Circuit Court for Somerset County
Case No: C-19-CR-20-000131

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1429

September Term, 2022

JAMES MATTHEW ROBELLARD

v.

STATE OF MARYLAND

Reed,
Friedman,
Ripken,

JJ.

Opinion by Reed, J.

Filed: March 29, 2024

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

After a jury trial in the Circuit Court for Somerset County, James Matthew Robellard, Appellant, was convicted of first- and second-degree murder, attempted first- and second-degree murder, and numerous other crimes arising out of the shooting death of his wife, LaGina Robellard, and the shooting of Corey Glover. He was sentenced to an aggregate term of life plus twenty years, the first five years without the possibility of parole, and a consecutive term of 20 years, the first five years without the possibility of parole. This timely appeal followed.

ISSUES PRESENTED

Appellant presents the following three issues for our consideration:

> I. Whether the trial court committed plain error when it failed to instruct the jury that Robellard's statement in violation of *Miranda* could only be considered as impeachment evidence and not substantive evidence;
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> II. Whether the trial court erred when it denied Robellard's motion for judgment of acquittal for first-degree murder and attempted first-degree murder; and,
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> III. Whether the trial court erred in denying Robellard's motion to preclude his statement to a nurse technician because the statement was not inherently trustworthy.

For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the night of October 17, 2020, LaGina Robellard[1] was shot and killed and Corey Glover and Appellant were shot in Glover's home on Cornstack Road in Somerset County. The jury was presented with two distinct versions of what occurred that night. The State

[1] In the record, LaGina Robellard is sometimes referred to as "Gina." For clarity, we shall refer to her as "LaGina."

argued that Appellant was upset that LaGina decided to leave him for Glover, that he went to Glover's home and shot and killed LaGina and shot Glover and, that during the incident, he was shot by Glover. The defense argued that Appellant and LaGina had reconciled. It maintained that LaGina went to Glover's home to pick up her mail and some tools, that Appellant learned that the tools could not be brought to him, and when he went to Glover's house to retrieve the tools, he was shot as he walked up to the front door.

Glover testified that he grew up with LaGina in Crisfield. Prior to 2020, they had not spoken to each other for "a long period of time." They reconnected in 2020 and began dating in August 2020. At that time, Glover was married to someone else and LaGina was married to Appellant. Glover was under the impression that LaGina had separated from Appellant.

A few weeks into the relationship, Appellant called Glover because he found a note in which Glover had declared his love for LaGina. Appellant asked Glover if he knew that LaGina was married. Glover responded that he understood they were getting a divorce. Appellant "threatened to beat [Glover] up and stuff like that." In September 2020, LaGina moved into Glover's home. Glover and his son helped move her furniture and other belongings into the residence. Two to three weeks later, LaGina left Glover and returned to Appellant. LaGina and Glover continued to speak and, eventually, she decided to move back to Glover's home.

On October 17, 2020, LaGina was at Glover's residence. Most of her belongings were moved out, but some tools that belonged to Appellant were in Glover's living room. Glover was aware that Appellant was coming to his home to get them. LaGina appeared to

be "super nervous" and "really, really scared."[2] Glover was not feeling well, so he went to bed. Later, Glover "heard some gunshots." He jumped out of bed and grabbed a loaded shotgun that he kept in his bedroom. He exited his bedroom and saw Appellant, who "started to open fire." Glover was shot a couple of times. From about ten feet away, Glover fired a single shot[3] at Appellant and then the shotgun "jammed up." Glover saw Appellant on the floor, so he went back into his bedroom to get his phone. As he turned around, he was shot a third time in his shoulder.

Glover got his phone, went into a bathroom, and locked the door. He called his mother and his son because he did not think he was "going to be around much longer" and wanted to tell them that he loved them. He then called 911. Glover was bleeding, in pain, and unable to walk. Eventually, the police arrived, kicked in the bathroom door, and carried him out to an ambulance. He was transported to a hospital in Salisbury where he had a bullet removed from his shoulder.

LaGina died. The parties stipulated that she died as a result of gunshot wounds, five to the chest and three in her abdomen. The direction of the wound paths showed that bullets entered from the front of LaGina's body. One wound went through her torso and seven projectiles were recovered from her body. The manner of her death was homicide.

Appellant testified on his own behalf. He and LaGina were married in June 1999, and, prior to the shooting, they lived together in Hebron. They did not have any children together. In August 2020, Appellant learned that LaGina was involved with another man.

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[2] She spoke about leaving.
[3] Glover testified that he fired a "bird shot."

Appellant was upset and they discussed whether they should stay married. In mid-September 2020, LaGina moved out of their home. Appellant helped her load boxes and furniture into a trailer "that Glover had left on the property for use in that purpose." Appellant stated that he and LaGina did not argue and had no disagreements about what she was taking with her. On cross-examination, Appellant stated that he was not mad at Glover because LaGina was the person who made the decision to move out and "[s]ometimes you just got to accept things." Appellant testified that he "just wanted her to be happy." He acknowledged, however, that he spoke to Glover before LaGina moved out and that it was not an amicable conversation. Appellant also sent Glover a text message in which he said that LaGina had stopped by his house where she learned that Appellant was considering moving away. Appellant testified that LaGina became upset and said "she was going to kill herself." Appellant wrote that Glover should "take good care of her, she is a good girl." Appellant denied threatening Glover, but he acknowledged that he drove by Glover's home to see where he lived because Glover had threatened him and said that he knew where Appellant lived.[4]

