Circuit Court for Baltimore City
Case No.: 117212014

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1201

September Term, 2019

COLIN WATERS

v.

STATE OF MARYLAND

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 7, 2021

On March 27, 2017, Colin Waters, appellant, shot and killed Ernest Edward Solomon following an altercation outside a carryout store on Reisterstown Road. During a recorded police interview, appellant admitted that he shot and killed Mr. Solomon, but he claimed that he fired the gun only trying "to scare" the victim, and he did not intend to shoot the victim.

On March 15, 2019, a jury in the Circuit Court for Baltimore City convicted appellant of second-degree murder, felony murder, robbery with a dangerous weapon, and related firearm offenses.[1] The court sentenced him to 65 years' imprisonment.

On appeal, appellant presents the following questions for this Court's review:

> 1. Did the trial court err by admitting appellant's recorded statement into evidence in its entirety?
>
> 2. Was the evidence legally insufficient to sustain appellant's conviction for second-degree murder?

For reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Jennifer Washington testified that she was driving in the area of Reisterstown Road with her sister, Lynn Lollis, at lunchtime on March 27, 2017. They saw two men "wrestling" and "tussling" with each other. Ms. Lollis testified that she saw an older man shoot a younger man in the back with a small handgun as the younger man tried to run

[1] The robbery and felony murder convictions were vacated because the jury found appellant guilty of robbery, but not guilty of theft.

away. She could not remember how many shots she heard, but it could have been more than one. After the shooting, the older man ran from the scene.

Adam Reynolds also was driving through the area, and he saw two men aggressively "fighting over a gun." Mr. Reynolds heard a couple of shots and then saw the older man "situate" his gun and shoot a couple times at the younger man from approximately ten feet away. After the victim fell down and the shooter ran off, Mr. Reynolds told his passenger to call 911, got out of his car, and started administering CPR. On cross-examination, Mr. Reynolds testified that he believed the gun went off while the two men were fighting and also when the victim tried to run away.[2]

Multiple cartridge casings and metal fragments were collected from the scene. The State's firearms expert testified that these casings and fragments, as well as the bullet recovered from the victim after an autopsy, were all fired from the same firearm. The gun was never recovered.

The medical examiner, Dr. James Locke, testified that Mr. Solomon died from a single, rapidly fatal, gunshot wound to the middle of the back. Gunpowder stippling near the wound suggested that the victim was shot at close range, possibly within a two-foot range. The manner of death was ruled a homicide.

James Miller, appellant's friend, testified that he was with appellant on the day of the shooting. He drove appellant to the area near Reisterstown Road and Gwynn Falls Parkway, parked approximately seven houses from that intersection, and then waited inside

[2] None of these witnesses were able to provide a positive identification of the shooter.

his car while appellant went to see his son and get some money. Approximately 15 minutes later, Mr. Miller heard a number of gunshots and saw several individuals, including appellant, running from the area. Appellant hurriedly got into Mr. Miller's car and told him "let's go, pull off, we got to go." He testified that appellant's "adrenaline was rushing," but appellant told him only that he had been in a fight.

Mr. Miller did as instructed and drove away from the area down Reisterstown Road. He was stopped four blocks away by the police, who advised that they had received information that a similar vehicle was seen near the scene of the shooting. As was evident on the police body camera footage of this stop, as well as from Mr. Miller's testimony and subsequent identification via a photo array, appellant was sitting in the front passenger seat at the time, and he did not disclose his involvement in the shooting.

Detective Raymond Hunter, a member of the Homicide Division of the Baltimore City Police Department, was the primary investigator on the case. After speaking to police officers and gathering preliminary details from witnesses, Detective Hunter learned that a car matching the description of the one the suspect had left the scene in had been stopped by police shortly after the shooting. He was advised that Mr. Miller was the driver and appellant was the passenger in that car.

Detective Hunter's team retrieved a surveillance video of the shooting from the Rainbow Carryout. He testified that the surveillance video, which was played for the jury at trial, depicted appellant and the victim inside the store at approximately the same time as the shooting.

