UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0148

September Term, 2015

KENNETH A. BROOKS

v.

STATE OF MARYLAND

Wright,
Graeff,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 17, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Appellant, Kenneth A. Brooks, was indicted in the Circuit Court for Baltimore County, Maryland, and charged with the attempted first-degree murders of Roland Eisenhart, Casey Clingerman, Angel Clingerman, and Carly Faller, and other related counts. Following a jury trial, appellant was convicted of attempted first-degree murder of Roland Eisenhart, first-degree assault of Casey Clingerman, Angel Clingerman and Carly Fuller, respectively, use of a firearm in the commission of a crime of violence, and retaliation against a witness in a felony case. After appellant was sentenced to an aggregate sentence of 70 years, he timely appealed and presents us with the following questions:

1. Did the motions court err in denying Appellant's motion to suppress his statements to the police?

2. Did the trial court err in admitting inadmissible hearsay testimony?

3. Did the trial court err in admitting cumulative prejudicial photographs of the victim's injuries?

For the following reasons, we shall affirm.

BACKGROUND

Motions Hearing

Appellant was arrested on March 5, 2014, at approximately 9:00 a.m., in connection with a drive-by shooting that happened in the middle of a public street in Baltimore County, Maryland. At around 1:34 p.m., and after he was brought to police headquarters, appellant was interviewed by Baltimore County Homicide Detectives Adrienne Grant and Eric Dunton. Detective Grant explained that the reason for the delay

between appellant's arrest and the interview was because police were towing a vehicle involved in the shooting and preparing and executing a search warrant for that vehicle.

A recording of portions of appellant's interview was presented to the motions court. On that recording, after Detective Grant introduced herself and her partner to appellant, the detective informed appellant that, before they could talk to appellant, they needed to "Mirandize" him.[1] Appellant stated that he knew about *Miranda* and confirmed that he had been arrested on a prior occasion on an unrelated matter.[2] After indicating that he did not graduate from high school, but had attended twelfth grade, the following ensued:

> DETECTIVE GRANT: All right. All right, what I'm gonna have you do is just read these for me. All right. It just helps me understand (INAUDIBLE).
>
> Out loud. I'm sorry.
>
> MR. BROOKS: Oh.
>
> DETECTIVE GRANT: Sorry.
>
> MR. BROOKS: You have, you have the absolute right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to both a lawyer and an attorney before (INAUDIBLE) any questions. If you want a lawyer and cannot afford one you can request the court to appoint a lawyer (INAUDIBLE) to any questions. If you agree to answer questions you may stop at any time and no further questions will be asked to you.

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

[2] In addition to the video of appellant's statement, submitted on a flash drive, the *Miranda* waiver form and the waiver of prompt presentment form, both signed by appellant, were admitted as exhibits during the motions hearing.

DETECTIVE GRANT: Okay, do you understand all of that?

MR. BROOKS: Um hum.

DETECTIVE GRANT: Do you have any questions about any of those? You understand?

MR. BROOKS: I just want to know what's going on.

DETECTIVE GRANT: Okay, and that's what, we gotta get through this in order for us to discuss that in any length.

And just read this last one.

MR. BROOKS: I have read and understand the explanation of my rights. My decision to waive these rights and be interrogated is free and voluntary on my part, my part.

DETECTIVE GRANT: That means I'm not forcing you to talk to me, or lying to you about anything at this time; okay?

MR. BROOKS: Okay.

DETECTIVE GRANT: All right. All you do is sign there and sign underneath your name.

MR. BROOKS: I mean I don't know if, I don't even know what I'm here for. That's what I'm saying.

DETECTIVE DUNTON: That's, before we can even explain anything to you and answer your questions we have to do that because you're in our building. This is just a formality man.

MR. BROOKS: All right. So I mean –

DETECTIVE DUNTON: If we ask you something you don't want to talk about then we don't talk about it. So we won't talk about that. You'll figure it out.

MR. BROOKS: Go ahead.

At this point, the detectives then proceeded to inform appellant of his right to prompt presentment before a Court Commissioner:

> DETECTIVE GRANT: Okay. And that's what I said, that's why these are here. All right, and the second form. Have you been arrested before?
>
> MR. BROOKS: Yeah.
>
> DETECTIVE GRANT: Okay, so you've been arrested in the county?
>
> MR. BROOKS: Yeah.
>
> DETECTIVE GRANT: You know how you go before a commissioner, basically you get charged, you go before a commissioner, --
>
> MR. BROOKS: Um hum.
>
> DETECTIVE GRANT: They decide whether they want to put a bail on you, whether they want to release you on your own recognizance and all that?
>
> MR. BROOKS: Um hum.

Detective Grant then proceeded to go over a waiver of prompt presentment form with appellant, as follows:

> DETECTIVE GRANT: Okay. This form basically explains the process and says that if you go to the commissioner obviously by sitting here and talking with us it just delays that time period. And it's saying that you understand that and you're, you understand that obviously if you're here talking to me you can't be sitting in the commissioner's office. Okay.
>
> MR. BROOKS: (INAUDIBLE) with you you're saying –

DETECTIVE DUNTON: If we talk for an hour you'll go to the commissioner in an hour. If that's the next (INAUDIBLE). If we talk for ten minutes you go to the commissioner ten minutes. [sic]

MR. BROOKS: (Inaudible).

DETECTIVE DUNTON: But they need a form to explain that to you.

DETECTIVE GRANT: Everything here has gotta be documented. That's just the way it is. So you can read that, and where it says judicial, judicial officer that's what a commissioner is.

MR. BROOKS: Okay.

DETECTIVE GRANT: All right. So me just understand [sic], just read that for me and look through it.

MR. BROOKS: Inform me of each offense I am charged with and the associate, associated –

DETECTIVE GRANT: Associated.

MR. BROOKS: Associated penalty and provide me with a written copy of the charges against me.

Now am I, (INAUDIBLE), so I don't know what –

DETECTIVE GRANT: Okay. That's okay. Look here, I'll read it, how about if I read it for you and if you have a question you ask.