After she moved to Glover's home, LaGina and Appellant communicated daily by text and by phone. On or about October 5, 2020, LaGina returned to the home she shared with Appellant. After Glover went to work, Appellant and LaGina's father drove a rental truck to Glover's home, loaded up LaGina's belongings, and drove them to Appellant and LaGina's home in Hebron. Appellant believed that they were going to try to make their

[4] Appellant did not report that threat to the police.

marriage work, that their relationship was "[v]ery good," and that they were able to talk about difficult topics. Between October 5 and 17, 2020, Appellant and LaGina traveled to New York together to attend a wedding and they re-engaged in a physical relationship. Appellant understood LaGina's relationship with Glover to be a thing of the past.

Appellant knew that LaGina was going to Glover's house on October 17, 2021, to pick up her mail and some tools that had been left at Glover's house. The tools belonged to Appellant and he needed them for a job. At some point, Appellant came to understand that the tools could not be brought to him. As a result, at 9 p.m., he drove to Glover's house to retrieve them. He called LaGina to say that he was on his way. It took approximately 45 minutes to get to Glover's house. Appellant denied drinking alcohol and denied having a weapon in his car, although he testified that he owned a Smith & Wesson .40 caliber handgun that held ten rounds in the clip. When Appellant arrived at Glover's house, he called LaGina and told her that he was there. He then walked up to the front door of the residence which was closed. He called LaGina and told her he was at the front door. LaGina opened the interior door and Appellant opened the storm door and stepped inside. LaGina backed up to a wood stove that was five or six feet away and then Appellant was shot.

Appellant's next memory is "waking up face down on the couch." The house was quiet, and he was in a lot of pain. He could not walk, but he was able to get his phone from his left jacket pocket. He tried to call 911, "but [his] phone would not operate." Specifically, Appellant could not push the numbers 9-1-1 because of blood that was on the phone. He was, however, able to call his son by swiping the surface of the phone.

Appellant recalled that a police officer touched his shoulder, startled him, and then passed in front of him. Appellant's next memory was being in an ambulance. He did not recall anything that happened thereafter until December 17, 2020, when he "was in [an] ICU room at University." According to Appellant, he suffered a gunshot wound to his stomach and chest area and had at least sixteen surgeries. Appellant testified that his injuries impacted his ability to think rationally, and he did not know if he could trust his memories. Appellant denied being angry at either Glover or LaGina and denied shooting them. Appellant had a gun safe and owned three handguns and three rifles. He claimed that LaGina had access to the guns in the gun safe, that she had taken guns in the past, and that in September 2020, she was in possession of the gun recovered from a chair in the living room at Glover's house. That gun was identified at trial as a black Smith & Wesson handgun with a black magazine and it was entered into evidence as State's Exhibit 42.

Numerous law enforcement officers and emergency medical personnel responded to the scene of the shooting. Maryland State Police Corporal Harry Lloyd, Somerset County Deputy Sheriff Kayla Corbin, and Deputy Jeff Burke were among the first to arrive on the scene. The house was quiet when they arrived. As they approached the house, they "noticed an empty pistol magazine and some shell casings by the front door." One deputy went to the back door and Corporal Lloyd and Deputy Corbin went to the front door which was open about four to six inches. As Corporal Lloyd opened the door with his foot, he saw a woman "laying on the floor." There was "[l]ots of blood on the floor, especially around the front door." An electrical tool set was by the woman's feet.

Corporal Lloyd then heard a male voice say, "I'm on the couch. I put the gun over there." Corporal Lloyd observed a gun on an ottoman six to eight feet away from the man. Deputy Corbin testified that the gun was in a chair. Deputy Corbin observed a man, whom she identified as Appellant, on the couch laying on his side with his hand underneath his body. Both officers heard another person in the back portion of the home. According to Corporal Lloyd, that man was "hollering for help saying that he had been shot" and that he "was bleeding out." Deputy Corbin stayed with Appellant, Deputy Burke cleared the rest of the house, and Corporal Lloyd proceeded to the back of the house where he found a man locked in the bathroom. After kicking in the bathroom door, Corporal Lloyd observed a shotgun on the floor and the man sitting on the toilet holding his upper right leg with a t-shirt or rag. Corporal Lloyd took the shotgun and put it on a bed. He then put pressure on the man's wound. Both of the wounded men were transported to Tidal Health Peninsula Regional Medical Center in Salisbury ("Tidal Health"). The woman, LaGina, was pronounced dead.

George Nelson, who was employed by the Princess Anne Volunteer Company ("EMS"), responded to the home and observed Appellant on a coach holding the upper left quadrant of his abdominal area. In the ambulance, Nelson observed a "large hole" and "a lot of bruising" on Appellant's chest. Nelson described Appellant as conscious and alert on the way to the hospital. Nicole Dodson, who was employed by Lower Somerset EMS was in the ambulance that transported Glover to the hospital. According to Dodson, when Glover "realized he was going to be okay he was able to tell [them] more" about what happened. She described him as speaking coherently. Sergeant Steve Hallman of the

Maryland State Police Homicide Unit observed Glover in the trauma room at the hospital. He described Glover as conscious and alert, but in "significant pain." Sergeant Hallman observed a medical procedure in which a projectile was removed from Glover's shoulder.

