Circuit Court for Prince George's County
Case No. CT190060X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 722

September Term, 2020

ALHAJI BAH

v.

STATE OF MARYLAND

Graeff,
Reed,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 7, 2022

In December 2018, Alhaji Bah, appellant, was indicted in the Circuit Court for Prince George's County for common-law murder, conspiracy to commit murder, and other firearms charges relating to the shooting of James Puryear, Jr. on June 26, 2018. The day following the shooting, the police interviewed appellant, and they searched his cell phone after appellant signed a consent form. Appellant filed a motion to suppress the evidence against him, arguing that the police violated *Miranda* and illegally searched his cell phone.[1] The circuit court denied the motion. Following a five-day trial, a jury acquitted appellant on the murder charge, but it found appellant guilty of conspiracy to commit murder. The court sentenced appellant to 80 years' imprisonment, with all but 28 years suspended.

On appeal, appellant presents the following questions for this Court's review,[2] which we have consolidated and rephrased, as follows:

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[2] Appellant's original questions presented were as follows:

1. Where a detective obtained consent to search a cell phone based on a detective's representation that "I'm going to see who you called and when you talked to the girlfriend" and "That's it" and appellant signed a generic consent form, did the circuit court err when it denied a motion to suppress based on a warrantless search that went beyond appellant's call history on his iPhone?

2. To the extent this Court concludes that the consent form authorized an unrestricted search of his phone, did the detective's statements to appellant indicating that the objective of the search was limited to information in his call history vitiate appellant's consent rendering his consent involuntary?

3. Did the circuit court err when it denied appellant's motion to suppress his June 27, 2018 statement under *Miranda v. Arizona*?

1. Did the circuit court err in denying appellant's motion to suppress evidence found in a warrantless search of appellant's cell phone?

2. Did the circuit court err in denying appellant's motion to suppress his June 27, 2018, statement pursuant to *Miranda v. Arizona*?

3. Was the evidence insufficient to support appellant's conviction for conspiracy to commit first-degree murder?

For the reasons set forth below, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Factual Background

At approximately 9:45 p.m. on June 26, 2018, Mr. Puryear was shot 14 times on a neighborhood lawn in Upper Marlboro. Emergency personnel arrived shortly thereafter and pronounced him dead at the scene. The next day, the police interviewed Mr. Puryear's girlfriend, Kelsey Washington, who told them that Mr. Puryear had been planning to meet with appellant on the night of the murder to search for a friend named "Ty." Mr. Puryear had contacted appellant at a phone number with a 202 area code, which was appellant's phone number. As a result of this conversation, the police sought to interview appellant as a potential witness with knowledge of Mr. Puryear's whereabouts on the night of the murder.

4. Was insufficient evidence admitted to support appellant's conviction for conspiracy to commit first-degree murder?

A.

June 27, 2018 Interview

On the afternoon of June 27, 2018, Detectives Dennis Windsor and John Paddy, members of the Prince George's County Police Department, approached appellant outside his home and advised that they wanted to speak with him at the police station about "something that happened to one of his friends." Appellant was calm and made no objection to going with the detectives. Prior to getting into the police vehicle, the detectives frisked appellant and found suspected controlled dangerous substances ("CDS") on his person in the form of pills.[3] The detectives transported appellant to the police station. He sat unrestrained in the front passenger seat of the police vehicle.

At the station, Detective Windsor and Detective Kenneth Smith interviewed appellant about Mr. Puryear in a small interview room for approximately four hours.[4] Prior to the interview, the detectives seized appellant's red iPhone, which had a 240-area-code number. Appellant was not given any *Miranda* warnings that day.

During the interview, appellant was seated at a table pushed into a corner, and the two detectives were positioned between him and the door in the interview room. The detectives began by offering appellant some food and asking basic identification questions.

[3] Appellant was never charged in connection with the pills.

[4] A transcript of the June 27, 2018 interview was prepared and submitted to this Court.

Appellant stated that his cell phone number was the 240-area-code number connected with the red iPhone, and he only had one cell phone.

Appellant told the detectives that he had grown up with Mr. Puryear, and they had been close friends. He stated that he had not seen or spoken to Mr. Puryear for approximately a week. Ms. Washington, whom he had never met, called him at approximately 2:00 a.m. that morning looking for Mr. Puryear, and he told her that he had not seen Mr. Puryear.

Appellant advised that, on the day of the murder, he went to a hospital in Baltimore at approximately 3:00 p.m. to visit his friend "Ty," who had been shot during a robbery, and he stayed at the hospital until approximately midnight. After appellant explained his whereabouts, the detectives stated that they did not "suspect [him] in any wrongdoing," but they wanted to speak with Mr. Puryear's friends to find out what happened.

Detective Smith then asked appellant if he ever lied, stating that "[e]veryone lies" at some point or another. Detective Smith repeatedly asked appellant to answer the question about lying until Detective Windsor interjected to tell appellant that they "just want[ed] to prove that [he was] not bullshitting[.]" The following exchange then occurred:

> DETECTIVE WINDSOR: So, this is – one of the things we like to do is this thing, right here. This is my phone, right? Based on what you're telling me, your phone will dictate whether you're telling the truth, okay? All I'm asking for you is permission to be able to look at that and verify what you're telling me is true.
>
> [APPELLANT]: As far as what?
>
> DETECTIVE WINDSOR: As far as like – all right, well you haven't talked to James, right?

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: So, I'm going to look at your phone and be like, "Oh, he's – he ain't lying to me."

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: You know what I mean? You know, things like that – little things like that. Just to verify, that's all.

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: But of course, I'm asking permission, because I don't think you're lying, to do that.

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: You know, I haven't had any issues, so that's why I'm asking.

[APPELLANT]: Right.

DETECTIVE WINDSOR: Is there any issue with that?

[APPELLANT]: I don't want you to check my phone.

DETECTIVE WINDSOR: Why is that?

[APPELLANT]: Because I just don't want you to.

DETECTIVE WINDSOR: Why, are you concerned about something?

[APPELLANT]: I mean, I just don't want you to go through my phone. I have rights, you know.

DETECTIVE WINDSOR: Yeah, I know, and that's why I'm asking you about it. And I just assumed that you were telling me the truth and that's –

[APPELLANT]: Mm-hmm.

> DETECTIVE WINDSOR: How we would be able to verify that. You know, you didn't talk to James and what time, for example – what time did the girlfriend call you.
>
> * * *
>
> DETECTIVE WINDSOR: I don't care what nudie pics you got. I don't care what weed pics you got. I don't care about none of that.
>
> [APPELLANT]: Mm-hmm.
>
> DETECTIVE WINDSOR: Okay? I'm trying to verify what you told me, and that's why I'm asking you. So it's one of those things where I either, I'm asking permission, or I've got to keep the phone and get a search warrant. And that's not what I want to do, because I don't believe you're a liar.
>
> [APPELLANT]: I mean, I can sit right here and show the messages with you.
>
> DETECTIVE WINDSOR: Well, it's not –
>
> [APPELLANT]: Or show you the calls.
>
> DETECTIVE WINDSOR: We don't want you sitting and waiting in here. I'm not calling anybody. I'm not talking to anybody.