It says, "I have the right to be taken promptly before a judicial officer. A judicial officer will do each of the following." This is what the commissioner will do for you.

MR. BROOKS: Um hum.

DETECTIVE GRANT: "Inform me of each offense I am charged with and associated penalty." Okay. "Provide me with a written copy of

> the charges against me. Advise me of the right to an attorney or a public defender if I cannot afford an attorney. Decide whether there's probable cause to believe that I committed a crime. Determine if I receive a bail or be released on my own recognizance." Basically being released there and expected to show up later for court.
>
> MR. BROOKS: Okay.
>
> DETECTIVE GRANT: Set a trial date for the District Court or advise me whether I have the right to a preliminary hearing.
>
> So basically this just says what a commissioner does.
>
> MR. BROOKS: Okay.
>
> DETECTIVE GRANT: Okay. And this says "I freely and voluntarily waive the right to be promptly presented before the judicial officer and agree to be interviewed by the police." This means instead of going right now we're gonna talk, all right, and then you're gonna go if that's what that one is. Okay.
>
> MR. BROOKS: Okay. And that's, I'm, I'm not doing that one yet.
>
> DETECTIVE GRANT: All this is saying that you understand that, that you can't be in two places at one time and as long as you're here you're not being promptly presented over there.
>
> MR. BROOKS: Okay.

Detective Grant testified that appellant never expressed any confusion about his *Miranda* rights and never stated that he did not want to answer any questions. Detective Grant agreed that appellant was informed that he could stop answering questions if he so desired. Appellant also never told Detective Grant that he wanted to stop the interview or that he wanted a lawyer. Detective Grant did not yell at appellant, nor did she threaten him or make him any promises or inducements to get him to talk to her. Appellant never

expressed any discomfort during the interview, and the interview lasted just under approximately two hours. Appellant was also offered food and drinks at the end of the interview.

On cross-examination, Detective Grant agreed that there was no language on the *Miranda* form presented to appellant for a person to indicate that "he didn't want to talk" with the police. She also agreed with defense counsel's question that she did not tell appellant "if you do not want to waive your rights do not sign the form[.]" Detective Grant confirmed that it was "routine" to read an individual the *Miranda* form. But, the detective also testified "I believe I explained it clearly and it's written and he said he understood that."

When asked why she did not immediately take appellant to the commissioner at 10:34 p.m., Detective Grant replied, "[b]ecause he was not necessarily gonna be charged. It depended on the outcome of the interview and the outcome of the search warrant on the vehicle." The police decided to charge appellant after clothing was recovered from the vehicle "that matched something important to the case . . . ." Detective Grant agreed that appellant was not free to leave and that he was being detained in connection with the investigation.

Detective Grant was also asked to confirm that appellant stated "what is going on," at some point during the interview. The detective agreed that appellant made that statement, but testified further:

> His question about what was going on is why he was there. He had said that more than once, not regard to the paper, but we cannot speak with him regarding it because if he were to blurt something out that would

> incriminate himself before he had signed it that would be a problem. So he indicated that he did not know why he was there, not that he didn't understand this paper.

Detective Grant was also asked, hypothetically, if appellant had said at 1:17 p.m. that he did not waive his rights and wanted to be taken before a commissioner, what would the officer have done. Detective Grant testified:

> Well at that point obviously he wouldn't be interviewed. He's saying I don't want to be interviewed. We'd have gone out, had a meeting and discussed on the facts we had up to that point was it enough to charge him?

Turning to the waiver of prompt presentment form, defense counsel asked if that form included an option for appellant to state that he did want to see a commissioner. Detective Grant replied that appellant had not been charged at the time this particular form was read to him. After defense counsel inquired whether this form really meant anything, the detective answered:

> No, it's letting him know the process. So let's say mid interview he admits to his involvement. We now know that he's going to the commissioner. He's already been told how that process works. And for him to continue the interview, that means that he's not gonna be at the commissioner during that time.

Detective Grant agreed that she did not explain this form in that manner, *i.e.*, that the police would make a decision whether to charge appellant after he spoke with them. The detective responded that she "couldn't discuss the case with him and that would involve, I believe, discussing the case until he had signed the *Miranda* form."

On redirect examination, Detective Grant was asked what she thought appellant meant when he asked what was going on, and Detective Grant testified "[h]e wanted to

know why he had been brought to headquarters because no one had told him." Detective Grant testified that appellant asked this question of her and her partner twice and asked other police officers this same question "multiple times."

Appellant testified at the motions hearing and agreed that the detective provided him with a waiver form. Appellant then gave the following narrative answer about the advice of rights:

> Basically when she read them to me I was just reading it. I didn't take it as I was reading my own rights to myself. She, or she, I asked her could she explain it to me. And what she, she just, both of them was like talking to me at the same time. So my, my attention span I just, I was just, I mean, you know, nervous the whole time and just, you know, like okay. She said she just wanted to get me to sign that so I could, so she could talk to me. So she could, you know, talk to me or whatever. So, I, I, I wasn't sure that she was reading me, I mean well I was reading my own rights to myself. I didn't, it, the, the *Miranda* rights there, well since I've been incarcerated the ones that I read it said do I understand. She never asked me did I understand anything that I read. The only time was, as you can see on the clip, is she's telling me to read another one on there, which I ain't know that I'm actually saying, it was like trickery to me. I didn't know she was actually getting me to waive my HICKS.[1] She never said that to me. I didn't understand what she was doing. And then they both kept talking to me like back and forth like it was basically like I'm trying to listen but I just was like yes. I just, I mean, I, I don't know.

Appellant testified that he did not know he did not have to talk to the police. He also testified that Detective Grant never told him that he did not have to waive his rights. He did not understand what she was saying about the Court Commissioner. When asked if he understood that he could be taken to a commissioner, appellant replied, "I, honestly

[1] *State v. Hicks*, 285 Md. 310 (1979).

I don't know what none of that stuff was. Like I just listened to her saying what she said and she said she just need me to sign it, so I just signed it."

