization as part of any effort to mislead the judge reviewing the search warrant application, nor for any reason other than concern for Brown's safety.

The motions judge stated, both before and after Detective Jackson's testimony, that it did not have a problem with the affiant's referral to Brown as a "concerned citizen." The court noted that Brown was, in fact, a citizen who "could be concerned about a lot of things including the fact that . . . he apparently had some problems of his own with the criminal justice system that might make one concerned." The court denied appellant's motion to suppress, explaining as follows:

> Viewing this only in the context of this limited issue under *Franks,* I cannot find that the detective's testimony or methods of operation that particular evening show a willful lie

> or a willingness to disregard the truth, a willful disregard of the truth. I am troubled by a number of things which we may have to address at some other point during the trial but in terms of this motion the motion is denied and the material recovered with the search and seizure warrant is not suppressed.

The trial began the following day. After jury selection, appellant renewed his motion to suppress, arguing that, the search warrant lacked probable cause. The court denied the renewed motion, ruling that, even if all of Brown's background had been included in the affidavit, it would nonetheless have contained probable cause to support the search warrant.

Before the trial commenced, the State moved to exclude the testimony of two defense witnesses, Officer Leon Dockins and firearms examiner Victor Meinhardt, arguing a lack of relevance. These witnesses were involved in the burglary case in which co-defendants Brown and appellant had been arrested on November 15, 2011. The State argued that the burglaries that occurred in November 2011 were factually unrelated to the murder of Weeden and irrelevant. Defense counsel argued that these witnesses would testify that when Brown was arrested for the November burglaries, he blamed appellant, thus demonstrating a pattern of shifting the blame to appellant for his own criminal acts. In addition, appellant argued that when Brown was arrested, he had an inoperable gun with a missing firing pin, showing "eerie similarities" between the two cases. The court reserved ruling on the motion in limine until after Brown testified at trial.

The State called Brown as a witness at trial. He recanted the statements he made to the police, stating that he could not remember what happened at the homicide unit or

speaking to police officers. He claimed that he had been using marijuana and "a lot of drugs" at the time, which made it difficult for him to remember anything. When asked about his handwritten statement, Brown responded, "That is not my signature. That's all I know. I don't know nothing about this case, ma'am." On cross-examination, he also testified as to his prior criminal convictions.

After completion of his testimony, the State renewed its motion to exclude Officer Dockins and Meinhardt as witnesses on the basis that their testimony would not only be irrelevant, but also cumulative, as defense counsel had impeached Brown's credibility. Appellant argued that the witnesses' testimony would be relevant to his case theory that Brown was responsible for the murder, and whenever Brown "gets in trouble with the law, he shifts the blame" as soon as he was capable of speaking with a police officer. Appellant argued that "the similarities between those two situations goes with my theory of the case that Mr. Brown is the perpetrator and conveniently in both cases he blames [appellant]" and that Brown's possession of an inoperable firearm would support this theory. The court granted the State's motion *in limine*, ruling that the proffered evidence was not relevant, and in any event, cumulative. The court explained as follows:

> You've already brought out the fact that almost all of the facts that you would appear to wish to produce through the officer, the fact that two guns are — I'll use the term advisedly inoperable, this gun worked. They were able to fire a round through this gun that is in evidence. The other gun I know nothing about other than it's inoperable. I'm not sure what that shows other than, oh, it's a coincidence. Well, a coincidence is

> not evidence of anything. It merely is a coincidence unless there's something that ties that gun in some way to an event which involved the firing of a gun. There's no information that that gun would fire under any circumstances. So that he had an inoperable gun in his possession. He didn't have the gun in this case in his possession. I mean so I think at best, at the very least it's cumulative but I don't think it's relevant either with regard to the testimony of the firearms examiner or Officer Dockins because these are totally unrelated events other than you as you've already brought out to the jury. The jury is already aware of those things and I think certainly you have laid the foundation. If you had ten more people, the argument that you could make to the jury would essentially be the same. So I'm going to deny the motion. I'm going to grant the State's motion in limine with regard to the two defense witnesses.