Kenitha Mason was a patient care technician in the Intensive Care Unit ("ICU") at Tidal Health for one shift during the time Appellant was a patient there. She treated a white, male, gunshot wound patient who was 50 to 60 years old, but at trial she could not recall his name. Mason said the patient "seemed normal" and "calm" to her and "was able to talk" to her and "carry on a conversation." The patient was aware that he was in the hospital and that Mason worked there. The patient would let Mason know when he had pain and she would inform a nurse. The patient had been on a sedation medication when he was on a ventilator, but Mason did not think he was on that medication when she saw him. She thought the patient had surgery the night or day before she was assigned to work with him and that he was taking a pain medication. The patient was asked hourly where he was, what was going on, and other questions that were asked of all patients to assess cognitive ability.

The patient told Mason that "he knew he'd shot his wife." Mason did not want to hear "the rest of it." A police officer was present for "the whole time" including when the patient made the statement about shooting his wife. The police officer did not tell Mason to ask the patient any questions and she did not recall the officer asking the patient any questions.

Maryland State Police Master Trooper Alex Edwards was assigned to guard Appellant while he was at Tidal Health. According to Trooper Edwards, Appellant slept

most of the time. Trooper Edwards was stationed outside the hospital room but entered it on two occasions when a nurse went in and asked Appellant questions. On one of those occasions, Trooper Edwards overheard the nurse asking Appellant if he remembered why he was at the hospital. Appellant responded, he "woke up in the hospital, he had a confrontation with his wife, and he killed her." Appellant said he "didn't plan to." When the nurse asked Appellant where he was, Appellant answered that he "felt like he was in a different place every time he woke up, with a different thought process." He said that he killed his wife "some time in the last 48 hours, but didn't know why." The nurse asked if he knew he had been shot and Appellant responded that he did not remember being shot, but remembered the doctor telling him he had been shot. The nurse also asked if Appellant knew that his wife was not the only person who had been shot and Appellant said yes, that Corey Glover had also been shot, but he did not know why. When asked what he remembered about why he was at the hospital, Appellant said he "had a confrontation with her." Trooper Edwards testified that he did not ask Appellant any questions and did not direct the nurse to ask any questions. According to Trooper Edwards, Appellant's answers did not seem strange or unresponsive.

Fourteen shell casings and one shotgun shell casing were recovered - six bullet fragments were recovered at the scene, seven were collected from LaGina's body by the medical examiner, and one was recovered from Glover's shoulder. Forensic testing was conducted. An expert in firearm and toolmark identification opined that all of the cartridge cases except one, for which results were inconclusive, were fired by the same .40 caliber Smith & Wesson handgun, and the shotgun shell was fired by the shotgun recovered at the

scene.[5] DNA samples were collected from the Smith & Wesson handgun, magazine, and trigger, and from the shotgun. In addition, known DNA samples from Appellant and Glover were provided. Tiffany Keener, who testified as an expert in forensic DNA analysis, opined that DNA recovered from swabs of the black magazine and the Smith & Wesson handgun matched the known DNA profile of Appellant and that swabs from the shotgun matched Glover as the major contributor.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Appellant contends that the trial court committed plain error when it failed to instruct the jury that his non-Mirandized[6] statement to Somerset County Sheriff's Deputy

[5] In *Abruquah v. State*, 483 Md. 637 (2023), Maryland's Supreme Court held that a ballistics expert can testify that patterns and markings on bullets and bullet fragments found at a crime scene are consistent with patterns and markings on bullets fired from a suspect's gun but cannot offer an unqualified opinion of a match between them. *Id.* at 698. Although the expert firearms and toolmark testimony in this case is probably no longer admissible under *Abruquah*, no challenge was made to that evidence at trial and no argument was presented with regard to that issue on appeal.

[6] Before conducting a custodial interrogation, the police must comply with the dictates of *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* requires the police to advise the suspect that "he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Id.* at 479. Only if the suspect, upon receiving valid warnings, makes a knowing, intelligent, and voluntary waiver of the rights embodied in the warnings may the police question the suspect. *Id.* at 478-79. A trial court may not admit a confession made during a custodial interrogation unless a law enforcement officer properly advised the defendant (continued)

Kayla Corbin could only be considered as impeachment evidence and not as substantive evidence. We decline to exercise our discretion to grant plain error review of this unpreserved issue.

Prior to trial, Appellant filed a motion to suppress certain statements. At the hearing on that motion, the prosecutor advised the court that on the day of the incident, Appellant made some statements to Deputy Corbin and the State had agreed not to use those statements in its case-in-chief. The prosecutor stated, "I believe that they are custodial questioning and thereby were done without *Miranda* and would not be admissible in the case-in-chief."

At trial, Appellant elected to testify on his own behalf. Defense counsel advised Appellant that if he testified, the State would likely call Deputy Corbin as a rebuttal witness. Defense counsel advised Appellant that "we could object but I don't believe the objection will be sustained." Appellant decided to testify stating, "I'm going to live and die by this, and I'm going to at least have my five minutes." The court then advised Appellant as follows:

> All right. Mr. Robellard, do you understand that you have the absolute right to take the stand and testify on your own behalf. You may not be compelled to do so. If you do not, no adverse inference can be drawn from your failure to do so. And I will instruct the jury to that effect. If [defense counsel] were to ask me to do that, I would do that.
>
> If you do testify, as [defense counsel] has said earlier, you are subject to cross examination by the State's Attorney. You may also be asked questions by the Court.

of the defendant's rights under *Miranda* and the defendant knowingly, intelligently, and voluntarily waived those rights. *See Gonzalez v. State*, 429 Md. 632, 652 (2012).