On cross-examination, appellant agreed that he read his *Miranda* rights out loud. However, appellant claimed that he did not know what happened and that "I did what she told me to." As for the interview itself, appellant did not agree that he answered the police questions appropriately because "she was rushing everything."

After testimony concluded, defense counsel argued that, even though he was read his *Miranda* rights, appellant "was not comprehending what was going on." After hearing from the State, the court denied the motion to suppress, ruling as follows:

> Okay. Well I'm going to deny the motion to suppress the statement. I do find that it was made knowingly, intelligently and voluntarily by the Defendant. As I noted in watching the video the Defendant read the *Miranda* rights out loud and really did, made no mistakes in the reading of them. He was very clear and cognizant and he actually acknowledged on the video that he understood the rights that he had just read.
> Further, the other detective who did not testify, I forgot his name, explained that when the Defendant did ask questions about why he was there, and it was pretty clear that's what he was asking about, not what the rights forms were but why he was there, what this was all about, it was explained to him that they could not explain anything to him unless he agreed to talk to them. And once he agreed to talk to them they'd be glad to have a full conversation and that he needed to acknowledge the rights and, and agree to talk in order for them to give a further explanation as to the questions that he was asking.

The court continued:

> Further, the detective explained the Waiver of Prompt Presentment to a Commissioner. The detective even further explained the difference, well not the difference but that the words "judicial officer" meant a commissioner. So there was further amplification of anything that may have been confusing. They engaged in a conversation with the Defendant.

> They didn't just stick a form in front of him. They had explained to him exactly the forms that they were giving him. And that, that was even made, made even more clear with the Waiver of Prompt Presentment form when the detective, once finding out that the Defendant may have had some difficulty in understanding that particular form, decided to read it aloud to him and asked him again did he understand.

The court also made the following findings:

> Relative to the delay in time, I think [the] detective gave a, a very adequate explanation as to why the interview did not begin. This was standard police technique and, and, and policy that they were still conducting an ongoing investigation and there are certain steps that needed to be accomplished. In no way was there any indication that he was being held in there with undue delay, or that he was under any type of duress. There, there was still further investigation that was out, ongoing outside of that room involving the search and seizure, execution and application for the search and seizure warrant of the vehicle. That way they could have a [sic], an intelligent conversation with him during the interview relative to any evidence that was either garnered or not garnered from the vehicle and immediately upon the finishing of that the interview began.

The court concluded:

> So in, in all of this and the totality of the circumstances I, I do not find in any way that this wasn't an intelligent, knowing and voluntary decision on his part. He acknowledged all of the rights. He read the rights out loud. He executed the forms and, and said that he understood them. And, and this is buyer's remorse to come in now and say that he didn't. So the motion is denied.

Trial

Prior to the commission of the crime leading to appellant's arrest, in the Fall of 2013, Roland Eisenhart testified in an armed robbery trial against Darren Gray. Gray was armed during that robbery, and Eisenhart maintained that he was "petrified" about

testifying against him. In fact, Eisenhart was told that if he ever talked about the armed robbery "they'd come back and kill me."

On the evening of March 3, 2014, shortly before 10:20 p.m., Eisenhart met Angel Clingerman, her daughter, Casey, and her granddaughter, Carly, at Charlie Brown's Convenience Store, located on Hazelwood Avenue in Baltimore County. There, Angel Clingerman gave Eisenhart, a friend of the family, a ride in her 2001 Dodge Caravan. Upon their arrival, Eisenhart got into the minivan's rear passenger seat, sitting next to two-year-old Carly, who was seated in a car seat.

After they left the store, Eisenhart noticed a red Crown Victoria, that had been parked in the store's parking lot, start to follow them. Eisenhart also noticed a darker-colored car approach as well. At the intersection of Kenwood Avenue and Lillian Holt Drive, the Crown Victoria pulled over, out of the way, and the darker colored car pulled up next to the Clingermans' minivan. At that point, gunfire erupted from the darker colored car, striking the minivan. That was followed by sounds of glass breaking as well as young Carly's screams. As a result, some glass struck Carly, injuring her face. She also sustained a grazing bullet wound in the head.

Approximately two days after the shooting, appellant was arrested while driving a red Crown Victoria that matched the one seen on a surveillance video taken from the convenience store.[3] He was interviewed by Detective Grant and Detective Dunton at the

[3] Although it is not included with the record on appeal, the jury watched the surveillance video for Charlie Brown's Convenience Store, admitted into evidence at trial, that was taken from 9:00 p.m. to 11:50 p.m. on March 3, 2014. In his statement to Detective Grant, appellant agreed that he drove "a big police car around (continued…)

Baltimore County Police Headquarters. After waiving his rights, appellant confirmed that he was brother to Darren Gray and Charles Patterson. Patterson lived with his sister, Jocelyn Stringfellow. By that time, Gray was incarcerated, having been sentenced to 120 years.

During the interview, and after appellant admitted that he stopped at Charlie Brown's convenience store on the night in question to buy cigarettes, Detective Grant told appellant that they knew from the store's surveillance video that the man who testified against appellant's brother, Gray, was inside the store with appellant. Appellant, although confirming that he attended his brother's trial, initially claimed that he did not recognize that witness, *i.e.*, Eisenhart, stating that "I wasn't paying him no mind." However, appellant eventually agreed that he called his brother, Patterson, and told him that he thought he saw the person that "snitched" on their brother, Gray. Appellant stated that he told Patterson "I think that's the guy but I wasn't sure but I said I think that's him." Appellant told Detective Grant that he had "a good memory on like faces. Like I never forget a face," and that he remembered Eisenhart from court.

After telling his brother that he saw Eisenhart, Patterson asked appellant what kind of car Eisenhart was in, and appellant replied that Eisenhart left in a silver-colored minivan. At some point, Patterson "hung up" on the telephone call with appellant.

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all day." And, police recovered a turquoise sweatshirt from the Crown Victoria, similar to one worn by appellant as shown in the surveillance video.