When appellant continued to express reluctance, Detective Windsor offered to let him "take the form home," noting that it "would really help [them] with solving" the murder. Detective Windsor stated that "the only thing that [was] holding [them] up" from eliminating him as a suspect was their ability to "verify [his] timeline" using his phone. The detectives repeatedly appealed to appellant's purportedly close friendship with Mr. Puryear and the effect that Mr. Puryear's death was going to have on his family.

After Detective Windsor stated that he thought appellant was "hiding something in [his] phone," appellant reiterated that he did not want them going through his phone because it was a "personal privacy" issue, and he was "not comfortable" with it. In

response to appellant stating that he did not know "what else [they] want[ed] him to do," the following occurred:

> DETECTIVE WINDSOR: Well, I mean, for starters, maybe you can jump back on the train of telling the truth.
>
> [APPELLANT]: I mean –
>
> DETECTIVE SMITH: You're lying.
>
> [APPELLANT]: I'm not lying about nothing, sir.
>
> DETECTIVE SMITH: Yes you are. I[t]'s okay.
>
> [APPELLANT]: I'm not.
>
> DETECTIVE SMITH: You are. It's okay.
>
> [APPELLANT]: No.
>
> DETECTIVE SMITH: It is okay.
>
> [APPELLANT]: I told you guys everything that I know.
>
> DETECTIVE WINDSOR: No, we know different. We know big time different.
>
> [APPELLANT]: I just told you guys everything that I know, sir.
>
> DETECTIVE WINDSOR: No.
>
> * * *
>
> [APPELLANT]: I'm innocent. I told you guys everything that I know. I told you everything on paper.
>
> DETECTIVE SMITH: What're you saying you're innocent for? Nobody's saying you was guilty. Nobody's saying that. (Indiscernible), you know, we're just – we're all different in here.
>
> [APPELLANT]: Mm-hmm.

DETECTIVE SMITH: But I know you're a liar. That's something we can prove.

Following this exchange, the detectives both left the room, stating that "maybe [he] need[ed] some time to think" before they went "over this again" because he had "backed [himself] in a corner [he did not] need to be in." Before leaving, they told him that if he did not start telling the truth, it was "not going to be good for [him]." They stated that, when they returned "at some point today" after speaking to "everybody else," they expected him to tell the truth. Appellant was then left alone in the room for approximately 20 minutes.

When the detectives reentered, appellant told them that he was in school studying Information Technology, and he anticipated getting an internship soon. The detectives responded that getting a job would be hard with his previous record. The following then occurred:

DETECTIVE WINDSOR: You think conspiracy to commit murder, accessory after the fact, before the fact will help you out with that?

DETECTIVE SMITH: Damn.

[APPELLANT]: Of course not.

DETECTIVE WINDSOR: No.

DETECTIVE SMITH: Damn.

DETECTIVE WINDSOR: So, point blank, it's like this.

[APPELLANT]: Say it again.

DETECTIVE WINDSOR: What?

[APPELLANT]: What you just said.

DETECTIVE WINDSOR: Conspiracy to commit murder, accessory after the fact and before the fact. That's three charges. So, it's like this, homie.

DETECTIVE SMITH: Damn.

DETECTIVE WINDSOR: There's some things that are – we know, and it was, kind of, a test to see how truthful you were going to be with us. Which, you fucking failed that test, by the way. So, apparently, you're very loyal to Ty. That's your boy. And not so loyal to James. So, around – between 9 and 10 last night – we're going to go over this again and I'm going to give you a second shot at this.

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: If not, that's what you're looking at, okay?

Detective Windsor told appellant that they knew he had two phones, and he had given one phone to Ty. Appellant maintained that he only had one phone. The detectives then stated that appellant was "digging [his] grave" and "blowing [his] future."[5] Detective Windsor received a phone call and exited the room. Detective Smith then asked appellant if he had "heard the horror stories in" jail, and appellant said: "[i]t's like getting butt raped, and stuff?" The following colloquy then occurred:

DETECTIVE SMITH: I[t]'s real. But that's how serious this is, right now.

[APPELLANT]: I know.

DETECTIVE SMITH: You don't know, because if you did, you'd start telling the truth.

[5] At this point, the detectives asked appellant to turn his chair to face towards them, and Detective Smith repositioned his chair in front of appellant. There was no table between them, and the two chairs were approximately three to four feet apart.

Detective Smith repeatedly stated that appellant was not telling the truth, and he was "going to be laughing" if appellant went to prison. Appellant reiterated his whereabouts on the day of the murder and the prior day.[6]

Detective Windsor then reentered the room, and they discussed a previous time appellant had been "caught with [] pills." Shortly thereafter, Detective Smith left the room, indicating that he was going to talk to another witness about the murder, but he would be back.

Detective Windsor stated that they had spoken to other witnesses, and they knew that there was an issue between Ty and Mr. Puryear, and Ty and Mr. Puryear had been together on the night that Ty was shot. They also knew that someone with the 202-area-code number had communicated with Mr. Puryear before his death and with another individual after the murder.[7]

Detective Windsor reiterated that, without appellant's consent to look at the cell phone, he would not be able to "clear" appellant that day, and he would have to get a search warrant. Appellant maintained that he was not involved with the murder of his friend, and he did not have any additional information.

[6] The video reflects that following these comments, there was approximately five minutes of a roaring sound that made the on-going conversation between Detective Smith and appellant indiscernible. This portion of the interview was not included in the transcript.

[7] Detective Windsor used a number that was a blend of the two phone numbers connected to appellant, but in context, it appears to be intended to be a reference to the phone number with the 202 area code.

After Detective Smith reentered, he stated that appellant was "in trouble" and that the only truth they had heard from him was his identifying information. He repeatedly stated that appellant was lying, did not care that Mr. Puryear was dead, and would have to "live with it." Detective Smith also expressed disbelief at appellant's story that Ty did not tell him any details about getting shot after spending hours together at the hospital.

When Detective Windsor continued to press him about the phone, appellant stated: "[O]nce you see my phone, I'm good, right?," to which the detective replied in the affirmative. Appellant then asked if there was a way that they could look at his phone with him in the room. Detective Windsor replied that they usually "plug it in to a screen," to look at it using a "different program." The following exchange then occurred:

> [APPELLANT]: So, pretty much, if I don't let you guys go through my cellphone you guys are going to hold me?
>
> DETECTIVE WINDSOR: We're going to hold – we're going to hold it.
>
> [APPELLANT] Hold it and let me go?
>
> DETECTIVE WINDSOR: Mm-hmm, and get a search warrant.
>
> [APPELLANT]: If I don't – if I don't do that, then you guys are going to – all right, so –
>
> DETECTIVE WINDSOR: Look, we're not holding you.
>
> [APPELLANT]: Mm-hmm.
>
> DETECTIVE WINDSOR: We're holding your phone, okay? Because of the suspicion.