On July 5, 2017, appellant was arrested, given his *Miranda* rights, and interviewed by Detective Hunter and another detective.[3] As discussed in more detail *infra*, the video of that interview was admitted over defense counsel's objection and played for the jury.

At the outset of the interview, appellant admitted that he was in the area of the shooting to obtain money from his son before going to work.[4] Appellant initially told the detectives that, after getting the money and being pulled over by police, he left the area to buy drugs and get high. He denied any involvement in the shooting.

As the interview progressed, however, Detective Hunter noted that appellant had omitted certain information depicted on the surveillance video from the carryout. That video, according to the detectives, showed appellant getting into a "physical altercation" with the victim.

Appellant then suggested that there was an alternative suspect who was involved in the shooting. After the detectives pressed him on this other suspect, appellant admitted his involvement in the shooting. Appellant stated that the victim "bumped" into him as he walked into the carryout store. Appellant demanded an apology from the victim, both inside the store and after he followed him outside into the street. When no apology was forthcoming, he and the victim began fighting.

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

[4] Appellant, who was employed by the Downtown Partnership at the time, stated during the interview that he was wearing his work uniform that day, which consisted of a red shirt and blue pants with thin red stripes. He indicated that, given the events that transpired, he did not end up going to work that day.

Appellant told the detectives that, at some point during the ensuing fight, the victim pulled out a gun. Appellant struggled to get control of the weapon, and a shot was fired. Fearing that he would be shot, appellant bit the victim on his arm, "head-butted" him, and then twisted the gun out of the victim's hands. Appellant stated that he tried to walk away after gaining control of the gun, but the victim jumped on his back and started "choking [him] out." The following discussion then occurred:

> [APPELLANT]: Right. And I got the gun like this. So I'm like what the fuck. So the gun pow. It went off. Went off like this one time.
>
> DETECTIVE HUNTER: Okay.
>
> [APPELLANT]: And when it went off that time, pow, that's when he turned around and he let me go and he ran.
>
> DETECTIVE HUNTER: Okay.
>
> [APPELLANT]: And I turned around and ditched it. I swear for God I thought I shot to the ground.
>
> DETECTIVE HUNTER: Okay.
>
> [APPELLANT]: I'm like (inaudible).
>
> DETECTIVE HUNTER: So hold up. So now he turns around and starts to run.
>
> [APPELLANT]: Yeah.
>
> DETECTIVE HUNTER: And what happened then?
>
> [APPELLANT]: I let off two shots.
>
> DETECTIVE HUNTER: Okay.
>
> [APPELLANT]: Pow, pow. Two shots. I thought they was ground shots. He fell on the ground. I said man, why the fuck you just ain't apologize?
>
> DETECTIVE HUNTER: Okay.

> [APPELLANT]: Why the fuck didn't you just apologize? While I'm saying shit him why didn't you apologize the gun went off again, the gun went off again. I'm like what? Because it was – the gun, it was crazy. The gun was crazy. It was a crazy-ass gun, man.
>
> DETECTIVE HUNTER: Okay.

Appellant further explained what happened when he went to the victim while the victim was on the ground:

> [APPELLANT]: I just – just like warning shots like man, you stupid, why the fuck you choke me out? (Inaudible) and I just pulled the trigger twice, two times, pow, pow. And I'm like man, why the fuck? When I got over there he like man. I said why didn't you just fucking apologize, man. All I wanted was an apology, man. You didn't have to go through all this.
>
> DETECTIVE HUNTER: Okay.
>
> [APPELLANT]: And I think the gun went off one more time. I think the gun went off one more time and I was just – man, I just – because I'm not that type of person, man, I swear.
>
> DETECTIVE HUNTER: I believe you. That's why we give you the opportunity to speak.

Appellant stated that the victim was alive when he left the scene, and he learned that he was dead when he was told during the subsequent traffic stop. Appellant maintained that he did not intend to shoot the victim, stating that he "didn't mean it," and it was a "spontaneous moment" that could have been avoided if the victim had just apologized. Appellant stated that he discarded the gun on a "curb" somewhere, and Mr. Miller, who had remained in the car a few blocks away, did not know anything about the shooting.