Appellant confirmed that he then followed the minivan out of the store's parking lot. Shortly thereafter, he saw two small black sedans, with "tints," pull up and also start following the minivan. Appellant did not recognize the other cars, stating that his brother Patterson's car was in the "shop" at that time. But, he agreed with Detective Grant when Grant stated "well he pulls up and obviously he followed the car."

At around this point during the pursuit, appellant decided to pull over because he needed to throw up. While he was on the side of the road, he then heard something that sounded like "a little firecracker." Appellant stated "I heard pop pop but I don't know if it was more than that . . . ."

Appellant denied that he was involved in the drive-by shooting at issue in this case, stating that he "didn't know that was going to happen," and "I didn't know, I didn't know." In fact, appellant just thought his brother would just "smack him up or, or something . . . ." But, appellant agreed that "[e]ither way, I'm going down for this . . . ." He also agreed with Detective Grant that the evidence looked like he was the one who set up the "hit" and that "I messed up."

We will include additional factual detail in the following discussion.

DISCUSSION

I.

Appellant first contends that the motions court erred in denying his motion to suppress his statement because his *Miranda* waiver was not made knowingly and

voluntarily. The State responds that the motion court properly denied the motion to suppress. We concur.

On review of the denial of a motion to suppress, we look solely to the evidence adduced at the suppression hearing, and view it in the light most favorable to the prevailing party on the motion. *Gonzalez v. State*, 429 Md. 632, 647 (2012). "The credibility of the witnesses, the weight to be given to the evidence, and the reasonable inferences that may be drawn from the evidence come within the province of the suppression court." *Id.* at 647-48 (citing *Longshore v. State*, 399 Md. 486, 499 (2007) ("Making factual determinations, *i.e.* resolving conflicts in the evidence, and weighing the credibility of witnesses, is properly reserved for the fact finder. In performing this role, the fact finder has the discretion to decide which evidence to credit and which to reject.")). We shall uphold the court's first level factual findings unless they are clearly erroneous, *id.* at 647, and will disturb the court's ruling on admissibility only if "'there was a clear abuse of discretion.'" *Jackson v. State*, 141 Md. App. 175, 187 (2001) (quoting *Murphy v. State*, 8 Md. App. 430, 435 (1970)). "We make our independent appraisal of the legal significance of the motion court's factual findings, however." *Id.* (citation omitted). "Finally, we review decisions on questions of law *de novo*." *Id.*

In Maryland, a confession may be admitted against an accused only when it has been "determined that the confession was '(1) voluntary under Maryland non-constitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*.'" *Ball v. State*,

347 Md. 156, 174 (1997) (quoting *Hof v. State*, 337 Md. 581, 597-98 (1995)); *accord Smith v. State*, 220 Md. App. 256, 273 (2014), *cert. denied*, 442 Md. 196 (2015).

Of these three options, appellant challenges his statement pursuant to *Miranda*. As has been explained, "[t]he Fifth Amendment to the United States Constitution, which applies to the States through the Fourteenth Amendment, provides in relevant part that '[n]o person . . . shall be compelled in any criminal case to be a witness against himself.'" *State v. Luckett*, 413 Md. 360, 376-77 (2010) (internal citations omitted). "To give force to the Constitution's protection against compelled self-incrimination, the [United States Supreme] Court established in *Miranda*, 'certain procedural safeguards that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation.'" *Id.* at 377 (citations omitted).

"The warnings mandated by that [*Miranda*] decision are well known and require that when an individual is taken into custody, in order to protect the privilege against self-incrimination, procedural safeguards must be employed." *State v. Tolbert*, 381 Md. 539, 549 (2004) (citing *Miranda*, 384 U.S. at 478-79). "The police must warn any person subjected to custodial interrogation that he has a right to remain silent, that any statement he does make may be used in evidence against him, and that he has the right to the presence of an attorney, either retained or appointed." *Id.* at 549 (citing *Miranda*, 384 U.S. at 479). "In the absence of these warnings, or their substantial equivalent, the prosecution is barred from using in its case-in-chief any statements obtained during that interrogation." *Id.* (citation omitted).

Nonetheless, an individual may waive his or her *Miranda* rights, "provided the waiver is made voluntarily, knowingly and intelligently." *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (citation omitted). In *North Carolina v. Butler*, 441 U.S. 369, 372-73 (1979), the Supreme Court noted that "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." (Quoting *Miranda*, 384 U.S. at 475). "In Maryland, when the State intends to use a confession or admission given by the defendant to the police during custodial interrogation, the prosecution must, upon proper challenge, establish by a preponderance of the evidence that the statement satisfies the mandates of *Miranda v. Arizona*, and that the statement is voluntary.[4] The test for voluntariness is whether, under the totality of all of the attendant circumstances, the statement was given freely and voluntarily." *Tolbert*, 381 Md. at 557 (internal citations omitted). The inquiry into whether a waiver is valid,

> has two distinct dimensions. First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

[4] The "preponderance of the evidence" standard is "'when a court is weighing one set of circumstances against another. Ordinarily in such a balancing process, a court simply determines which side outweighs the other, without being concerned with how much or how clearly one side may outweigh the other.'" *Bryant v. State*, 374 Md. 585, 602-03 (2003) (citation omitted).

Burbine, 475 U.S. at 421 (internal citations omitted); *see also Butler*, 441 U.S. at 374-75 ("[T]he question of waiver must be determined on 'the particular facts and circumstances surrounding th[e] case, including the background, experience, and conduct of the accused'") (citations omitted).

As a noted treatise has explained, "[w]ith respect to the first component, because the Fifth Amendment and its *Miranda* protective warnings are concerned with governmental compulsion, a waiver will be considered voluntary if it is free of governmental 'over-reaching.'" Jezic et al., *Maryland Law of Confessions* § 11:1 at 494 (2015-2016 ed.) (emphasis and footnote omitted) (hereinafter "Maryland Law of Confessions"). As for the second component, "[a] 'knowing' waiver does not necessarily involve a prudent or wise decision; a foolish decision to speak is not protected. *Miranda* precludes only a statement made without the suspect's basic understanding of his *Miranda* rights and the consequences of waiving them." *Id.* at 495.