> And as [the prosecutor] has indicated, that there was certain evidence this Court had excluded. Namely the statement to Deputy Corbin, which was made shortly after the incident, that the Court has suppressed based upon agreement of the parties in the State's case in chief. However, if you do testify you're subject to cross examination about those statements. You're also – the State may use it in rebuttal of any testimony you give. I just want to make sure you're fully aware of that.

Appellant responded in the affirmative and he proceeded to testify on his own behalf. At the conclusion of Appellant's testimony, the defense rested. Without objection, the State called Deputy Corbin as a rebuttal witness. She testified that on October 17, 2020, she responded to a call for gunshot victims at Glover's home on Cornstack Road. While at the house, she had a conversation with Appellant, who was on "the sofa." She stated that "he was in some pain, but he was able to answer questions," that he seemed cognizant of what was going on, and that he responded appropriately to her questions.

Deputy Corbin asked Appellant if he had any weapons and he responded that "the handgun that was in the chair belonged to him." Deputy Corbin "asked in reference to a possible suspect on who was involved in the shooting," and Appellant responded that he "came to the residence because he found out that his wife, Ms. LaGina, was having an affair with Corey Glover." Appellant "stated that he shot them." Deputy Corbin sought to clarify Appellant's statement. She "pointed to Ms. LaGina, he stated yes. And then I asked about Mr. Glover, he also stated yes." On cross-examination, Deputy Corbin said that Appellant was holding his side but was not crying.

At the close of the evidence, the court instructed the jury. The instructions referenced evidence that Appellant made a statement to the police,[7] but did not include an instruction that Deputy Corbin's testimony could be considered only as impeachment evidence. Defense counsel did not request the judge to give such an instruction. In fact,

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[7] The court's instructions to the jury included the following:

> You have heard evidence that the Defendant made a statement to the police about the crimes charged. You must first determine whether the Defendant made a statement. If you find that the Defendant made a statement, then you must decide whether the State has proven, beyond a reasonable doubt, that the statement was voluntarily made.
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> A voluntary statement is one that under all circumstances was given freely. To be voluntary, a statement must not have been compelled or obtained as a result of any force, promise[ ], threat, inducement or offer of reward.
>
> If you decide the police used force, a threat or promise or inducement and/or offer of reward in obtaining Defendant's statement, then you must find that the statement was involuntary and disregard it. Unless the State has proven beyond a reasonable doubt that the force, threat, promise or inducement and/or offer of reward did not, in any way, cause the Defendant to make the statement.
>
> If you do not exclude the statement for one of these reasons you then must decide whether it was voluntary under the circumstances. In deciding whether the statement was voluntary, consider all the circumstances surrounding the statement.
>
> The conversations, if any, between the police and the Defendant, whether the Defendant was advised of his rights, the length of time the Defendant was questioned, who was present, the mental and physical condition of the Defendant, whether the Defendant was subjected to force or threat of force by the police, the age, background, experience, education, character and intelligence of the Defendant, whether the Defendant was taken before a district court commissioner without unnecessary delay following arrest, and if not, whether that affected the voluntariness of the statement, any other circumstances surrounding the taking of the statement.

If you find beyond a reasonable doubt that the statement was voluntary, given [sic] it such weight as you believe it deserves. If you do not find beyond a reasonable doubt that the statement was voluntary, you must disregard it.

when the judge finished instructing the jury, he asked, "Counsel, are you satisfied with the jury instructions?" Defense counsel responded, "Defense is satisfied, Your Honor."

Appellant acknowledges that no objection was made to the jury instructions that were given by the judge, but he argues that we should exercise our discretion to grant plain error review. We decline to do so.

"Plain error is 'error which vitally affects a defendant's right to a fair and impartial trial.'" *Walker v. State*, 192 Md. App. 678, 692 (2010) (quoting *State v. Daughton*, 321 Md. 206, 211 (1990)). To be sure, appellate courts have discretion under Md. Rule 8-131(a) to address an unpreserved issue, but we do so rarely because:

> Considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007). *See also Lopez-Villa v. State*, 478 Md. 1, 19-20 (2022) (holding same).

Review under the plain error doctrine "'1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.'" *Kelly v. State*, 195 Md. App. 403, 432 (2010) (quoting *Hammersla v. State*, 184 Md. App. 295, 306 (2009)), *cert. denied*, 417 Md. 502 (2011), *cert. denied*, 563 U.S. 947 (2011). Accordingly, we will review an unpreserved error under the plain error doctrine "only when the unobjected to error [is] compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Id.* (citations omitted).

Generally, before we can consider whether to exercise our discretion to review an unpreserved error, an Appellant must establish, among other things, that the plain error "'affected the outcome of the [trial] court proceedings[.]'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)). Appellant cannot make that showing here because Deputy Corbin's testimony was largely cumulative of other evidence presented at trial. Trooper Edwards testified that he overheard Appellant tell a patient care technician that he had a confrontation with his wife and killed her and that Glover had also been shot, although he did not know why. Patient care technician Mason testified that the patient she worked with stated that "he knew he'd shot his wife." In light of this evidence, we cannot say that the trial court's failure to give a limiting instruction to the jury with respect to Deputy Corbin's testimony affected the outcome of the trial. We, therefore, decline to exercise our right to engage in plain error review.