Detective Hunter then excused himself from the interview room. Appellant remained in the room with a second, unidentified detective, who followed up about the gun. The following exchange occurred:

DETECTIVE: If you're going to be honest and be sincere about what happened, **you need to be honest all the way.**

[APPELLANT]: I'm telling you, man.

DETECTIVE: When we say we have video, it's clear video of who had that gun. So if you're going to --

[APPELLANT]: I got the gun. I just told you I took the gun from him.

DETECTIVE: If you're going to be honest and sincere and really dig deep, **we have clear video of where you got that gun from right at the front door of the Rainbow Carryout. It's clear. . . . We saw the guy hand it to you**. It's clear. Look, I'm not – I'm not messing with you. I'm not lying to you. You're right in the doorway. You get the gun in the doorway and you walk around to the front of the kid's car, just like you said everything else. And the kid does grab the gun. We got that.

* * *

We see everything. And you've been honest about your drug use since you were 15, on and off again. You were honest about going up there to get drugs and go to work. You were honest about – you were honest about everything, but if you really want to be sincere, **we know you got the gun in the doorway.** It's clear he hands it to you and you walk probably say, hey, why you disrespecting me? If you're going to be honest you got to be honest all the way. . . . But if you're going to be sincere, you've got to be sincere all the way because that one, little piece that you're leaving out, that's the difference of is he really sincere or is he lying or is he just trying to BS everybody?

[APPELLANT]: I ain't BSing nobody.

DETECTIVE: We – but – but it's clear on video where you get the gun from. It is. **I mean you are 99 percent telling the truth, 99 percent**.

(Emphasis added.)

At this point in the interview, appellant maintained that he did not go into the store with a gun and that "nobody passed [him] that gun." After Detective Hunter returned to the interview room and asked what he had missed, the unidentified detective stated that

they were discussing "how honest [appellant had] been," and that he was "to that 99 percent point . . . [e]xcept for the gun."

Detective Hunter resumed as the primary interviewer and again pressed appellant on the gun, stating that the store's surveillance video clearly showed a man wearing a blue Adidas jacket and jeans hand appellant the gun. Detective Hunter then told appellant:

> [W]e was seeing how truthful you was going to be with us. And I know – you remember why your grandma used to say, the truth will set you free, you know what I'm saying. Is because everything – I like to tell people all the time, nothing is never as bad as you think it – or think it is. You know what I'm saying?

After further discussion, appellant admitted that he had obtained the gun from this unidentified third party in the store. He stated that he displayed the gun to the victim and asked him to apologize for bumping into him inside the carryout. Appellant said his only intention was to scare the victim into apologizing, and he did not intend to harm anyone. The victim, however, did not apologize and jumped on him as he tried to walk away, and the shots were fired during the ensuing struggle. Appellant denied that he took anything from the victim following the shooting.

After the State rested, appellant testified in his own defense. He testified that, when he left his house earlier that day and crossed the street to meet Mr. Miller, who was parked on the opposite side of the road, a gold car with tinted windows nearly struck him. Words were exchanged at that time, but the car ultimately drove away without incident.

While he was waiting for his son in the carryout a little while later, the same car, driven by Mr. Solomon, pulled up outside the store. Consistent with his recorded video statement, appellant testified that he obtained a gun from another customer in the carryout,

who he declined to identify. He then went outside to confront the driver because he wanted to resolve any dispute between them to avoid future "repercussions." He tucked the gun into his pant waistband to "keep a neutral peace" if things escalated, and he approached Mr. Solomon, who had exited his vehicle. Appellant asked: "[W]hat was that all about." Mr. Solomon then tried to reach for the gun and a "tussl[e]" ensued, during which a shot was fired. Appellant bit Mr. Solomon on the arm to gain control of the weapon.