We are guided by *Berghuis v. Thompkins*, 560 U.S. 370 (2010), where the United States Supreme Court reviewed what a state must show in order to prove a waiver of a defendant's *Miranda* rights. There, Thompkins had been given *Miranda* warnings at the beginning of an interrogation during which detectives questioned him about a shooting in which one victim died. *Id.* at 374-75. Thompkins verbally affirmed that he understood his rights. *Id.* The Court described the interrogation as follows:

> At no point during the interrogation did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney. Thompkins was "[l]argely" silent during the interrogation which lasted about three hours. He did give a few limited verbal responses, however, such as "yeah," "no," or "I don't know." And on occasion he

> communicated by nodding his head. Thompkins also said that he "didn't want a peppermint" that was offered to him by the police and that the chair he was "sitting in was hard."
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> ***
>
> [B]ut near the end, he answered "yes" when asked if he prayed to God to forgive him for the shooting. He moved to suppress his statements, claiming that he had invoked his Fifth Amendment right to remain silent, that he had not waived that right, and that his inculpatory statements were involuntary. The trial court denied the motion.

Id. at 370, 375-76 (references to appendix omitted).

Thompkins subsequently sought to suppress that statement, claiming that, because he had invoked his right to remain silent, the police were required to have ended the interview. *Id.* at 376. He argued that he had not waived his right to remain silent, and that the statements were involuntary. *Id*. The United States Supreme Court concluded that Thompkins had, in fact, waived his right to remain silent. *Id.* at 387. The Court ruled that "an accused who wants to invoke his or her right to remain silent [is required to] do so unambiguously." *Id.* at 381.

In addition, the Court noted that the "heavy burden" imposed by *Miranda* was "not more than the burden to establish waiver by a preponderance of the evidence." *Id.* at 384 (citation omitted). The Court also reiterated the language of *Butler* that a waiver of *Miranda* rights "may be implied through 'the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver.'" *Id.* (quoting *Butler*, 441 U.S. at 373). Still, "[e]ven absent the accused's invocation of the right to remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused 'in fact knowingly and

voluntarily waived [*Miranda*] rights' when making the statement." *Id.* at 382 (citation omitted). The *Berghuis* Court explained:

> If the State establishes that a *Miranda* warning was given and the accused made an uncoerced statement, this showing, standing alone, is insufficient to demonstrate "a valid waiver" of *Miranda* rights. The prosecution must make the additional showing that the accused understood these rights. Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent.

Id. at 384 (internal citations omitted).

And, in establishing a knowing and voluntary waiver, the State is not required to show that a "formalistic waiver procedure" was followed. The Supreme Court explained:

> Although *Miranda* imposes on the police a rule that is both formalistic and practical when it prevents them from interrogating suspects without first providing them with a *Miranda* warning, *see Burbine*, 475 U.S. at 427, 106 S.Ct. 1135, it does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights. As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford. *See, e.g., Butler, supra*, at 372-76, 99 S.Ct. 1755; [*Colorado v. Connelly*, 479 U.S. 157,] 169-70, 107 S.Ct. 515 [(1986)] ("There is obviously no reason to require more in the way of a 'voluntariness' inquiry in the *Miranda* waiver context than in the [due process] confession context"). The Court's cases have recognized that a waiver of *Miranda* rights need only meet the standard of *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). *See Butler, supra*, at 374-75, 99 S.Ct. 1755; *Miranda, supra*, at 475-476, 86 S.Ct. 1602 (applying *Zerbst* standard of intentional relinquishment of a known right). As *Butler* recognized, 441 U.S. at 375-376, 99 S.Ct. 1755, *Miranda* rights can therefore be waived through means less formal than a typical waiver on the record in a courtroom, cf. Fed. Rule Crim. Proc. 11, given the practical constraints and necessities of interrogation and the fact that *Miranda's* main protection lies in advising

> defendants of their rights, *see Davis* [*v. U.S.*], 512 U.S.[452,] 460, 114 S.Ct. 2350 [(1994)]; *Burbine*, 475 U.S. at 427, 106 S.Ct. 1135.

Berghuis, 560 U.S. at 385; *see In re Darryl P.*, 211 Md. App. 112, 170 (2013) ("Once informed of and understanding his *Miranda* rights, a suspect who then voluntarily speaks to the police may be found to have implicitly waived those rights").

In this case, appellant stated that he knew about *Miranda* and confirmed that he had been arrested on some prior occasion on an unrelated matter. He then read the written rights out loud, responded affirmatively when asked if he understood those rights, and then signed the waiver form. He never expressed any confusion and never stated that he did not want to answer any questions. If appellant wanted to remain silent, he could have said nothing in response to the detectives' questions, or he could have unambiguously invoked his *Miranda* rights and ended the interrogation.

Further, there is no evidence that appellant's statement was coerced. The detectives did not yell at appellant, nor did either one of them threaten him or make him any promises or inducements to get him to talk. And, appellant never expressed any discomfort during the interview, and the interview lasted just under approximately two hours.

Despite this, appellant's claim focuses on the detectives' statements that "we gotta get through this," and "[t]his is just a formality man." By these words, appellant claims that "the officers obscured the significance of the waiver provision; they dressed the waiver in the clothing of mere advice."

A similar claim was rejected in *Commonwealth v. Gaboriault*, 785 N.E.2d 691, 696 (Mass. 2003), where the defendant claimed that a detective's description of the *Miranda* waiver as a "formality" served to "undercut the purpose of the rights, and relegated them to a mere preliminary ritual, devoid of substance or meaning." We agree with the following:

> The circumstances surrounding this interrogation, taken as a whole, demonstrate that the use of the word "formality" did not render the *Miranda* warnings constitutionally inadequate. The defendant was read his *Miranda* warnings three times, and after all three readings, indicated a willingness to speak with the officers. The defendant also signed a *Miranda* card acknowledging the rights he was given, and prior to his statement never asked for an attorney or whether he could make a telephone call. Additionally, he was given more time to reflect on his waiver because of the malfunctioning video equipment in the first interrogation room. When he was brought to the second room, and read his *Miranda* warnings for the third time, he once again waived them. Although any use of words that characterize or minimize a suspect's *Miranda* rights should be avoided, we agree that in this situation, using the word "formality" did not coerce or mislead the defendant as to the rights he was waiving. We therefore find no reversible error.