Appellant rested his case, and as indicated previously, the jury convicted appellant, the court imposed sentence, and this timely appeal followed.

II.

Appellant contends that the term "concerned citizen" has a specific meaning, and Detective Jackson's use of that term to describe Brown was misleading and a reckless disregard of the truth. Appellant also argues that, because there was no other information about the source of the information other than the phrase "concerned citizen," had the suppression court removed that term, the remaining information was insufficient to establish probable cause. Without the identification of the source as a "concerned citizen," the issuing magistrate would have had no way of knowing anything about the person who provided the information. Was that individual an anonymous tipster, a paid informant, a debriefed

witness, a cooperator, or an objective, concerned citizen not from the criminal mileau? According to appellant, the phrase is vague and misleading.

The State offers three responses. First, the State contends that the circuit court was not clearly erroneous in finding no falisty, deliberate misrepresentation, or reckless disregard for the truth in Detective Jackson's use of the term "concerned citizen." Second, the State argues that the warrant would still be supported by probable cause without the term. Third, the State asserts that there was a substantial basis to issue the search warrant and, even if there had not been, the good faith doctrine would apply.

Additionally, appellant and the State disagree about whether the circuit court violated appellant's constitutional rights by excluding two of his proposed witnesses or properly exercised its discretion in determining that the proferred testimony was irrelevant and cumulative.

III.

We turn first to the validity of the search warrant. The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend IV. The probable cause standard is a "practical, nontechnical conception." *Brinegar v. United States*, 338 U.S. 160, 176 (1949). Probable cause means a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *Minor v. State*, 334 Md. 707, 716 (1994).

We review the magistrate's decision to issue a search warrant to determine whether there was "a substantial basis for concluding that the evidence sought would be discovered in the place described in the application and its affidavit." *State v. Lee,* 330 Md. 320, 326 (1993); *Birchead v. State*, 317 Md. 691, 701 (1989). In *Birchead,* the Court of Appeals observed as follows:

> The judge's task is simply to make a practical, common-sense decision whether probable cause exists; however, his action cannot be a mere ratification of the bare conclusions of others.

317 Md. at 701 (internal quotation marks and citations omitted). The Supreme Court, in *Gates*, 462 U.S. at 236, reiterated this standard of review, explaining "that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review." The judge's determination that probable cause exists is entitled to great deference. *Id.* at 237; *see also United States v. Leon*, 468 U.S. 897, 914 (1984); *Lee*, 330 Md. at 326.

In *Franks v. Delaware*, 438 U.S. 154 (1978), the Supreme Court set out a limited exception to the presumptive validity of an affidavit supporting a search warrant application. Under *Franks,* if law enforcement intentionally includes material false statements in a warrant affidavit, or includes material false statements with reckless disregard for the truth, a legal equivalent of an intentional falsehood, the suppression court must excise those statements and then review the remaining portion of the affidavit to see if the remainder is sufficient to establish probable cause. *United States v. Garcia*, 785 F.2d 214, 222 (8th Cir. 1986), *cert. denied*, 475 U.S. 1143 (1986); *Agurs v. State*, 415 Md. 62, 100 n.4 (2010). The

burden is on the defendant to prove the intentional or reckless inclusion of false statements in the supporting affidavit. *Garcia*, 785 F.2d at 222. *Franks* requires a detailed proffer from the defense before the defendant is entitled to a hearing to go behind the four corners of the warrant. *Franks*, 438 U.S. at 155. Under *Franks*, when a defendant makes a substantial preliminary showing that the affiant intentionally or recklessly included false statements in the supporting affidavit for a search warrant, and that the affidavit without the false statement is insufficient to support a finding of probable cause, the defendant is then entitled to a hearing on the matter. *Id*. at 155-56. The burden is on the defendant to establish knowing or reckless falsity by a preponderance of the evidence before the evidence will be suppressed. *Id.* Negligence or innocent mistake resulting in false statements in the affidavit is not sufficient to satisfy the defendant's burden. *Id.* at 171. It is important to remember that an evidentiary hearing under *Franks* is not warranted unless the defendant makes a strong initial showing of deliberate falsehood or of reckless disregard for the truth. *Id.*