Appellant testified that, as he was trying to unload the gun and walk away, Mr. Solomon jumped on his back. He fired the gun because he was "trying to scare him to get off" of him. Mr. Solomon let go and "went up towards his vehicle," and as appellant was turning, he fired another shot, which struck Mr. Solomon, who then fell to the ground. Appellant stated that he ran and stood over the victim, but he denied that the gun went off again. He testified that he left the scene and did not know Mr. Solomon was dead until he was told at a traffic stop shortly thereafter.

With respect to the police interview, appellant conceded that there were portions of his statement in which he had been untruthful, and he did not tell the police about the victim's car almost hitting him earlier in the day because he was scared. He maintained that he did not intend to shoot anyone.

After appellant was convicted and sentenced, this appeal followed.

DISCUSSION

I.

Appellant contends that the trial court erred by admitting his video recorded interview with detectives into evidence. He appears to agree that his own statements were

admissible as statements of a party opponent.[5] He argues, however, that the statements made by the detectives in the video were inadmissible hearsay. He further argues that admission of the following three declarations by the detective to appellant during the interview was prejudicial: (1) "You need to be honest all the way"; (2) "We have clear video of where this gun came from . . . . We saw the guy hand it to you . . . . We know you got the gun in the doorway"; and, (3) "I mean you are 99 percent telling the truth, 99 percent."

The State contends that appellant's contention is not preserved for this Court's review. In any event, it asserts that the contention is without merit.

We address the State's preservation argument first. Maryland Rule 4-323(a) provides, in part:

> An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived. The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs.

Pursuant to this rule, if a party appeals a trial court's ruling on a general objection to the admission of evidence, that party is free to "argue *any* ground against its inadmissibility." *See Johnson v. State*, 408 Md. 204, 223 (2009) (quoting *DeLeon v. State*,

[5] Appellant's decision not to contest the admission of his statements was appropriate given the "statement by a party opponent" hearsay exception of Md. Rule 5-803(a)(1). This exception provides that "[a] statement that is offered against a party" and is "[t]he party's own statement, in either an individual or representative capacity," is not excluded by the hearsay rule. Md. Rule 5-803(a)(1). Here, the State offered the video evidence against appellant at trial, and therefore, his own statements within that video were admissible. *Id.*

407 Md. 16, 24–25 (2008)). "[T]he only exceptions to the principle that a general objection is sufficient are where a rule requires the ground to be stated, where the trial court requests that the ground be stated, and where the objector, although not requested by the court, voluntarily offers specific reasons for objecting to certain evidence[.]" *Bazzle v. State*, 426 Md. 541, 561 (2012) (quoting *Boyd v. State*, 399 Md. 457, 476 (2007)).

Here, when the State sought to admit the video and play it for the jury in full, defense counsel objected, and the following colloquy at the bench occurred:

> THE COURT: All right. Any objection for the record?
>
> [DEFENSE COUNSEL]: I object, Your Honor.
>
> THE COURT: The objection is noted for the record. It's a statement of the defendant in these proceedings. Overruled.
>
> [PROSECUTOR]: Thank you.
>
> THE COURT: He's a party opponent. Overruled. And State's Exhibit 9 –
>
> [PROSECUTOR]: Nine, Your Honor.
>
> THE COURT – is now in evidence.
>
> [DEFENSE COUNSEL]: And --
>
> THE COURT: Yes, sir.
>
> [DEFENSE COUNSEL]: -- just to alert the court, it's about an hour long.

Under these circumstances, appellant's hearsay objection to the interview video is preserved because the objection made was a general one. *See Gutierrez v. State*, 423 Md. 476, 487–89 (2011) (Appellant preserved his objection to "*all* statements" made by a witness by lodging a general objection.); *Handy v. State*, 201 Md. App. 521, 537–38 (2011) (Defendant's objection to hearsay evidence was preserved by a general objection even

though he did not specifically state that his issue was hearsay within hearsay.), *cert. denied*, 424 Md. 630 (2012).

Turning to the merits, appellant argues that the court erred in admitting the video in its entirety because the detective's statements were inadmissible hearsay that did not fall within an exception. He contends that this evidence was prejudicial because he was compelled at trial to acknowledge that portions of his recorded statements were untrue, affecting his credibility with the jury.