Id. at 696-97 (footnote omitted).

Appellant also asserts that "the detectives never told Appellant, nor did the form state, that he had the option of *not* waiving his *Miranda* rights." This mirrors the argument defense counsel raised in the motions court that "[t]here is no place on there that says, you know, if you want to waive your rights sign here. If you don't want to waive your rights don't sign."

We have been unable to find, and appellant has not cited, a case that mandates the *Miranda* rights waiver form to include such an option. Looking to the original source, *Miranda* requires the following:

> He must be warned prior to any questioning 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. Opportunity to exercise these rights must be afforded to him throughout the interrogation.

Miranda, 384 U.S. at 479.

Subsequently, the Supreme Court clarified:

> We have never insisted that *Miranda* warnings be given in the exact form described in that decision. In *Miranda* itself, the Court said that "[t]he warnings required and the waiver necessary in accordance with our opinion today are, *in the absence of a fully effective equivalent*, prerequisites to the admissibility of any statement made by a defendant." 384 U.S. at 476 (emphasis added). *See also Rhode Island v. Innis*, 446 U.S. 291, 297, 100 S.Ct. 1682, 1687, 64 L.Ed.2d 297 (1980) (referring to "the now familiar Miranda warnings ... or their equivalent"). In *California v. Prysock*, 453 U.S. 355, 101 S.Ct. 2806, 69 L.Ed.2d 696 (1981) (per curiam), we stated that "the 'rigidity' of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant," and that "no talismanic incantation [is] required to satisfy its strictures." *Id.* at 359, 101 S.Ct. at 2809.

Duckworth v. Eagan, 492 U.S. 195, 202-03 (1989) (emphasis in original, footnote omitted).

The Maryland Court of Appeals considered the adequacy of slightly modified *Miranda* warnings in *Rush v. State*, 403 Md. 68 (2008). There, the Court of Appeals concluded that the following specific advisements, used at the time by the Prince

George's County Police Department, "sufficiently communicated all of the rights required by *Miranda*:"

> 1. You have the right to remain silent. If you choose to give up this right, anything that you say can be used against you in court.
>
> 2. You have the right to talk to a lawyer before you are asked any questions and to have a lawyer with you while you are being questioned.
>
> 3. If you want a lawyer, but cannot afford one, a lawyer will be provided to you . . . at no cost.
>
> 4. If you want to answer questions now without a lawyer, you still have the right to stop answering questions at any time.

Rush, 403 Md. at 90.

The ellipsis cited above denotes the location on the specific form that was used in *Rush* where an officer handwrote in the words "[at some time]." *Id.* The Court held that this modification of the right to counsel did not undermine the advisement, stating:

> . . . Rush was told that she could speak with a lawyer before being questioned and at any time during questioning. The modification of the advisements did not tie her right to counsel to a future event or to her ability to obtain a lawyer herself; rather, as in *Duckworth*, the modified language only clarified, in a separate advisement, how and when appointed counsel would be provided. Read objectively, the modified language does not suggest, as Rush argues, that appointed counsel could not be present during questioning.

Id. *Cf. Luckett*, 413 Md. at 381-84 (holding that, although the formal advisements complied with *Miranda*, the detective's further "clarifications" and "explanations" of those rights, "nullified what otherwise were proper warnings, and rendered the *Miranda* advisement constitutionally defective").

In this case, the Baltimore County Police Department's *Miranda* Rights Waiver form, used in this case and read out loud and signed by appellant, provides as follows:

YOU ARE HEREBY ADVISED THAT:

1. You have the absolute right to remain silent.

2. Anything you say can and will be used against you in a court of law.

3. You have the right to talk with a lawyer at any time before or during any questioning.

4. If you want a lawyer and cannot afford one, you can request the court to appoint a lawyer prior to any questioning.

5. If you agree to answer questions, you may stop at any time and no further questions will be asked of you.

We are persuaded that these warnings fully complied with the requirements of *Miranda*. Although they do not expressly indicate that a defendant has a choice when considering the *Miranda* rights, choice may be implied by a defendant's conduct after receiving the warnings. *See Berghuis*, 560 U.S. at 385 ("As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford.") (Citation omitted).

Ultimately, we abide by the knowing and voluntary test, considered under the circumstances of the case. *See Warren v. State*, 205 Md. App. 93, 118 (2012) (concluding, based on the totality of the circumstances, that appellant knowingly, voluntarily, and intelligently waived his *Miranda* rights). This record reveals that appellant read and agreed that he understood his *Miranda* rights prior to speaking to the

detectives. Appellant's waiver was both express, as evident on the waiver form, and implicit, by both his conduct and conversation with the detectives. As such, under the totality of the circumstances, we conclude from our independent constitutional appraisal of the record, and by a preponderance of the evidence, that appellant understood the *Miranda* warnings and validly waived his constitutional rights. The motion to suppress was properly denied.

II.

Appellant next asserts the trial court erred in admitting hearsay testimony from Detective Grant that appellant co-owned a red Crown Victoria with his mother, that appellant's brother was Charles Patterson, and that Patterson had access to a grey Volkswagen Jetta. The State concedes that this evidence was inadmissible hearsay but argues that any error was harmless because it was "both (1) completely consistent with the defense theory of the case, as it had been expressed in Brooks's opening statement, and (2) to the extent it mattered, [the evidence was] admitted elsewhere through other means."

Here, during appellant's opening statement, the defense informed the jury "what you're here to decide is whether or not Mr. Brooks knew or should have known that his brother was going to do a shooting." Counsel acknowledged that appellant told the police that he called his brother, and that he saw the victim in the convenience store. However, counsel maintained that appellant did not know what his brother would do with that information.