* * *

> [APPELLANT]: So, it just means, if I don't give you guys the permission to check my phone, you guys are still going to let me leave?
>
> DETECTIVE WINDSOR: I'm going to let you leave, okay? I'm not – I'm not holding you for nothing.

Appellant again asked for clarification about the phone, to which Detective Windsor replied that, if he signed the consent form, he would get the cell phone back that day, but if he did not sign, they would hold it, get a search warrant, and "send it off to the tech FBI people," who would go through it and put it in the FBI system. Appellant then asked: "Either way, regardless of what happens, I'm going home today?" Detective Windsor replied: "Well, it depends on if he finds out you're involved in something you shouldn't be. Like, you're not supposed to have those drugs." He then stated, however, that, "as far as I'm concerned, they're probably Advil."

The conversation continued as follows:

> [APPELLANT]: So, what are you guys going to have to do when you check my phone?
>
> DETECTIVE WINDSOR: All right, so just go down your storyline.
>
> [APPELLANT]: Mm-hmm.
>
> DETECTIVE WINDSOR: I'm going to see who you called and when you talked to the girlfriend. That's it.
>
> [APPELLANT]: Okay. You're just going to go down my phone, my –
>
> DETECTIVE WINDSOR: I'm not worried about your pictures.
>
> [APPELLANT]: My messages?
>
> DETECTIVE WINDSOR: That's it.

[APPELLANT]: You're not going through my messages or through my camera?

DETECTIVE WINDSOR: No, nope, nope. I don't care about that.

[APPELLANT]: So, you going through my call log, that's it?

* * *

DETECTIVE WINDSOR: The call log, yeah.

[APPELLANT]: Can you write a contract to that right now?

DETECTIVE WINDSOR: Sure.

[APPELLANT]: Write a contract in the back of this.

DETECTIVE WINDSOR: That's fine.[8]

The police then presented to appellant a consent form, which stated: "I agree to allow the officer of the Prince George's County Police Department . . . to do the following: Search my cellphone." Appellant gave Detective Windsor the phone number for his iPhone. Detective Windsor then continued to read the form and the following occurred:

DETECTIVE WINDSOR: Okay. I consent to the police taking the action without obtaining a search warrant. I give this permission freely and voluntarily. Okay, that sounds good, doesn't it? I understand that the police may take and obtain any property found for investigative purposes, and that the property may be evidence of a crime.

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: Okay? We're looking just to clear you.

[APPELLANT]: What are you all allowed to look at in my phone?

[8] The record does not indicate that any such "contract" was written on the back of the consent form.

DETECTIVE WINDSOR: Your – same thing we just talked about, doesn't change.

[APPELLANT]: What are you about to look at?

DETECTIVE WINDSOR: Okay, I want to see what time you talked to her.

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: I want to see if there's a conversation between you and Ty.

[APPELLANT]: Mm-hmm.

DETECTIVE WINDSOR: Okay? That's all I care about. I told you I don't care about your pictures.

[APPELLANT]: All right, sir.

DETECTIVE WINDSOR: Okay.

[APPELLANT]: So, how long this about to take?

DETECTIVE WINDSOR: Like I said, 20 minutes, bro.

[APPELLANT]: And I can leave after that?

DETECTIVE WINDSOR: We're going to take you home.

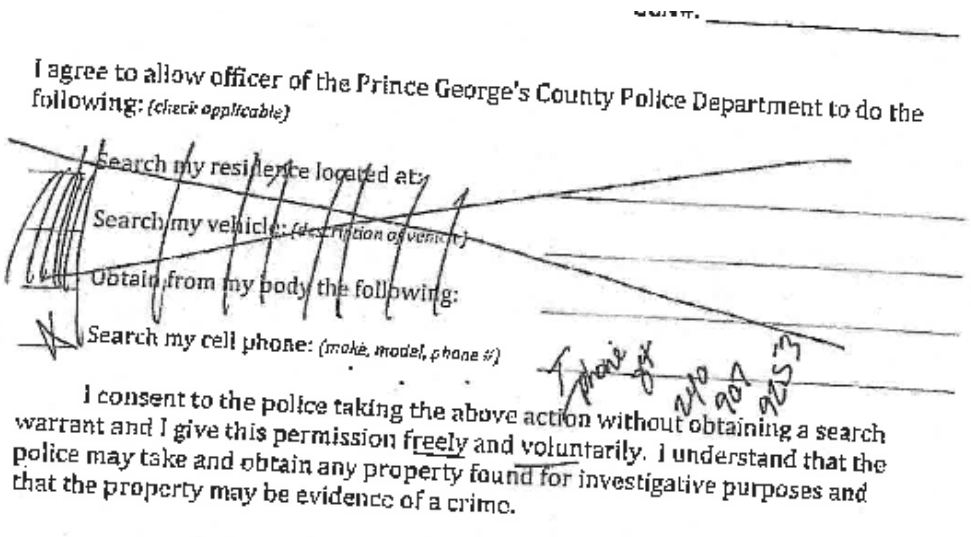
Appellant then signed the consent form and provided his passcode. In doing so, appellant placed an "X" next to the cell phone search item and crossed out the other items on the consent form pertaining to searches of his home, vehicle, and body.[9]

[9] The completed consent form appears in the record:

After signing the consent form, Detective Windsor said he would return with the phone within 20 minutes, to which appellant replied: "And then I'm leaving, right?" The detective responded by asking if appellant wanted them to call him an Uber. He then exited the room.

While Detective Windsor was gone and appellant was alone in the locked interview room, appellant began to pray, stating: "In the name of Jesus, I'll walk out this place today with my phone. . . . I'm walking out of here today. By faith I'm walking out of here." An unidentified officer then escorted him to the bathroom. Sometime after he returned to the interview room, he again knocked on the door for assistance, but no one answered.

After more than an hour, Detective Smith reentered the interview room and asked appellant if he "ha[d] anything to tell" him. Appellant denied any knowledge of the murder, but the detective repeatedly said that they knew he was lying. Detective Smith



I agree to allow officer of the Prince George's County Police Department to do the following: *(check applicable)*

Search my residence located at:

Search my vehicle: *(description of vehicle)*

Obtain from my body the following:

Search my cell phone: *(make, model, phone #)*

I consent to the police taking the above action without obtaining a search warrant and I give this permission freely and voluntarily. I understand that the police may take and obtain any property found for investigative purposes and that the property may be evidence of a crime.

Appellant testified at the suppression hearing that "freely" and "voluntarily" were not underlined at the time that he signed it.

then stated: "It's going to be fun when I put you away. It's going to be so much fun. It's going to be fun. It's going to [be] fun because you think it's a game." After obtaining additional contact information for his family, Detective Smith left the room. Following the interview, appellant called a friend to drive him home.

B.