Appellant relies upon *West v. State,*137 Md. App. 314 (2001), *cert. denied,* 364 Md. 536 (2001). In *West*, this Court concluded that the affidavit made no showing of the informant's basis of knowledge, reliability or veracity, stating only that the police received "numerous complaints from several different concerned citizens. . . ." *Id*. at 318, 329-30. Nonetheless, we did not exclude the evidence the police seized pursuant to the warrant based

on *United States v. Leon,* 468 U.S. 897 (1984), the good faith exception.[1] *West*, 137 Md. App. at 351.

West is informative for its analysis of the current approach to search warrant review and a historical review of the process. After reiterating black letter law regarding our preference for warrants, we reviewed the Supreme Court's evolution of thinking as to warrant sufficiency analysis, stating as follows:

> In the past, the test for probable cause based on an informant's tip consisted of the two-pronged analysis first enunciated in *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964). There, the Supreme Court required that the police establish 1) the basis of the informant's knowledge and 2) the veracity of the tip, i.e., the credibility of the informant or the reliability of the informant's information. *Id.* at 114, 84 S. Ct. 1509. The Supreme Court also had emphasized that an affidavit must either indicate the manner in which the information was gathered or contain a tip which describes 'the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation.' *Spinelli v. United States*, 393 U.S. 410, 416, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).
>
> Occasionally in the law, as elsewhere, there is a house cleaning. Old concepts are discarded or dusted off and refurbished, and space is vacated in order to make room for new theories. Such was the case when it became apparent that the structured nature of these guidelines often undermined law enforcement to an extent greater than the Supreme Court believed necessary. In *Gates*, Justice Rehnquist, writing for the

[1]Because we hold that the warrant was supported by probable cause, we do not address the applicability of the good faith exception in the case before us.

> Court, expressed concern over the difficulty faced by non-lawyer magistrates in applying the complex set of analytical and evidentiary rules that had developed under the *Aguilar-Spinelli* test. Reasoning that a less rigid common sense analysis would help alleviate this problem, the Supreme Court abandoned these strict guidelines in favor of a 'totality of the circumstances' approach. *Gates*, 462 U.S. at 238, 103 S. Ct. 2317. *See Winters v. State*, 301 Md. 214, 227, 482 A.2d 886 (1984) (*Gates* replaced the rigid technical analysis of the reliability of informant data in *Aguilar* and *Spinelli* with a more flexible approach).
>
> > This totality-of-the-circumstances approach is far more consistent with our prior treatment of probable cause than is any rigid demand that specific 'tests' be satisfied by every informant's tip. Perhaps the central teaching of our decisions bearing on the probable-cause standard is that it is a 'practical, nontechnical conception.' *Brinegar v. United States*, 338 U.S. 160, 176[, 69 S. Ct. 1302, 93 L. Ed. 1879] (1949). 'In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' *Id.* at 175[, 69 S. Ct. 1302].

Specifically, as to the affiant's use of "concerned citizen," we were not happy. We stated as follows:

> Unquestionably, a police officer attempting to convince a judge to issue a warrant is aware that certain words sound better and are cloaked with more reliability than others. This is a prime example. The affidavit should have indicated more facts relating to this 'interview.' In order to assign more reliability to it, more information should have been provided regarding this meeting between Officer Jon Foote and the concerned citizen. Where did it take place? Was it actually conducted in person or on the telephone? What made this an interview rather than a

> mere casual conversation or anonymous telephone call? If the Officer did indeed meet this person face-to-face, why was that not stated in the affidavit? Certainly, additional information can only be helpful when deciding on the issuance of a warrant. In order to assure that the purpose of the Fourth Amendment is upheld, police officers must provide details within affidavits when attempting to acquire search warrants, even if such information would seem to the police officer of trivial consequence at the time.