Thereafter, the challenged testimony was admitted during Detective Grant's direct examination, when she was asked whether appellant was developed as a suspect in this shooting. Appellant objected and the following ensued at a bench conference:

> [DEFENSE COUNSEL]: I'm not challenging probable cause to arrest my client, I believe everything she's saying is hearsay and has not been established by the State up to this point and I would object to her giving what she knows or what she understands or what she believes. I think it's not, not admissible.
>
> THE COURT: I'll entertain individual objections on a hearsay basis to parts of her responses that, that call for hearsay responses. So we'll just all stay on our toes and let's try and be a little less conclusory and more specific with regard to what she did and who she talked to.
>
> [PROSECUTOR]: Absolutely, Your Honor.

Detective Grant's testimony continued, and appellant specifically challenges the following portion of her direct examination:

> Q. Now after you identified him as a suspect, what, what, if anything, did you do next with respect to your investigation?
>
> A. Once we identified him as a suspect, we, I, I ran background checks on the defendant, basically looking at any possible ties to a subject named Darren Gray, also looking at any possible ties between Mr. Brooks and a red Crown Victoria vehicle. We did searches through MVA with Mr. Kenneth Brooks and discovered that he had a . . .
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> A. MVA showed that he had a red Crown Victoria listed to him and to his mother as a co-owner. We also learned that he shared the same address.
>
> [DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

A. Also learned that he shared the same address as Darren Gray and that their mother was Kindra Brooks, they had the same mother and that they were, in fact, brothers.

Q. Were you able to establish whether or not Kenneth Brooks had any other brothers?

A. Yes, we did. We learned that, it was discovered that he had another brother, Charles Patterson.

Q. Did you research any cars available to Charles Patterson?

A. Yes, I researched and discovered that Charles Patterson . . .

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

A. Charles Patterson had access to a gray Volkswagen Jetta that is owned by his sister, Jocelyn Stringfellow, and his mother, Kindra Gray.[5]

Under the Maryland Rules, 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). Further, "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. "Generally, an out-of-court statement is admissible as non-hearsay if it is offered for the purpose of showing that a person relied and acted upon the statement, rather than for the purpose of showing that the facts elicited

[5] Defense counsel maintained this objection when the State later elicited further details concerning the ownership of the Volkswagen. Defense counsel also objected to the recovery of a turquoise sweat shirt from the interior of the red Crown Victoria.

in the statement are true." *Morales v. State*, 219 Md. App. 1, 11 (2014) (citing *Purvis v. State*, 27 Md. App. 713, 716 (1975)). However, "a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo*." *Bernadyn v. State*, 390 Md. 1, 8 (2005); *accord Thomas v. State*, 429 Md. 85, 98 (2012).

Courts generally begin by identifying the proposition that the evidence was offered to prove. *See Bernadyn*, 390 Md. at 10 ("We therefore begin our inquiry by identifying the proposition that the medical bill was offered to prove") (citing *United States v. Hathaway*, 798 F.2d 902, 907 (6th Cir. 1986) (stating that "in addressing the question of whether the documents at issue were hearsay, we begin by determining what the evidence offered to prove")); Murphy, *Maryland Evidence Handbook* § 702, at 305 (4th ed. 2010) ("When an out-of-court statement is offered in evidence, the trial judge must first determine why it is being offered"). Moreover, although the general rule provides that extrajudicial statements may be admissible to explain police conduct, when the probative force of such a statement goes primarily to the guilt or innocence of the accused it "'is so likely to be misused by the jury as evidence of the fact asserted that it should be excluded as hearsay.'" *Graves v. State*, 334 Md. 30, 39 (1994) (quoting McCormick on Evidence § 248, at 587 (Edward W. Cleary ed., 2d. ed. 1972)) (emphasis omitted).

As the State concedes in its brief, this evidence was not elicited simply to explain the course of Detective Grant's investigation. Instead, we are persuaded that Detective Grant's testimony, offered over objection, that appellant was a co-owner of the red

Crown Victoria with his mother, and that his brother, Charles Patterson, had access to a dark Volkswagen sedan, were offered for their truth and, therefore, constituted inadmissible hearsay. The evidence directly went to appellant's criminal agency and was offered as additional proof connecting appellant to the red Crown Victoria and to Patterson's malicious conduct.

Despite this error, the State contends that Detective Grant's hearsay testimony was harmless beyond a reasonable doubt as it was cumulative to other evidence properly admitted during the trial. The Court of Appeals has explained:

> In considering whether an error was harmless, we also consider whether the evidence presented in error was cumulative evidence. Evidence is cumulative when, beyond a reasonable doubt, we are convinced that "there was sufficient evidence, independent of the [evidence] complained of, to support the appellant['s] conviction[]." *Richardson v. State*, 7 Md. App. 334, 343, 255 A.2d 463, 468 (1969). In other words, cumulative evidence tends to prove the same point as other evidence presented during the trial or sentencing hearing. For example, witness testimony is cumulative when it repeats the testimony of other witnesses introduced during the State's case-in-chief. *See Hutchinson* [*v. State*], 406 Md. [219,] 227-28, 958 A.2d [284,] 288-89 [(2008)] (holding that improperly admitted expert testimony was not cumulative when the testimony "did not repeat the testimony of any of the prior witnesses introduced during the State's case-in-chief" and the testimony asserted that the victim's injuries were consistent with her description of the incident). "The essence of this test is the determination whether the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded." *Ross v. State*, 276 Md. 664, 674, 350 A.2d 680, 687 (1976).

Dove v. State, 415 Md. 727, 743-44 (2010); *see also Frobouck v. State*, 212 Md. App. 262, 284 (2013) ("To say that an error did not contribute to the verdict is . . . to find that

error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record") (citation omitted).