Investigation & Arrest

Two days later, on June 29, 2018, the police obtained a search warrant for appellant's red iPhone. The warrant affidavit, discussed in more detail *infra*, stated that Ms. Washington had advised that appellant communicated with Mr. Puryear on the night of the murder using a phone number with a 202 area code. The affidavit further stated that, during the June 27 interview, appellant "initially stated to detectives that he did not have prior knowledge of the aforementioned murder," but after they searched his red iPhone (with the 240-area-code number) pursuant to his consent, the "detectives learned that [appellant] did have prior knowledge of the incident, indicating that he intentionally made misleading statements to investigators concerning his knowledge of the incident."

On July 16, 2018, police obtained a "DNA search warrant" for appellant because they had located saliva at the crime scene. Appellant was detained at a traffic stop and transported to the police station, at which time Detective Windsor conducted a second interview. Appellant maintained that he had neither seen nor spoken with Mr. Puryear in the week leading up to the murder. After Detective Windsor suggested that appellant was lying, appellant requested an attorney, and the interview ended. Police then executed the

DNA search warrant, and Detective Windsor drove appellant home. On December 10, 2018, police obtained a warrant for appellant's arrest, and on December 20, 2018, appellant turned himself in.

II.

Motion to Suppress

On February 11, 2019, after appellant was indicted for murder and other crimes, he filed a general motion to suppress the evidence seized. At the hearing on the motion, appellant argued that the information obtained from the initial search of his iPhone should be suppressed because the search exceeded the limited scope of his consent. He stated that, if the information obtained from that search was excised from the subsequent warrant application to search the phone, the warrant lacked probable cause. Appellant also argued that the statements he made during the June 27, 2018 interview should be suppressed because he was not given *Miranda* warnings prior to the interview, which amounted to a custodial interrogation. The video of that interview was submitted to the court prior to the hearing.[10]

Detective Windsor testified that he responded to the murder scene on June 26, 2018, and he learned from Ms. Washington that Mr. Puryear had intended to meet with appellant that night. He and Detective Paddy then contacted appellant to gather information

[10] The interview video was not played at the suppression hearing, but the court indicated that it had reviewed it.

regarding the "timeline of events that could have occurred or somebody that may have last spoke[n] with" Mr. Puryear. At that time, appellant was not a suspect.

On June 27, 2018, after obtaining appellant's home address using police databases, the two detectives approached appellant outside his home. They drove an unmarked cruiser, and they were both wearing a suit.

Appellant voluntarily came to the police station to discuss Mr. Puryear's death. Before escorting appellant to the car, they frisked him "to make sure he didn't have anything on him he wasn't supposed to," and they found the pills. Appellant then got into the police vehicle, sitting unrestrained in the front seat with Detective Windsor driving and Detective Paddy seated in the back.

When they arrived at the station approximately ten minutes later, they placed appellant in a small interview room, which remained locked because it was a secure facility. At some point prior to the interview, police seized appellant's red iPhone because it was "standard policy" not to allow phones in the interview rooms.

During the interview, appellant was not handcuffed, but he was escorted by an officer to the bathroom. Appellant did not inquire whether he was under arrest or request counsel, and appellant was free to leave at any time. Detective Windsor stated that he did not read appellant his *Miranda* rights because appellant "was not under arrest" and not "even a suspect" at that time.

Detective Windsor and Detective Smith interviewed appellant from approximately 5:40 p.m. to 10:00 p.m. They did not bring their service weapons into the interview room,

and they did not threaten appellant in any way. On cross-examination, Detective Windsor conceded that he told appellant that he was lying and could be charged as a conspirator or accessory to the murder, but he did not recall Detective Smith suggesting that appellant could be sexually assaulted in prison.

The detectives told appellant that, if he did not consent to the search of his phone, they were going to get a search warrant that would "go out to the FBI," which would be able to see everything on the phone. Detective Windsor declined to let appellant show them his call log in appellant's presence because they "wanted text messages to see if there was any correspondence with the decedent."

The State introduced the consent form signed by both Detective Windsor and appellant. Detective Windsor testified that his understanding was that appellant consented to a search of the phone for "calls" and "texts pertaining to the case" or Mr. Puryear. On cross-examination, the following exchange occurred:

> [DEFENSE COUNSEL]: But it was your understanding that he wanted you to just look at the numbers?
>
> [DETECTIVE WINDSOR]: At that time, yes.
>
> [DEFENSE COUNSEL]: When did he ever change that, on that film that we saw?
>
> [DETECTIVE WINDSOR]: In my opinion, by signing that form.
>
> [DEFENSE COUNSEL]: In your opinion, you felt that gave you permission to look beyond what he had already told you, which is just the phone numbers; right?

> [DETECTIVE WINDSOR]: Yes. Because if he would have limited me on anything else, he would have done it on that piece of paper, just like he did for the residential portion of that, just like he did on the DNA portion of that.

When defense counsel asked why he applied for a search warrant for the phone if he already had unlimited consent, Detective Windsor stated that they "found something" on the phone and felt that they needed a warrant to "follow up with the consent."

After the interview concluded, appellant was allowed to go home. As the investigation continued, it became apparent to Detective Windsor that appellant had been lying about his contact with Mr. Puryear. Specifically, appellant said that he did not communicate with Mr. Puryear, but they knew he had, because a number found to be appellant's phone number communicated with Ms. Washington.

Two days after the June 27, 2018 interview, Detective Paddy obtained a search warrant for all information and data on the red iPhone. The warrant affidavit stated that the initial consent search of the phone had revealed that appellant "did have prior knowledge" of the murder, thereby suggesting that appellant had "made misleading statements" to police in the interview. It also stated that police had learned from Ms. Washington that Mr. Puryear had utilized her cell phone to contact appellant at a phone number with a 202 area code prior to the murder.

Detective Smith, the lead detective on the case, testified that appellant became a suspect in the weeks following the June interview. He explained: "During the interview, actually, when we go back and look at it, through inconsistencies, since he said he wasn't there, he don't know nothing about the other telephone number, based on search warrants,

looking through cell phone, so that started giving us all development as a person of interest." He also stated that, during the interview, he escorted appellant to the bathroom and waited inside.

When asked on cross-examination about the two phone numbers, the phone number with the 202 area code and the phone number with the 240 area code associated with appellant's red iPhone, Detective Smith stated that they were able to verify that both numbers belonged to appellant by looking at the contents of the phone during the consent search. He reiterated that appellant had been free to leave at any time during that interview.

Appellant testified that he was 23 years old at the time of the interview in June 2018. After the police initially approached him and he got into the police vehicle, the detectives immediately confiscated his iPhone because he attempted to text someone to tell them where he was going.[11] He stated that he knew that the door to the interview room was locked, and he waited approximately 30 minutes before the detectives came in to speak with him.

He described the detectives' behavior during the interview as being verbally abusive, which made him feel scared and uncomfortable. They repeatedly called him a liar, threatened him with serious charges (including drug charges for the pills), and suggested that he would be sexually assaulted in prison. He was frightened because they

[11] Both Detectives Windsor and Paddy could not recall at what point they seized appellant's phone.

had told him that he was being brought in as a witness, but "they were treating [him] otherwise." Appellant testified that he did not feel free to leave.