II.

Appellant contends that the trial court erred in denying his motion for judgment of acquittal with respect to the charges of first-degree murder and attempted first-degree murder because the State failed to prove beyond a reasonable doubt that he acted with premeditation. He argues that, at most, the evidence showed that he impulsively shot LaGina and Glover. We disagree.

A. Standard of Review

The Supreme Court of Maryland recently summarized the established standards governing appellate review of whether evidence is sufficient to sustain a conviction:

> It is the responsibility of the appellate court, in assessing the sufficiency of the evidence to sustain a criminal conviction, to determine "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." This Court adopted this standard from the United States Supreme Court case, *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).
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> When reviewing the sufficiency of evidence, this Court does not retry the case. "It is simply not the province of the appellate court to determine whether . . . [it] could have drawn other inferences from the evidence[.]" "[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt."
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> * * *
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> Because the circuit court is entrusted with making credibility determinations, resolving conflicting evidence, and drawing inferences from the evidence, the reviewing court "gives deference to a trial judge's or a jury's ability to choose among differing inferences that might possibly be made from a factual situation[.]"

Koushall v. State, 479 Md. 124, 148-49 (2022) (some citations omitted).

Section 2-201 of the Criminal Law Article ("CR") of the Maryland Code provides that in order to support a conviction for first-degree murder, the State must prove beyond a reasonable doubt that the killing was "deliberate, premeditated, and willful[.]" *See* CR § 2-201(a)(1). *See also* Maryland Criminal Pattern Jury Instructions ("MPJI-Cr") 4:17.2(A)(defining first-degree murder as "the intentional killing of another person with willfulness, deliberation, and premeditation."). That is, the State must prove that the killing was not "'the immediate offspring of rashness and impetuous temper,'" but was the product of a "mind 'fully conscious of its own design.'" *Handy v. State*, 201 Md. App. 521, 560

(2011) (quoting *Mitchell v. State*, 363 Md. 130, 148 (2001)). Like intent, premeditation typically must be inferred from the facts and surrounding circumstances. *Id.* at 560-61.

"Willful means that the defendant actually intended to kill [the victim]." MPJI-Cr 4:17.2(A). *See also Tichnell v. State*, 287 Md. 695, 717-18 (1980) ("For a killing to be 'willful' there must be a specific purpose and intent to kill[.]"). "Deliberate means that the defendant was conscious of the intent to kill." *Id. See also Tichnell*, 287 Md. at 717-18 ("To be 'deliberate' there must be a full and conscious knowledge of the purpose to kill[.]"). MPJI-Cr 4:17.2(A) defines premeditation to mean that:

> [T]he defendant thought about the killing and that there was enough time before the killing, though it may only have been brief, for the defendant to consider the decision whether or not to kill and enough time to weigh the reasons for and against the choice. The premeditated intent to kill must be formed before the killing.

Id. In *Tichnell*, the Supreme Court of Maryland wrote that to be "premeditated," "the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate." 287 Md. at 717-18. The Court explained:

> It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time. Their existence is discerned from the facts of the case. If the killing results from a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder.

Id.

To establish the elements of attempted first-degree murder, the State was required to prove that Appellant (1) "took a substantial step, beyond mere preparation, toward the commission of" that crime and (2) that he "intended to commit" that crime. MPJI-Cr 4:02.

B. Evidence Presented at Trial

There was sufficient evidence of premeditation produced at trial to sustain Appellant's convictions for first-degree murder and attempted first-degree murder. Glover testified that a few weeks into his relationship with LaGina, he had a conversation with Appellant:

> [Prosecutor]: And what was the nature of that conversation?
>
> [Glover]: [Appellant] called me, want to know – I think he found a note that I gave [LaGina], that I told her I loved her. And he was calling me and asking me, did I love his wife, and knew that she was married. And I was, like, yeah, but I heard that you all, you know, getting to divorce and what not. And, like, he threatened to beat me up and stuff like that.
>
> [Prosecutor]: How did he threaten to beat you up?
>
> [Glover]: He just said something about, you know, I beat P-U-S-S-Y-S's [sic] up, like you, for a living, and this and that, threatening, you know, to come see me or what not, and just pretty much said he was going to beat me up.

Appellant testified that at some point before LaGina moved out of the marital home, he spoke to Glover and asked him "what he was doing with my wife." Appellant acknowledged that the conversation was not amicable. He denied threatening Glover, but when asked if he felt threatened Appellant said, "[w]e used some choice words. It was pretty colorful." On cross-examination, Appellant stated that on one occasion, he drove by Glover's house to see where he lived because Glover had threatened him and "said he knew where [Appellant] lived."

As we have already noted, Glover and LaGina eventually began living together in Glover's house. After a couple of weeks, LaGina moved back to the home she shared with Appellant. Glover and LaGina continued to talk, and he considered himself still to be in a

relationship with her. In early October, Glover gave LaGina money to begin divorce proceedings. During the same time period, Appellant believed that his relationship with LaGina was "[v]ery good." Appellant and LaGina had traveled together to a wedding and re-engaged in a physical relationship. Appellant believed that LaGina's relationship with Glover was in the past.