The State contends that the detective's statements were not inadmissible hearsay because they were not offered to prove the truth of the matter asserted, but rather, to show the effect that making those statements had on appellant. It further argues that the admission of the challenged statements was not prejudicial because appellant eventually admitted, in both his final statement during the interview and at trial, that his initial statement was not true, and an unidentified man gave him the gun. Thus, any damage to appellant's credibility resulted from his own inconsistent story, not the statements by the detectives.

Generally, rulings on the admissibility of evidence are subject to an abuse of discretion standard of review. *State v. Robertson*, 463 Md. 342, 351 (2019). The question whether evidence is hearsay, however, is a question of law, which is reviewed *de novo*. *Hailes v. State*, 442 Md. 488, 499–501 (2015).

This Court has explained Maryland's hearsay rule as follows:

> "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "Except as otherwise provided

> by [the Maryland] rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. Despite the general rule against hearsay, certain out-of-court statements are admissible. Indeed, we have explained that "[a]n out-of-court statement is admissible *if it is not being offered for the truth of the matter asserted* or if it falls within one of the recognized exceptions to the hearsay rule." *Handy v. State*, 201 Md. App. 521, 539, 30 A.3d 197 (2011) (quoting *Conyers v. State*, 354 Md. 132, 158, 729 A.2d 910 (1999)) (emphasis added).

Jarrett v. State, 220 Md. App. 571, 582–83 (2014).

Here, the statements identified by appellant were not hearsay because they were not offered to prove the truth of the matter asserted, i.e., where appellant got the gun. *See id.* (Introduction of a phone conversation between defendant and his son was admissible in full because the son's comments were not offered to show the truth of the matter asserted.). Rather, the statements were offered to provide context for appellant's answers. *See United States v. Wills*, 346 F.3d 476, 489–90 (4th Cir. 2003) (Court did not err in admitting both sides of a recorded phone conversation because defendant's statements were admissions by a party opponent and his brother's statements "were reasonably required to place [the defendant's] responses into context."), *cert. denied*, 542 U.S. 939 (2004); *People v. Theis*, 963 N.E.2d 378, 386 (Ill. App. Ct. 2011) (Detective's statements in a taped interview were not hearsay in part because, absent the detective's statements, the "defendant's answers would have been nonsensical."), *cert. denied*, 968 N.E. 2d 87 (Ill. 2012); *State v. Chandler*, 380 P.3d 932, 938–39 (Or. 2016) (Detective's statements in conversation with defendant were not admitted for their truth or to show that the defendant was untruthful, "but rather as context for the responses that those statements elicited from [the] defendant.").

Appellant next contends, however, that even if the detective's statements were not hearsay, the statements indicating the detective's disbelief of his assertions were prejudicial. He points to several cases where convictions were reversed when police expressions of disbelief of a suspect's version of events were admitted into evidence.

In *Crawford v. State*, 285 Md. 431, 439–51 (1979), the Court of Appeals reversed a first-degree murder conviction, holding that Crawford was deprived of her due process right to a fair trial when the trial court admitted into evidence Crawford's recorded interrogation, during which police officers expressed disbelief in her claim of self-defense. The Court observed that

> throughout the questioning the police attempted to have [Crawford] recant her version of the incident by indicating their disbelief in her story, by exhorting her to tell the truth and arguing with her, by recounting what other persons, some named, some unnamed, had told them, by stating their opinions as to what had occurred, and by referring to what the victim had said when she was deposed five months before her death in [an unrelated] civil proceeding[.]

Id. at 433. The Court concluded that "[t]he tapes clearly brought out the obvious disbelief of the police in the accused's version of what happened, a disbelief predicated on what the police had learned from other persons." *Id.* at 447. Because of the "constant repetition" of this objectionable evidence, and because "credibility of the accused was all important in the determination by the jury of the validity of her claim throughout the interrogations that she killed in self-defense," the court stated that there was no doubt that the assertions of disbelief "tended to seriously prejudice the defense." *Id.* at 451.