With regard to the consent search of his iPhone, appellant testified that he did not think he was going to be able to leave if he did not sign the consent form. By signing the form, he intended only to provide consent for the detectives to look at the phone's call log. He "scribbled out" the other items because they had an agreement that the detectives would only look at the call log.[12] The police took his phone out of the room, and when they gave it back to him, they did not tell him what had been done with it.

Defense counsel argued that the search of the cell phone was illegal, and the interview was improper because appellant was not given his *Miranda* rights. Counsel asserted that these violations tainted the June 29, 2018 search warrant for the phone and the July 16, 2018 DNA search warrant. With respect to the June 29 warrant to search the red iPhone, he argued that, if the information found during the consent search regarding appellant's association with both the 202-area-code number and the 240-area-code number was excised from the warrant application, it lacked probable because the only information left was Ms. Washington's statement that Mr. Puryear told her that he spoke to appellant on the day of the murder on a phone number other than the 240-area-code number. As a

[12] Appellant testified that his intention had been to cross out the "Search my cell phone" line as well, and the only reason he would sign a form with all the actions crossed out was because they told him he could leave after he signed it. He also noted that "freely and "voluntarily" were not underlined at the time that he signed it.

result, they would not have been able to establish prior knowledge or that appellant had been untruthful about his communications without the illegal search of the phone.

Defense counsel described the initial violations at the June 27, 2018 interview as having a "domino" effect on all subsequently discovered evidence because the information obtained from those violations was included in the subsequent warrants. In response, the State argued that, even if a violation occurred, there was other evidence implicating appellant in the murder that was discovered independently of his statements during the interview and cell phone search.

On the first day of trial, the circuit court denied appellant's motion to suppress. With regard to the suppression of appellant's June 27, 2018 statements, the court stated as follows:

> The court finds as to statement number one, June 27, 201[8], the defendant was not under arrest. The defendant was not considered a suspect but a friend of the decedent whose help was needed. The defendant was not handcuffed. No threats were made. It [sic] was no coercion, no promises made, no promise of confidentiality, no recitation of [*Miranda*] given. The defendant left on his own afterwards.
>
> * * *
>
> Based on a totality of the circumstances and on that finding that court finds that the statement made on June 27, 201[8] was freely, voluntarily, and knowingly given[.]

With respect to the consent search of appellant's red iPhone, the court found as follows:

> Further, the court finds that the cell phone [consent] was freely given knowingly and voluntarily.

> The defendant drew a line over the language as it relates to the search of the residence, search of the vehicle, and any body search. He then placed an "X" on the line next to the search of the cell phone, which the court takes that that [sic] is what he was actually allowing, not allowing anything where a line was drawn through.

III.

Trial

The five-day jury trial began on January 27, 2020. The State's theory of the case was that Ty (a/k/a Alex Sanders) and Mr. Puryear had been involved in a botched drug deal on June 25, 2018, during which Mr. Sanders was shot. Appellant and others then lured Mr. Puryear to a location on the following evening, June 26, 2018, and shot him.

Ms. Washington testified that, at approximately 8:00 p.m. on June 25, 2018, Mr. Puryear drove his Nissan from their home in Upper Marlboro to meet a friend, and she did not hear from him until 6:00 a.m. the following morning, when he called her from an unknown number. She ordered a Lyft to his location in Howard County to transport him home. When he arrived home at approximately 9:00 a.m., he did not have his car, wallet, or cell phone. They rented a 2018 Nissan Altima to search for Mr. Puryear's car in Howard County, but they were unsuccessful and reported it as stolen.

At approximately 5:00 p.m. that same day, she and Mr. Puryear met with appellant in a parked car outside appellant's home, and Mr. Puryear told appellant what happened the night before. Appellant did not appear to believe Mr. Puryear's story. Appellant told them that he was going to look for Mr. Sanders, and they parted ways amicably. Ms. Washington and Mr. Puryear drove home, arriving at approximately 7:00 p.m.

Appellant called Ms. Washington's cell phone several times from the phone number with the 202 area code. Mr. Puryear went outside to return the call using her phone, and he then told Ms. Washington that he was going to meet appellant to look for Mr. Sanders. Mr. Puryear left at approximately 8:00 p.m. in the rented Nissan. Ms. Washington fell asleep, but when she woke up at approximately 3:00 a.m., Mr. Puryear had not returned home. She texted appellant at the 202-area-code number asking if he knew where Mr. Puryear was. Appellant said that they did not end up meeting that night.

The next day, a detective contacted Ms. Washington to say that Mr. Puryear had been killed. She told police that Mr. Puryear and Mr. Sanders had intended to rob the drug dealer that they met on the night of June 25. Mr. Puryear told her that "he had to jump out of the vehicle and run," and he and Mr. Sanders had split up.

The State introduced evidence to show that Howard County police located Mr. Puryear's silver Nissan on June 25 after responding to reports of gunshots in a parking lot in Laurel.[13] The responding officer found Mr. Sanders, who had been shot in the leg. Mr. Sanders was transported to Baltimore shock trauma. Two handguns were recovered from

[13] The car had bullet holes it in, as well as "projectiles" inside the trunk. Police also found additional ammunition, cash, Mr. Puryear's cell phone, and "green brown vegetable matter" inside the car.

A National Security Agency officer testified that he happened to be in the Laurel area at approximately 9:00 p.m. on June 25, 2018, when he heard gunshots, a scream, and a "silver Nissan" pulling away. He pursued the Nissan in his patrol vehicle, but lost the suspect, a "black male," after he exited the car and fled on foot. The Nissan ultimately was found approximately one mile away from where Mr. Sanders was shot.

the scene; a Glock was found in a black bag near where Mr. Sanders was shot, and a Smith & Wesson was found the next day in a nearby yard.

Amray Daramy testified that he visited his friend, Mr. Sanders, at shock trauma on June 26. Appellant also was there, and he was still at the hospital when Mr. Daramy left at approximately 4:00 p.m.

Gabriella Coffie, appellant's friend, testified that she loaned appellant her "dark colored" 2018 Hyundai Elantra to visit Mr. Sanders in the hospital. Appellant picked up the car at approximately 6:00 p.m. She subsequently texted appellant to tell him not to do anything "wild" in her car. The car was returned to her the next day.

Terry Moore testified that, at approximately 10:00 p.m. on June 26, he heard "about 30 gunshots" in close proximity to his home in Prince George's County. After hearing the shots, he observed a dark-colored Hyundai sedan "fleeing down the street," and he called 911.[14]

Officer Hassan Odeyemi responded to multiple reports of gunshots at Binghampton Place in Upper Marlboro, where he observed Mr. Puryear's body lying in the yard of a house. Emergency personnel on the scene pronounced Mr. Puryear dead at 10:05 p.m. The medical examiner who performed the autopsy, Dr. Nikki Mourtzinos, testified that Mr. Puryear had been shot 14 times in the head, torso, and upper and lower extremities, causing

[14] Mr. Moore testified that the car was a Hyundai Elantra, but on cross-examination, he conceded that he told the 911 dispatcher that it was a Hyundai Sonata. He stated that he often mixed up the two car models.

his death. Three of these gunshot wounds showed "gunpowder stippling," suggesting that those shots were made at a range of approximately three feet.