According to Glover, on October 17, 2020, LaGina expressed her desire to move back to his home. Earlier that day, Glover placed Appellant's tools by the front door. When asked if he found it "odd" that Appellant was going to pick the tools up from his house, Glover responded: "I had talked to [LaGina] about it. And she just said, I'm just going to go ahead and give them to him, so he'll go home, and you know – and be done with it." Glover described LaGina as "very super nervous." He stated that she "was talking about leaving" and about Appellant coming to Glover's house to get some of his tools.

Appellant was aware that, on October 17, 2020, LaGina was going to Glover's house to pick up her mail and his tools. LaGina's car was at Glover's house. No evidence was presented as to why LaGina did not pick up the tools at Glover's house and bring them to Appellant. Appellant testified only that he understood the tools could not be brought to him and if he wanted them, he had to get them. At about 9 p.m., he drove to Glover's house to retrieve the tools. It was undisputed that Appellant lived about 44 minutes to an hour from Glover's house.

Appellant testified that he was shot as he stepped inside the threshold of Glover's house. According to Glover, he heard gun shots and then exited his bedroom and saw Appellant "open fire." Glover was "shot a couple times." Glover fired his shotgun at

Appellant and then saw Appellant on the floor. When he turned to go back to his room to get his phone, Glover was shot a third time in his shoulder.

Appellant directed law enforcement to a handgun that was on a chair near to him. Appellant's DNA was recovered from both the handgun and a magazine and he admitted that the handgun belonged to him. Appellant denied that he had the handgun or any other weapon with him when he left his home in Hebron and denied that he had a weapon in his vehicle. He admitted that he owned a .40 caliber Smith & Wesson handgun that held ten rounds in the magazine. He testified that LaGina had access to three handguns and three rifles he stored in a gun safe in his house, that she had taken guns before, and that in September 2020, she possessed the handgun identified as State's Exhibit 42. Evidence presented at trial showed that that handgun fired the cartridge casings recovered from the scene as well as all but one of the bullets that struck LaGina and Glover.[8] The remaining bullet was too damaged to determine if it was fired from Appellant's handgun. Appellant's memory of what occurred after the shooting was very limited. He did not recall anything about his time at Tidal Health and his next memory was on December 17, 2020.

From that evidence, and reasonable inferences therefrom, the jury could conclude that Appellant acted with premeditation on the night he shot and killed LaGina and attempted to kill Glover. The jury was free to disregard Appellant's testimony about his reconciliation with LaGina and his vague "understanding" that his tools could not be brought home by her. The jury was free to credit Glover's testimony that LaGina had

[8] See footnote 5.

decided to resume her relationship with him. The jury could infer that Appellant was angry LaGina had decided to return to Glover, just as he had been angry when she left him the first time. It could also credit Glover's testimony that Appellant had threatened to beat him up and infer from that evidence that Appellant would act on his prior threat after LaGina left him a second time. The jury was free to reject Appellant's testimony that LaGina had his handgun in September 2020 and the suggestion that she brought it to the scene of the shooting. Based on the evidence presented, the jury could conclude that Appellant armed himself with his handgun and ammunition and drove 45 minutes or more to Glover's house with the intent of killing both LaGina and Glover. There was ample evidence to support the conclusion that Appellant shot LaGina several times when she opened the door, that he shot Glover twice, and that he shot Glover a third time as he was turning away to go find his phone. Thus, the evidence was sufficient for a reasonable jury to rationally conclude that Appellant acted with premeditation on the night he shot and killed LaGina and attempted to kill Glover.

III.

Appellant contends that the circuit court erred in denying his motion to preclude a statement he made to nurse technician Mason because the statement was not inherently trustworthy. Appellant argues that the court applied the wrong standard in admitting the statement and failed to determine whether the statement was inherently trustworthy.

A. Suppression Hearing

The admissibility of Appellant's statement was initially raised at a pre-trial motions hearing on January 10, 2022. Trooper Edwards testified at that hearing that on October 21,

2020, he responded to Tidal Health to guard Appellant who was a suspect in the shooting. When Trooper Edwards arrived, Appellant had a feeding tube and was unable to speak. Trooper Edwards did not ask him any direct questions. At some point, Trooper Edwards observed Appellant remove the feeding tube on his own. He notified the nursing staff. Each time a member of the nursing staff entered the hospital room, Trooper Edwards also entered "in case anything were to happen."

Trooper Edwards reported two events that he observed that day, one of which involved a conversation between Appellant and Mason that lasted close to 20 minutes.[9] He prepared a written report based, in part, on his observations of that conversation. A portion of that report was admitted at the motions hearing as State's Exhibit 1. That portion of the report, in which Appellant was erroneously referred to as "Roberllard," provided:

> Mason: What do you remember about why you're here?
>
> Roberllard: I woke up in the hospital. I had a confrontation with my wife and I went to talk to her and didn't plan on shooting her.
>
> Mason: Do you know where you are?
>
> Roberllard: In the hospital but every time I wake up I'm somewhere different.
>
> Mason: If [sic] a different place or a different thought process.
>
> Roberllard: In my thought process.

[9] The other event occurred at approximately 10:04 a.m. when Trooper Edwards entered the hospital room at Tidal Health with nurse Allison Cherry. The nurse asked Appellant what hospital he was in and Appellant responded, "University of Maryland." Cherry also asked Appellant if he remembered why he was there. In response, Appellant "extended his index finger and his thumb on his left hand" and "moved his index finger back towards the palm of his hand . . . to mimic [what] I would interpret as the [sic] pulling the trigger of a handgun." After that, Appellant fell back asleep.