In *Casey v. State*, 124 Md. App. 331, 336 (1999), a State witness testified that he hired Casey and another individual to commit a murder in exchange for $2,000. The State

introduced into evidence a tape recording of the statement Casey gave to the police, in which the officers repeatedly told him that they did not believe his version of events. *Id.* at 337–38. This Court held that the portion of the recording expressing the officers' disbelief of Casey's account should not have been admitted because it is "well settled that the investigating officers' opinions on the truthfulness of an accused's statement [are] inadmissible under Maryland Rule 5-401." *Id.* at 338–39.[6]

In *Snyder v. State*, 104 Md. App. 533, 537 (1995), the State charged Snyder with the murder of his wife. The State's case was largely circumstantial, and there were no eyewitnesses or forensic evidence connecting Snyder to the murder. *Id.* at 538. Snyder challenged the admission of testimony by a police homicide detective concerning a series of questions the detective wanted to ask appellant about "certain inconsistencies" noted during the investigation, including the timing of various events and the reason why appellant took certain actions that appeared contrary to his normal routine. *Id.* at 551–53. This Court held that the trial court erred in admitting the officer's testimony because the detective's testimony, "in essence, put into evidence the detective's disbelief of [the defendant's] statement regarding his activities, and the events surrounding his wife's murder, as well as the detective's opinion as to inconsistencies in [the defendant's] statements." *Id.* at 554.

[6] Rule 5-401 defines "relevant evidence" as "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."

In *Walter v. State*, 239 Md. App. 168, 182 (2018), the defendant was charged with child sexual abuse, and the court admitted, over defense counsel's objection, an unredacted video of a detective's interview with Walter. Throughout this interview, the detective repeatedly asked the defendant whether the victim was lying and "expressed her disbelief in his denial of culpability" in a tactical attempt to cause him to change his story. *Id.* at 182–83, 189.

This Court stated that "[t]he expressions of disbelief were a perfectly legitimate investigative tactic to induce Walter either to confess or to change his account and to introduce inconsistencies that the detective could exploit in further questioning." *Id.* at 189. We determined that, unlike in *Crawford*, the expressions of disbelief were "not so pervasive as to deprive Walter of his due process right to a fair trial." *Id.* at 189. They were, however, irrelevant because they did not cause Walter "to inculpate himself or to alter his account." *Id.* at 189–90. Accordingly, we reversed Walter's conviction. *Id.* at 193.

We stated, however:

> In reversing Walter's conviction and remanding the case for a new trial, we do not mean to suggest that investigators are prohibited from expressing their disbelief in a suspect's account during an interview or interrogation, or that they may not ask a suspect whether a victim or witness is lying. Investigators can and should continue to employ lawful and effective investigative techniques. We hold only that if the State intends to play portions of a recorded interview in which the investigators directly or indirectly express their disbelief in the suspect's statements or their opinion about the suspect's guilt, the court must balance the probative value (if any) of the investigator's comments against their prejudicial effect. In general, where the investigators' comments do not induce the suspect to alter his account or to inculpate himself, a court should prohibit the State from playing those portions of the interview.

Id. at 193 (footnote omitted).

These cases make clear that the admission of an interrogating officer's expression of disbelief in the suspect's version of events can be cause for reversal. In this case, however, unlike the cases upon which appellant relies, there were not sustained expressions of disbelief in appellant's general explanation of his defense, that he had no intent to kill or hurt the victim. Rather, the detectives in this case indicated that they believed the majority of appellant's version of events, except for his description of how he obtained the gun.[7] Moreover, the three comments challenged by appellant can accurately be characterized as attempts to "induce [appellant] to alter his account" of where he got the gun, *see Walters*, 239 Md. App. at 189, 193, and because the comments did cause appellant to change his story, they were relevant to give context to appellant's statement. Accordingly, the court could conclude that the probative value of admitting the entire video outweighed any prejudice. The court did not abuse its discretion in admitting the interview into evidence.

II.

Appellant next asserts that the evidence was insufficient to support his conviction of second-degree murder. Specifically, he argues that the State did not show that he had the requisite intent to commit second-degree murder, i.e., an intent to kill or an intent to commit grievous bodily harm.