Id. at 331.

The case at bar is distinguishable from *West.* In the instant case, Detective Jackson included more information in the affidavit than was included in the West affidavit. The subject affidavit made clear that the source of the information was interviewed in person at the police homicide office, and although "[t]he concerned citizen's identity will remain anonymous to ensure their safety; however, they will/can be made available for any proceedings." Additionally, the source of the information was apparent: the person relaying the information to the police heard about the murder from appellant, and he had seen the gun at the residence named in the search warrant.

Here, appellant persuaded the trial court to hold a *Franks* hearing. The trial court determined that Detective Jackson's use of the term "concerned citizen" was neither deliberately false nor made with reckless disregard for the truth. The court had the opportunity to observe Detective Jackson while he testified and to observe his demeanor. The court was not required, as appellant suggests, to infer that Detective Jackson intended to mislead the court. The court was entitled to accept Detective Jackson's explanation and

the determination that the detective did not intend to mislead the court was not clearly erroneous.

In this instance, the reference to a "concerned citizen" standing alone might have been misleading, but the affidavit clarified other important details about the witness and his relationship to police. Detective Jackson's usage of the term "concerned citizen" — although unwise — was intended to clarify that Brown was not a regularly used confidential informant. In any event, the label "concerned citizen" was unnecessary to the warrant and the remaining information in the affidavit amply justified the warrant.

Appellant further argues that the circuit court erred in denying his motion to suppress because, even without the term "concerned citizen," the affidavit did not contain sufficient "evidence of corroboration or reliability to establish the needed probable cause." According to appellant, because Detective Jackson's affidavit provides few facts in support of probable cause and makes "essentially no showing of the informant's reliability, veracity, or basis of knowledge[,]" it is even weaker than the affidavit submitted in West. The State responds that the circuit court determined properly that the issuing judge had a substantial basis upon which to issue the search warrant and that, in any event, because the warrant was obtained under a reasonable, good faith belief that evidence regarding the murder would be found at the address to be searched, appellant's motion to suppress was properly denied.

No search warrant shall issue without probable cause. U.S. Const. amend. IV; *Birchhead v. State,* 317 Md. 691, 700 (1989). Probable cause is defined as a "fair probability

that contraband or evidence will be found in a particular place." *Birchhead*, 317 Md. at 700. When dealing with probable cause, "'as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Gates,* 462 U.S. at 213 (quoting *Brinegar*, 338 U.S. at 176).

In the case before us, the circuit court concluded that, within the four corners of the affidavit, the detective provided an adequate basis for the issuance of a search warrant. Although appellant contends that the affidavit contains no information regarding the informant's background, veracity, or basis of knowledge, as we have noted, the detective provided adequate details to support his conclusion that there was a substantial probability that evidence would be found at the location proposed to be searched. To reiterate, the detective averred that he had interviewed the citizen at the homicide office, where the informant made a positive identification of appellant in a photo array. These statements made it clear that an in-person interview of the informant had taken place, and the information was not from an unknown, anonymous source. By averring that the citizens's "identity will remain anonymous to ensure their safety, however, they will/can be made available for any proceedings," the detective essentially represented to the court that the informant was both known and accountable to the police. *See Herod v. State*, 311 Md. 288, 297-98 (1987) (reliability stronger when information based on personal dealings). The trial court was not clearly erroneous in denying appellant's motion to suppress.

IV.

The final issue appellant raises in this appeal is that the trial court abused its discretion in excluding the testimony of his two witnesses, Officer Dockins and firearms examiner Meinhardt. The court determined the evidence to be irrelevant and cumulative.