Roberllard: Somewhere along the way, the last 48 hours I killed my wife.

Mason: Why?

Roberllard: I dont [sic] know why.

Mason: Do you know you were shot?

Roberllard: Yes. I remember the doctor telling me but I don't remember being shot.

Mason: You know your wife was not the only one that was shot?

Roberllard: Yes. Corey Glover but I don't know why.

Appellant could be heard clearly, although he spoke in a low, raspy tone of voice that Trooper Edwards assumed was from the feeding tube that had been inserted for several days. According to Trooper Edwards, it "appeared that simply talking was a struggle, like [Appellant] was losing his breath very easily[,]" but he "was able to speak in full sentences." Trooper Edwards believed there was some conversation about transferring Appellant from Tidal Health to the University of Maryland, but he was not privy to the details. Other than the conversations between Appellant, Cherry, and Mason, Appellant spent the majority of the time sleeping. Trooper Edwards described Appellant's injury as a "large, probably four or five inch open wound . . . in his upper torso . . . towards the back of his left upper torso." He observed medication being administered to Appellant but did not know what type of medication or the time it was administered.

Appellant sought to exclude his statement to Mason pursuant to the Fourth Amendment to the United States Constitution on the ground that it was obtained through government action when he had not been advised of his rights under *Miranda*. The court

rejected that argument stating, "I've heard nothing to convince me that there was any action by the State to induce the statement given by [Appellant] to the hospital personnel[.]" Appellant does not challenge that decision in the instant appeal. The court reserved until trial the issue of whether to admit Appellant's statement to Mason, which was made in the presence of Trooper Edwards.

At trial, out of the presence of the jury, the court heard testimony from Mason. She stated, among other things, that she spent one shift with a white, male, 50- to 60-year-old patient with a gunshot wound, whose name she could not recall. In the presence of a police officer, the patient told Mason that "he remembered shooting his wife." Mason testified that "anything else with that conversation, I kind of ended it, because I didn't want to know much more than that. But he did say, state that."

According to Mason, the patient had been on a ventilator, but at the time she arrived, he was not "vented." The patient appeared to be lucid, was "okay," was "talking normally" and not slurring his words, was not confused, and was able to communicate with her. The patient let Mason know when he had pain and she would let the nurse know so he could get something for it. The patient did not say he felt foggy or mentally "un-alert" and he was able to respond appropriately to questions. According to Mason, all patients were asked questions such as the date, day, or year. Appellant was asked such questions on a regular basis for medical purposes, and he answered them.

When asked if she knew what type of medication the patient was taking, Mason stated, "[i]f he was on anything, it would've maybe been Propofol and or Versed, which are the pain medicines that they generally use in ICU." On cross-examination, Mason

explained that one of those medicines was used for sedation when patients are "on the ventilator." The other one was "more so for pain . . . at least what I know of." She recalled that the patient said he "was hurting" and she knew a nurse brought him pain medicine. She believed the medicine was taken by the patient before he made the statement that he killed his wife because "it was a normal conversation then."

After hearing Mason's testimony, the court considered whether Appellant's statement to her was "knowingly, intelligently, and voluntarily made[.]" The court determined that the evidence showed that Appellant's statement was voluntarily and intelligently made. In considering whether the statement was "knowingly given," the court stated:

> So the question today is . . . whether that the statement was knowingly given. And, to that, the Court has to examine the mental state of Mr. Robellard at the time the statement was given. And the Court must look to, notably, Hoey versus State, 311 Md. 473, which is a 1998, believe, 1998, Court of Appeals case. In that, the court found that mere mental deficiency alone is not enough to automatically make a confession involuntary, that the confession is involuntary only if the Defendant, at the time of his confession, is so mentally impaired that he does not know or understand what he is saying.
>
> And, ultimately, that was further expounded in Harper versus State. And I – that is at 162 Md. App. 55. That is a 2005 case from the Court of Special Appeals. And, particularly, in Harper, they cite Hoey, that defendant's mere mental deficiency, as I said earlier, is insufficient to automatically make his confession involuntary. Rather, a confession is only involuntary when the defendant, as [sic] the time of his confession, is so mentally impaired that he does not know or understand what he is saying. Further, went on to quote that mental impairment from drugs or alcohol does not, per se, render a confession involuntary.
>
> We have testimony from Ms. Mason, that Mr. Robellard was in some pain from the injuries he had sustained and there was pain medication that was administered to him. But she did further go on to say that, when

> questioned by the State's attorney, that he was not ventilated at the time, he appeared to be lucid, was able to comment without any problem, was not slurring his speech, responded appropriately to questions that he was asked, he knew that he was in the hospital, and that he had started without any prompting. She was not asked by the state police to ask him any questions. And that's when he, as she said, told her that he had killed his wife. And she really didn't want to hear too much more after that. So I assume, from the prior testimony of Trooper Edwards, that he was able to get the more full detailed statement from the Defendant, in its entirety. She also stated that she was on a 12-hour shift and was with him for the entire time of that shift, while she made these observations she testified to today.