Mimi Simon, a Prince George's County crime scene technician, testified that they recovered approximately 26 cartridge casings and three bullets from the front yard where Mr. Puryear's body was found and the sidewalk areas on both sides of the adjacent road. Jaimie Smith, a firearms examiner for the Prince George's County Police Department, testified that, based on the bullets and shell casings recovered from the scene, the crime involved three "unknown" firearms.[15]

Police also found saliva near three of the casings on the sidewalk by the yard. Mary Sanchez, a forensic chemist, testified that the saliva sample "yielded a complete DNA profile that [was] consistent with the known DNA profile" of appellant.

Corporal Edgar Gallardo, a corporal with the Prince George's County Department, testified that Mr. Puryear's rented 2018 Nissan Altima was found abandoned at a park nearby the crime scene. Marisa Bender, an FBI forensic examiner who assisted with the case, testified that appellant's thumb print was found on the driver's side rear door handle of the Nissan. The only other prints found on or in the car belonged to Mr. Puryear.

Detective Windsor testified that, during his June 27 interview with appellant,

[15] The bullets indicated that one firearm was .9 millimeter caliber and another one was ".40 caliber." None of the firearms were recovered.

appellant told him that he had only one cell phone with a 240-area-code number.[16] Following Detective Windsor's testimony, and over the defense's objection, the State introduced and played for the jury an edited version of appellant's June 27 interview.[17]

Detective Paddy testified that he was involved with the execution of the search warrants for the cell phone records associated with both the 202-area-code number and the 240-area-code number (i.e., the red iPhone). The police never obtained the actual phone associated with the 202-area-code number, but they were able to obtain the cell phone records from Verizon. Records of text messages sent and received from the 202-area-code number were introduced as State's Exhibit 308, which included messages corroborating Ms. Washington's testimony that she texted appellant using the 202-area-code number.

Detective Paddy testified regarding the information downloaded from the red iPhone associated with the 240-area-code number. The exhibit showed that, from the 240-area-code number, appellant texted an unknown individual the following message on March 11, 2018: "[B]ut ima text u da address off my other number cause this phone off running on wifi[.]" Appellant then texted the 202-area-code number to that individual.

The exhibit also showed that, on April 22, 2018, appellant received a text at the 240-area-code number from another unknown person asking: "What's your other number I'm

[16] The State introduced appellant's red iPhone associated with that number as State's Exhibit 311.

[17] The interview video, introduced as State's Exhibit 264, was split into 15 clips that were played consecutively for the jury without accompanying testimony.

bouta tell him call it. Cause [I do not] got the number he prolly call you off." Appellant again responded with the 202-area-code number. These texts contradicted appellant's statement to the police that he only had one phone.

The State next introduced other information downloaded from the red iPhone, which included web searches made on the phone. On June 27, 2018, at approximately 1:25 a.m., numerous Google searches appear for the phrase: "upper marlboro shooting." Detective Paddy testified that, to his knowledge, his department had not released any information about the homicide at that time.

Finally, Detective Aven Odhner, a detective in the Prince George's County Technical Operations Unit, testified as an expert in cell phone technology. He stated that, based on the location data, the cell phone associated with the 202-area-code number was at the hospital where Mr. Sanders was brought,[18] at 3:47 p.m. on June 26, 2018, and it was used at 7:57 p.m. near the location where appellant picked up Ms. Coffie's car. At 8:48 p.m., the phone was located within two miles of Toucan Drive in Upper Marlboro, consistent with an 8:00 p.m. text that the State argued was from Mr. Puryear to appellant regarding a place to meet. Then, at 9:37 p.m., the cell phone was present in the neighborhood where Mr. Puryear was killed. By 10:04 p.m., the cell phone had left the area.

[18] Detective Odhner testified that the red iPhone associated with the 240-area-code number also was present in the area of the hospital at 3:48 p.m. on June 26, 2018, and it remained in that area until at least 9:47 p.m.

At the close of the State's case, appellant made a motion for judgment of acquittal. With regard to the conspiracy count, appellant argued that there was no evidence to show that a "meeting of the minds" occurred with another person prior to the crime, or during an escape, sufficient to constitute a conspiracy to commit premeditated murder. The court denied appellant's motion.

At the close of all evidence, appellant renewed his motion for judgment of acquittal on the same grounds. The court denied the motion.

During closing argument, as pertinent to the issues on appeal, the State replayed four clips from the June 27 interview, and then stated:

> No less than six times the Defendant says, he stayed at the hospital until 11:00 or 12:00. Six times, less than 24 hours after the death of James Puryear he bald face lied six times. Five times he says, I didn't see James. I didn't talk to James for a week. Flat out lied.

As indicated, the jury found appellant guilty of conspiracy to commit first-degree murder, and the court sentenced him to 80 years' imprisonment, all but 28 years suspended. This appeal followed.

DISCUSSION

I.

Motion to Suppress

This Court has explained the proper standard of review of a motion to suppress as follows:

> We review a denial of a motion to suppress evidence seized pursuant to a warrantless search based on the record of the suppression hearing, not the subsequent trial. *State v. Nieves*, 383 Md. 573, 581 (2004). We consider the

> evidence in the light most favorable to the prevailing party, here, the State. *Gorman v. State*, 168 Md. App. 412, 421 (2006) (Quotation omitted). We also "accept the suppression court's first-level factual findings unless clearly erroneous, and give due regard to the court's opportunity to assess the credibility of witnesses." *Id.* "We exercise plenary review of the suppression court's conclusions of law," and "make our own constitutional appraisal as to whether an action taken was proper, by reviewing the law and applying it to the facts of the case." *Id.*

Goodwin v. State, 235 Md. App. 263, 274 (2017) (quoting *Bowling v. State*, 227 Md. App. 460, 466–67 (2016)), *cert. denied*, 457 Md. 671 (2018).

Appellant contends that the circuit court erred in denying his motion to suppress the contents of his cell phone because the search exceeded the scope of his consent. He argues that, based on his conversations with the detectives, a reasonable person would have understood that his consent was limited to looking at his phone's list of recent calls. As a result, he contends that the information obtained from Google searches on the phone and the search of his text messages exceeded the scope of his consent and violated his Fourth Amendment rights. Alternatively, appellant argues that, if this Court concludes that the consent form authorized an unlimited search of the cell phone, consent to search beyond his call history was involuntary because the detective told him both before and after reading the consent form that they were only interested in his call history, but the police subsequently admitted that they wanted his text messages.