The State directs our attention to appellant's statement in support of its contention that Detective Grant's testimony was cumulative. During his recorded statement to Detective Grant, appellant confirmed that he lived with his mother, Kindra Gray. And, Kindra Gray testified that appellant was her son, and that she had a total of five children. Further, appellant stated that, of his four brothers and two sisters, that two of his brothers on his father's side are Kyle and Cameron Brooks. In addition, the jury heard that appellant's siblings on his mother's side include Darren Gray, Charles Patterson, and Jocelyn Stringfellow. Appellant's remaining sister was named Destiny but evidence of her last name was unclear.

As for appellant's vehicle, although the State did not offer any other evidence, other than Detective Grant's, that appellant was a co-owner of the red Crown Victoria, there was no dispute that appellant was arrested driving a red Crown Victoria and that that vehicle matched the one in the video. Moreover, appellant admitted that he drove the vehicle he was stopped in as part of his employment with a company called Baltimore Sedan.

We are persuaded that the foregoing evidence was cumulative to Detective Grant's testimony concerning appellant's mother and his relationship to the red Crown Victoria. Furthermore, the jury could rationally infer, even without other evidence of appellant's ownership interest in that car, that he was the person who drove that vehicle and that he

was related to both Charles Patterson, the apparent shooter, and Darren Gray, the defendant in the unrelated case involving witness/victim Roland Eisenhart.

In addition, there was also other evidence connecting Patterson to a dark sedan on the night of the shooting other than Detective Grant's testimony. That evidence, again from appellant's statement, included appellant's agreement that he spoke to Patterson after leaving the convenience store and told him that Eisenhart was in a silver-colored minivan. Appellant confirmed that he followed Eisenhart for a while, and that he saw two black sedans join the pursuit. And, although appellant was not entirely certain, his statement to Detective Grant suggests that appellant thought his brother, Patterson, was in one of those vehicles. We are persuaded that, given the cumulative evidence properly admitted at trial, any error in admitting hearsay through Detective Grant was harmless beyond a reasonable doubt.[6]

III.

Appellant finally asserts that the trial court erred in admitting cumulative prejudicial photographs of Carly Fuller's injuries. The State responds that the court properly exercised its discretion in the matter. We agree.

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[6] Although we ultimately conclude the error was harmless beyond a reasonable doubt, we agree with appellant that the erroneous admission of this hearsay easily could have been avoided had the State, for example, sought to admit this evidence by introducing authenticated records from the Motor Vehicle Administration under the public records exception. *See* Maryland Rule 5-803(b)(8).

When the State sought to admit the photographs in question, defense counsel asked to approach, and the following ensued:

> [DEFENSE COUNSEL]: I don't have objection to the individual photographs, however, I do object to all of them being admitted. I would submit that one photograph is sufficient to show the injury, and the others are merely there to inflame the jury. Particularly since they didn't clean the blood off her face before taking the photos and I think that's the whole purpose of entering all those, and I think one is sufficient to show injury.
>
> [PROSECUTOR]: Your Honor, I would profer that they're important because they show the nature and extent of her injuries, not to mention some of the photos are taken from different angles so they show a close-up of the injuries as to her head and her face which I think it's important for the jury to, to have that information.
>
> THE COURT: I'm going to overrule the objection. Thank you.

There is a two-part test in determining the admissibility of photographs. "[F]irst, the judge must decide whether the photograph is relevant, and second, the judge must balance its probative value against its prejudicial effect." *State v. Broberg*, 342 Md. 544, 555 (1996); *accord Thompson v. State*, 181 Md. App. 74, 95 (2008), *aff'd*, 412 Md. 497 (2010). A photograph is relevant if it "'assist[s] the jury in understanding the case or aid[s] a witness in explaining his testimony . . . .'" *Mason v. Lynch*, 388 Md. 37, 49 (2005) (quoting *Hance v. State Roads Comm*., 221 Md. 164, 172 (1959)).

Second, when a photograph is relevant, then "[t]he admissibility of photographs under this State's law is determined by a balancing of the probative value against the potential for improper prejudice to the defendant . . . . This balancing is committed to the trial judge's sound discretion." *Bedford v. State*, 317 Md. 659, 676 (1989); *see also Johnson v. State*, 303 Md. 487, 502 (1985) ("whether or not a photograph is of practical

value in a case and admissible at trial is a matter best left to the sound discretion of the trial judge"). And, the judge's determination "will not be disturbed unless plainly arbitrary." *Grandison v. State*, 305 Md. 685, 729 (1986); *see also Lovelace v. State*, 214 Md. App. 512, 548 (2013) ("The trial court's decision will not be disturbed unless 'plainly arbitrary,' . . . because the trial judge is in the best position to make this assessment") (quoting *Ayala v. State*, 174 Md. App. 647, 679 (2007)).

In assessing whether there has been an abuse of discretion, the Court of Appeals has recognized that even though photographs "may be more graphic than other available evidence . . . we have seldom found an abuse of a trial judge's discretion in admitting them in evidence." *Hunt v. State*, 312 Md. 494, 505 (1988) (citations omitted). Further:

> Among the scores of this Court's opinions involving the admission or exclusion of photographic evidence, it is extremely difficult to find cases in which this Court has held that the trial court's ruling, as to the admission or exclusion of photographs, constituted reversible error. The very few cases finding reversible error are ones where the trial courts admitted photographs which this Court held did not accurately represent the person or scene or were otherwise not properly verified.

Mason, 388 Md. at 52 (citations omitted).

Here, the State's theory was that Carly was a victim of a drive-by shooting, perpetrated at appellant's direction by his brother, Charles Patterson, in conjunction with the attempted murder of Roland Eisenhart, either to retaliate against Eisenhart or to intimidate him for his testimony against a third brother, Darren Gray. Thus, the photographs depicting Carly's injuries had probative value on the question whether she had been the victim of a first-degree assault during the shooting. The record shows that

the trial court considered the photographs, including the argument that they were cumulative, and concluded that any danger of unfair prejudice was outweighed by that probative value. The court's ruling was not plainly arbitrary, and we discern no abuse of discretion in admitting these photographs at trial.

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