After making further comments on the case law and the evidence, the court denied Appellant's motion to suppress his statement to Mason, stating:

> [T]he Court does believe, based upon the evidence and testimony considering the factors cited by the Court today, as well as the factors from the Harper and Hoey cases, that the statement was given – the statement by the Defendant, given on October 21st, 2020, was knowingly, intelligently, and voluntarily given.

B. Standard of Review

The standard of review for motions to suppress is well-established and was recently reiterated by the Supreme Court of Maryland in *Washington v. State*:

> When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party[.] We accept facts found by the trial court during the suppression hearing unless clearly erroneous. In contrast, our review of the trial court's application of law to the facts is *de novo*. In the event of a constitutional challenge, we conduct an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

482 Md. 395, 420 (2022) (internal quotation marks and citations omitted). If there is "any competent evidence to support the factual findings below, those findings cannot be held to

be clearly erroneous." *In re D.D.,* 479 Md. 206, 222-23 (2022) (quoting *Givens v. State*, 459 Md. 694, 705 (2018)).

C. Analysis

The Supreme Court of Maryland has recognized that the "[e]xclusion of confessions elicited by purely private persons does not further the goal of protecting citizens from overreaching conduct of police or government." *Pappaconstantinou v. State*, 352 Md. 167, 180-81 (1998). Here, where Appellant's statement was a privately extracted confession, the fear that it "may be untrue or inherently untrustworthy is properly addressed under the laws governing the admissibility of evidence" in Maryland. *Id.* at 181. Such a confession is viewed as any other hearsay statement and the test, therefore, is "whether the statement is inherently trustworthy" which can be determined by evaluating whether the hearsay statements were competent, trustworthy, and/or enhance the accuracy of the verdict. *Id.* at 181.

The record makes clear that the trial court applied the wrong standard when it analyzed whether Appellant's statement was knowingly, intelligently, and voluntarily given. Appellant argues that because his statement was admitted under the wrong standard, and there was insufficient evidence to support the finding that his statement was inherently trustworthy, the trial court erred in admitting the hearsay statement. We are not persuaded.

The statement made by Appellant to a private individual, Mason, fell under an

exception to the rule against hearsay,[10] and was admissible, because it was relevant and inherently trustworthy. Specifically, it fell under an exception to the general rule against hearsay for statements by a party-opponent which include "[a] statement that is offered against a party and is: (1) [t]he party's own statement, in either an individual or representative capacity[.]" Md. Rule 5-803(a)(1). Although we acknowledge that the trial court applied the wrong standard, in finding that Appellant's statement was voluntary, the trial court was necessarily required to determine whether Appellant was mentally capable of making a confession. *See Hoey v. State*, 311 Md. 473, 481 (1988) (A confession is voluntary under Maryland nonconstitutional law if it is freely and voluntarily made at a time when [the defendant] knew and understood what he was saying.). By finding that Appellant's statement was voluntary, intelligent, and knowing, the trial court implicitly determined that his statement was trustworthy because he was mentally capable of making a confession at the time he made it.

Appellant argues that his statement was not trustworthy because he suffered a serious injury and was under the influence of pain medication, was confused, and thought he was at the University of Maryland. In addition, he points to inconsistencies between the testimony of Mason and the testimony of Trooper Edwards. Our review of the record of the suppression hearing reveals ample evidence to support the finding that Appellant's statement was trustworthy and admissible.

[10] Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801. Generally, "hearsay is not admissible." Md. Rule 5-802.

The testimony of Trooper Edwards and Mason showed that Appellant was able to communicate with members of the nursing staff, provide appropriate responses to questions, and speak normally and in complete sentences. Appellant was described as lucid, alert, not confused, not slurring his words, not "foggy or mentally un-alert[,]" and oriented to time and place. He was able to request what he needed. Mason testified that Appellant knew he was in the hospital and that she worked there. As for medications, Mason stated that if Appellant "was on anything, it would've maybe been Propofol and or Versed, which are the pain medicines that they generally use in ICU." One of those medications was "for sedation, once they are on the ventilator." The other medication was "more so for pain[.]"

Appellant maintains that his statement was not trustworthy because he was confused. He points to Mason's inquiry as to whether he knew where he was and his response that he was "[i]n the hospital but every time I wake up I'm somewhere different." However, Mason followed up by asking Appellant if he was in "a different place or a different thought process" and Appellant responded, "[i]n my thought process." Appellant also points to his belief that he was at the University of Maryland hospital when, in fact, he was at Tidal Health. Appellant's response did not render his statement untrustworthy. There was evidence that there had been discussions about transferring Appellant to the University of Maryland, that he spent much of his time sleeping, and he was ultimately transferred to that hospital. The fact that Appellant was not sure whether he had, at that time, been transferred to the University of Maryland did not render his statement to Mason untrustworthy.

Lastly, we reject Appellant's arguments with respect to inconsistencies in the testimony of Trooper Edwards and Mason. The jury was free to give the testimony of witnesses the weight it believed the testimony deserved. Any inconsistency in the testimony of the two witnesses had no bearing on the threshold determination of the admissibility of that testimony.

Considered as a whole, the evidence presented at the suppression hearing showed that Appellant was in a sufficiently lucid state of mind for his statement to be trustworthy. That statement constituted a statement of a party-opponent and was admissible as an exception to the hearsay rule. For those reasons, the trial court did not err in admitting Appellant's self-incriminating statement to Mason.

JUDGMENT OF THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.