The State contends that appellant voluntarily consented to the search of his entire phone. It notes that appellant signed a consent form to search his phone, and although he crossed out the other sections on the form that did not apply, he did not include any limits on the cell phone search. The State argues that nothing in the suppression record shows

that the police recovered any evidence beyond the scope of appellant's consent, noting that the only thing the police seemed to gain from the search was that appellant had used the "202" phone, consistent with what Ms. Washington advised.

Alternatively, the State contends that, even if the detectives illegally searched appellant's phone, the evidence was admissible under the independent source doctrine. It argues that appellant was not entitled to suppression of evidence recovered pursuant to the June 29 search warrant because there was independent evidence supporting probable cause to issue that warrant.[19]

Appellant argues that the independent source doctrine does not salvage the unlawful searches of the phone. He notes that the warrant affidavit stated that investigators recovered evidence from the consent search of the phone suggesting that appellant had prior knowledge of the incident and had lied to police about it, which appellant asserts shows that the initial search included looking at Google searches on his phone for a shooting in Upper Marlboro prior to information being released by the authorities. Appellant contends that, if information related to the consent search of the phone is excised, the search warrant lacked probable cause because the only remaining factual basis to search

[19] With respect to appellant's contention that the consent was not voluntary because the police unlawfully induced the consent with misleading statements about the scope of the search, the State argues that this contention is not preserved for our review because it was not raised below. Appellant asserts in his reply brief that this argument is preserved because he argued at the suppression hearing his consent was involuntary due to coercion and/or promises made by the detectives during the interview. Because, as explained *infra*, we agree that the search of the phone impermissibly exceeded the scope of appellant's consent, we need not address this issue or resolve the preservation question.

the phone was that appellant called Ms. Washington on the day of the murder from a different phone.

A.

Scope of Consent

The Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, guarantees "'[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]'" *Lewis v. State*, 470 Md. 1, 17 (2020) (quoting U.S. CONST. amend. IV). A search conducted without a warrant is not unreasonable under the Fourth Amendment "if a person consents to it." *Varriale v. State*, 218 Md. App. 47, 53 (2014), *aff'd*, 444 Md. 400 (2015), *cert. denied*, 577 U.S. 1103 (2016).

Consent may be given expressly, impliedly, or by gesture. *Turner v. State*, 133 Md. App. 192, 207 (2000). To establish valid consent, the State must "prove that the consent was freely and voluntarily given." *Jones v. State*, 407 Md. 33, 51 (2008). "The determination of whether consent is valid is a question of fact, to be decided based upon a consideration of the totality of the circumstances." *Id*. at 52.

A consensual search may not go beyond the limits defined by the consent. *Varriale*, 444 Md. at 412; *see* 4 LaFave, *Search and Seizure*: *A Treatise on the Fourth Amendment* § 8.1(c) (6th ed. 2021) ("When the police are relying upon consent as the basis for their warrantless search, they have no more authority than they have apparently been given by the consent."). "In other words, a consensual search may be limited in scope." *Varriale*,

444 Md. at 412. "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).

Here, appellant limited his consent to search his phone to looking at his call logs. Although he did not add the limitation to the written form, he made it very clear in his discussions that he was consenting only to the police looking at the calls that he made with his phone. *See United States v. Lemmons*, 282 F.3d 920, 924 (7th Cir. 2002) (Signing consent form does not constitute consent to an unlimited search when conversation indicated consent to limited search). Appellant consented to the search only after he received assurances that they would look only at the call history.

The record indicates, however, that the police exceeded the scope of appellant's consent. The subsequent affidavit in support of a search warrant for the phone stated that the initial search of the phone showed that appellant had prior knowledge of the murder, indicating that appellant's denial of knowledge was intentionally misleading. This statement, taken in context with the evidence subsequently presented, suggests that the police saw appellant's Google searches, made hours after the shooting, for "Upper Malboro shooting," even though the police had not released information about the homicide at the time. The testimony of the detectives also indicates that they discovered appellant's other phone, which allegedly was used to call victim before the murder, by looking at texts on the red iPhone.

Looking at appellant's texts and Google search history exceeded the scope of his consent to look at his call logs. Accordingly, the initial search of the phone was unreasonable under the Fourth Amendment.

B.

Independent Source Doctrine

The State contends that, even if the detectives' initial search of the phone was illegal, the evidence obtained pursuant to the subsequent search warrant was admissible under the independent source doctrine. Appellant disagrees.

"[T]he independent source doctrine allows trial courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate, independent source." *Utah v. Strieff*, 579 U.S. 232, 238 (2016). This exception aims "to balance the interests of society in deterring unlawful police conduct with the interest of ensuring juries receive all probative evidence of a crime." *Williams v. State*, 372 Md. 386, 410 (2002). The independent source doctrine applies when the evidence seized is independent of the initial illegality. *See Segura v. United States*, 468 U.S. 796, 814 (1984) (Although police unlawfully entered apartment, evidence seized in subsequent search pursuant to a warrant was admissible because "[n]one of the information on which the warrant was secured was derived from or related in any way to the initial entry."). The policy of the independent source doctrine is that, although the prosecution should not be put in a better position due to illegal activity, it should not be placed in a worse position

simply because of some earlier police misconduct. *Murray v. United States*, 487 U.S. 533, 542 (1988).

In *Redmond v. State*, 213 Md. App. 163, 191 (2013), this Court explained that evidence is not obtained by independent means "'(1) where the officer's 'decision to seek the warrant was prompted by what they had seen during the initial entry'; and (2) where 'information obtained during that entry was presented to the [judge] and affected his [or her] decision to issue the warrant.'" (quoting *Kamara v. State*, 205 Md. App. 607, 627–28 (2012)). With respect to the latter situation, the question is whether, "'after the constitutionally tainted information is excised from the warrant, the remaining information is sufficient to support a finding of probable cause.'" *Id*. at 192 (quoting *Williams*, 372 Md. at 419). There is probable cause for a search warrant when, considering the totality of the circumstances, "there is 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).

Here, the application for a search warrant for the red iPhone stated that, after locating the body, the police spoke with Ms. Washington, who told them about the planned robbery for drugs that Mr. Puryear and Mr. Sanders were involved in on June 25, 2018. The affidavit continued as follows:

> Ms. Washington advised that on the evening of June 26th, 2018 at approximately 1930 hours, the Decedent was utilizing her cell phone to contact an acquaintance named "Alhaji" on number of 202[****] for the purpose of him arranging a meeting with "Alhaji" to cooperatively attempt to locate "Ty"; who was still unaccounted for after the armed robbery attempt the previous day. Ms. Washington stated that after communicating with "Alhaji" on number 202 [****], the Decedent left her residence at

> approximately 2000 hours. The Decedent was shot and killed a short time later at 2146 hours.
>
> On June 27th, 2018 detectives located the Decedent's acquaintance, [appellant], and transported him to the Criminal Investigation Division to be interviewed. [Appellant] was in possession of a red Iphone cellular phone with assigned number of 240 [****] at the time of the interview. During the subsequent interview, [appellant] initially stated to detectives that he did not have any prior knowledge of the aforementioned murder. **As the interview continued, [appellant] consented for detectives to look at content contained in his red Iphone. Upon doing so, detectives learned that Mr. Bah did have prior knowledge of the incident, indicating that he intentionally made misleading statements to investigators concerning his knowledge of the incident.** At the conclusion of the interview, [appellant's] red Iphone was retained by detectives for future evidentiary purposes.
>
> Based upon the aforementioned facts, your Afffiant believes that the Decedent was in communication with [appellant] less than two hours before his murder **and that [appellant] intentionally misled investigators about his knowledge of the incident.** Your Affiant believes that the red Iphone recovered from [appellant's] person will contain additional information that will assist detectives in identifying the suspects who committed the murder.