In a criminal case, the right to offer the testimony of witnesses and to compel their attendance, if necessary, is in essence the right to present a defense and to present the defendant's version of the facts to the trier of fact. *Redditt v. State,* 337 Md. 621, 634-35 (1995). The right to present a defense is a fundamental element of due process of law. *Washington v. Texas*, 388 U.S. 14, 19 (1967); *see also Webb v. Texas*, 409 U.S. 95, 98 (1972); *McCray v. State*, 305 Md. 126, 133 (1985). The right, however, is not absolute. *See Taylor v. Illinois*, 484 U.S. 400, 410-16 (1988) (Compulsory Process Clause of Sixth Amendment does not create an absolute bar to preclusion of testimony of defense witness as sanction for violating discovery rule); *United States v. Nobles*, 422 U.S. 225, 241 (1975) ("The Sixth Amendment does not confer the right to present testimony free from the legitimate demands of the adversarial system").

The rules of evidence govern the admissibility of evidence. To be admissible, evidence must still be relevant to the case before the court and must not be needlessly cumulative. Md. Rules 5-402, 5-403. It is well settled that determination of the admissibility of evidence lies within the sound discretion of the trial court. *Conyers v. State,* 354 Md. 132, 176, *cert. denied,* 528 U.S. 910 (1999); *Robinson v. State,* 151 Md. App. 384, 394

(2003). We consider the admissibility of evidence under an abuse of discretion standard and we will not disturb a trial court's evidentiary ruling absent error or clear abuse of discretion. *Blair v. State,* 130 Md. App. 571, 592-93 (2000); *Conyers*, 354 Md. at 176.

Brown testified at trial that he had been arrested in November, 2011, on a breaking and entering charge and gun possession. At that time, he told the police about appellant's involvement in the Weedon murder and appellant's actions in scraping the gun barrel with a screwdriver to mess up any ballistic examination. Brown made another statement to police in January, 2012, providing additional details. He testified at trial that "[w]hen you're at the precinct and you're facing the time I'm facing, you'll make up anything to try to get you out when they promise you." He also stated that in his situation, "you're liable to say anything just to get out if they make you a promise," and that "[w]hen you first get locked up . . . who wouldn't say nothing or make up anything." He testified that the police promised him he could go home in return for any information about a shooting, robbery, carjacking or homicide. He told them that he could "try to give you a homicide." Finally, he testified that "I don't know nothing about this case." On cross-examination, Brown testified fully about his criminal background, the sentence that he faced on the robberies, and the back-up time on his probation.

Firearms examiner Teniera Brown testified that she could neither identify nor eliminate the firearm the police seized from the Cedargarden apartment as the murder weapon. The interior of the barrel had been gouged or marred. In addition, she testified that

the interior frame of that gun was so dirty that the hammer could not move freely, but that it was readily made operable by cleaning with gun oil. Charles Brown was not asked about any operability with his gun.

Maryland Rule 5-401 defines relevant evidence 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.

Rule 5-403 addresses, *inter alia,* cumulative evidence, reading as follows:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

We hold that the trial court did not abuse its discretion in excluding the two witnesses on the basis that their proffered testimony would be irrelevant and cumulative.[2] Brown had been impeached regarding his credibility on several bases. The two gun operability issues were different, and the gun found at Cedargate was actually operable after cleaning; Brown's gun was missing a firing pin. The testimony of the proposed witnesses would do nothing

[2] In the alternative, the State argues that assuming error *arguendo,* the error was harmless beyond a reasonable doubt. We agree with the State. The jury heard Brown's testimony that he was trying to get a good deal for himself and that he did not know anything about the murder case. The search warrant yielded not only the gun, but the pants matching other witnesses' description of Weedon's killer. Jacqueline Haynes testified at trial that she saw appellant shoot and kill Weedon. We are convinced beyond a reasonable doubt that, assuming error, it was harmless beyond a reasonable doubt. *Dorsey v. State,* 276 Md. 638, 659 (1976).

more than prolong the trial with the needless presentation of cumulative evidence. The judgments of the circuit court are affirmed.

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