[7] The detectives stated that appellant was "99 percent telling the truth," but needed "to be honest all the way" about how he got the gun.

The State contends that there was sufficient evidence of intent to support appellant's conviction for second-degree murder. It noted that, with regard to both intent to kill and intent to commit grievous bodily harm, intent most often is inferred from circumstantial evidence. It argues that "[c]ircumstantial evidence is not inferior to direct evidence," and in this case, there was substantial circumstantial evidence to support the jury's verdict.

In considering a challenge to the sufficiency of the evidence, we ask "whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Grimm v. State*, 447 Md. 482, 494–95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656–57 (2011)); *accord Jackson v. Virginia*, 443 U.S. 307, 319, *reh'g denied*, 444 U.S. 890 (1979). "[W]e defer to the fact finder's 'resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Riley v. State*, 227 Md. App. 249, 256 (quoting *State v. Suddith*, 379 Md. 425, 430 (2004)), *cert. denied*, 448 Md. 726 (2016). In doing so, the jury is free to "accept all, some, or none" of a witness's testimony. *Correll v. State*, 215 Md. App. 483, 502 (2013), *cert. denied*, 437 Md. 638 (2014).

Further, we "must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference." *Cox*, 421 Md. at 657 (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). This Court has noted that, in this undertaking, "the limited question before us is not 'whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Allen v. State*, 158 Md. App. 194, 249 (2004),

aff'd, 387 Md. 389 (2005)). "A valid conviction may be based solely on circumstantial evidence." *State v. Smith*, 374 Md. 527, 534 (2003).

In Maryland, "the crime of murder remains a common law crime, although first and second degree murder have been delineated by statute." *Thornton v. State*, 397 Md. 704, 721 (2007); *accord* Md. Code Ann., Crim. Law §§ 2-201, 2-204 (2012 Repl. Vol.). Murder is "the killing of one human being by another with the requisite malevolent state of mind and without justification, excuse, or mitigation." *Harrison v. State*, 382 Md. 477, 488 (2004) (quoting *Ross v. State*, 308 Md. 337, 340 (1987)).

The mental states that make a killing second-degree murder include, as the jury was instructed, intent to kill and intent to inflict such bodily harm that death would be the likely result. *Burch v. State*, 346 Md. 253, 274, *cert. denied*, 522 U.S. 1001 (1997); *Thornton*, 397 Md. at 730 ("A person is guilty of the intent-to-do-grievous-bodily-harm form of murder *only* if he or she has the requisite intent (and malice) to cause such severe harm that death would be *the* likely result, not merely a possible result.").

As the State notes, "proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *Smith*, 374 Md. at 534. Indeed, "[b]ecause few defendants announce their intent to kill," *Anderson v. State*, 227 Md. App. 329, 347–48 (2016), or their intent to cause grievous bodily harm, intent often must be inferred from circumstantial evidence. *See State v. Raines*, 326 Md. 582, 591 ("It is well established that under the proper circumstances, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the human body."), *cert. denied*, 506 U.S. 1029 (1992).

Here, the evidence was sufficient to support the jury's conclusion that appellant had the requisite intent to commit second-degree murder. The medical examiner testified that the victim was shot in the back at close range. Eyewitnesses testified that appellant shot the victim in the back as he attempted to run away. Appellant, who testified that the gun went off at least two times during the altercation, not only fled the scene and discarded the gun after the shooting, but he also changed his version of events to police multiple times, thereby indicating a consciousness of guilt. *See State v. Simms*, 420 Md. 705, 727 (2011) ("[I]t is not necessary that evidence of this nature conclusively establish guilt. The proper inquiry is whether the evidence *could* support an inference that the defendant's conduct demonstrates a consciousness of guilt.") (quoting *Thomas v. State*, 397 Md. 557, 577 (2007)).

Based on the evidence presented, a rational trier of fact could conclude that appellant shot the victim with the requisite intent to commit second-degree murder. The evidence was sufficient to support appellant's conviction.

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