(Emphasis added). The probable cause portion of the affidavit concluded by proffering that the red iPhone may contain communications and other data that would assist the police in their investigation.

After excising the emphasized text, which represents the information obtained from the initial illegal search of the cell phone, the remaining information indicates that appellant allegedly communicated with Ms. Washington, using a 202-area-code number, two hours before the murder, and Mr. Puryear intended to meet appellant that night. This information did not establish probable cause that appellant was involved in the crime, or that the iPhone would contain evidence of the crime.

Accordingly, "the independent source doctrine does not serve to allow the admission of the evidence that should have been excluded." *Redmond*, 213 Md. App. at 194. The circuit court erred in denying the motion to suppress with respect to the evidence derived from the cellphone.[20]

II.

Sufficiency of the Evidence

Appellant's final contention is that the evidence was insufficient to support his conviction for conspiracy to commit first-degree murder.[21] He argues that "the State failed to introduce sufficient evidence to show that, prior to Mr. Puryear's death, appellant conspired with another with the specific intent to malicious[ly] kill with deliberation and premeditation." He further asserted in his reply brief that "mere presence at the scene of the crime is insufficient as a matter of law to establish participation in [the] crime."

[20] The State does not argue, for good reason, that the admission of the cell phone evidence was harmless error. *See Hurst v. State*, 400 Md. 397, 418 (2007) ("[A]n error is harmless if 'a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict.'") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)). The text messages established that appellant had two phones and suggested that he lured Mr. Puryear to a particular location, which was the basis for his conspiracy conviction. Additionally, the Google search for a shooting in the area, prior to any information being released by the authorities, indicated his knowledge of murder and his involvement in the conspiracy to commit that murder.

[21] Appellant also argues that the circuit court erred in denying his motion to suppress his June 27, 2018 statement to police because it was elicited in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Because this issue may not arise on a retrial, we will not address it.

The State contends that the evidence was legally sufficient to support appellant's conviction for conspiracy to commit first-degree murder. It argues that the evidence permitted the jury to find that appellant facilitated Mr. Puryear's murder "by luring him to the location" where he was killed because Mr. Puryear had been "disloyal" to Mr. Sanders, a mutual friend who was shot in the course of a drug transaction the previous day. Additionally, there was witness and expert testimony that placed appellant at the crime scene, and the number of firearms and shots fired indicated the participation of multiple individuals.

Evidence is sufficient to support a conviction if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 430 (2015) (emphasis omitted) (quoting *Taylor v. State*, 346 Md. 452, 457 (1997)). *Accord State v. McGagh*, 472 Md. 168, 194 (2021). An appellate court does not re-weigh the evidence, but instead, we "seek to determine 'whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt.'" *Haile v. State*, 431 Md. 448, 466 (2013) (quoting *State v. Smith*, 374 Md. 527, 534 (2003)).

"A criminal conspiracy 'consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means.'" *In re Heather B.*, 369 Md. 257, 270 (2002) (quoting *Mitchell v. State*, 363 Md. 130, 145 (2001)). "It is well accepted that the essence of a criminal conspiracy is an unlawful agreement." *Id.* *Accord Savage v. State*, 226 Md. App. 166, 174 (2015) ("The

crime of conspiracy is complete when the agreement to undertake the illegal act is formed."), *cert. denied*, 448 Md. 317 (2016). "The agreement at the heart of a conspiracy 'need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design.'" *Carroll v. State*, 428 Md. 679, 696–97 (2012) (quoting *Khalifa v. State*, 382 Md. 400, 436 (2004)).

"'[C]onspiracy is necessarily a specific intent crime; there must exist the specific intent to join with another person in the accomplishment of an unlawful purpose or a lawful purpose by unlawful means.'" *In re Heather B.*, 369 Md. at 271 (quoting *Mitchell*, 363 Md. at 146). "Conspiracy may be proven by 'circumstantial evidence, from which a common scheme may be inferred.'" *Sequeira v. State*, 250 Md. App. 161, 204 (2021) (quoting *Hall v. State*, 233 Md. App. 118, 138 (2017)).

Here, the evidence was sufficient for the jury to find that appellant conspired with at least one other person to kill Mr. Puryear. The State introduced text messages and witness testimony, in particular Ms. Washington's testimony, tending to show that appellant lured Mr. Puryear to the location where he was killed. Moreover, the forensic evidence, i.e., appellant's fingerprints on the rented Nissan, the saliva found at the scene matching appellant's DNA, and the cell phone location data, placed appellant at the scene at the time of the murder.[22] Appellant's Google searches further indicated appellant's

[22] Additionally, Mr. Moore testified that he saw a dark-colored Hyundai sedan fleeing the scene after hearing the gunshots, which matched the description of the car loaned to appellant by Ms. Coffie on the night of the murder. Although appellant is correct that his "mere presence" at the scene is not, by itself, sufficient to indicate his participation

knowledge of the murder, prior to information being released to the public, and thereby suggesting his involvement. This evidence, combined with the fact that Mr. Puryear was shot at nearly 30 times, using three different firearms, supported the inference that appellant was involved in a concerted action with at least one other individual to murder Mr. Puryear.

Additionally, the State provided a potential motive for the killing. It introduced evidence regarding the botched drug transaction involving Mr. Sanders and Mr. Puryear the day before, where Mr. Sanders was hurt and Mr. Puryear escaped. Ms. Washington testified that appellant did not appear to believe Mr. Puryear's version of the events. Appellant showed consciousness of guilt by lying to the police.

Although the evidence was circumstantial, a rational trier of fact could have concluded that appellant conspired with others to commit the murder. The evidence was sufficient to support his conviction.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

in the conspiracy, there was additional circumstantial evidence in this case, such as the text messages and Ms. Washington's testimony, indicating his involvement in the scheme to lure Mr. Puryear to that location. *See United States v. Anderson*, 747 F.3d 51, 60 (2d Cir. 2014) (The defendant's "presence at 'critical stages of the conspiracy that cannot be explained by happenstance'" was probative circumstantial evidence of the "defendant's knowing participation in a conspiracy." (quoting *United States v. Aleskerova*, 300 F.3d 286, 292–93 (2d Cir. 2002)).