UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1515

September Term, 2016

LARNELL TYRAN LYLES

v.

STATE OF MARYLAND

Graeff,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Raker, J.

Filed: July 13, 2017

Appellant, Larnell Tyran Lyles, was convicted in the Circuit Court for Frederick County of first degree murder, use of a firearm in the commission of a crime of violence, and unlawful possession of a regulated firearm. Appellant presents two questions for our review, which we have rephrased as follows:

> 1. Did the circuit court err in denying appellant's motion to suppress post-arrest statements by holding that he did not unequivocally invoke his right to counsel?
>
> 2. Did the circuit court err in sentencing appellant to a term of life without parole?

We shall hold that the circuit court erred in denying appellant's motion to suppress because he invoked his right to counsel and any subsequent questioning was improper. Accordingly, we shall reverse and remand for a new trial. We do not reach appellant's second question for review.

I.

Appellant was indicted by the Grand Jury for Frederick County with first degree murder, use of a firearm in the commission of a crime of violence, and unlawful possession of a regulated firearm. He was convicted by a jury in the circuit court of all counts. The court imposed a term of life without the possibility of parole for murder, and a consecutive term of incarceration of ten years for use of a firearm in a crime of violence. The court merged unlawful possession of a firearm for sentencing purposes.

The following evidence was presented at trial. On June 13, 2015, around 5 PM, Brandon Brown and Brandon McIntosh drove a friend's ice cream truck into the Sagner or

Lucas Village neighborhood in Frederick, MD to sell ice cream. The pair stopped the truck at 466 Vermont Court. As appellant approached the truck, Brown stepped out to smoke a cigarette. At this point, McIntosh recalled hearing someone say, "shit, I didn't know that was you," followed by three gunshots fired at Brown. McIntosh called 911 and reported the shooting. Shortly thereafter, Brown died from multiple gunshot wounds.

Officers transported McIntosh to the police station for an interview, where he described the sequence of events to Detective Steven Petruzzello. McIntosh related that the shooter was wearing a black T-shirt, dark blue jeans, gold or silver teeth, and no hat. Subsequent testimony from other witnesses varied as to the shooter's appearance. McIntosh next viewed two photographic arrays, with no positive identification on the first. After saying, "I don't know the dude. I can't identify him. I've got to go, man," McIntosh viewed the second array and identified appellant's photograph at 7:58 PM, stating he was "almost 100 percent sure."

The police arrested appellant early on June 14 and took him to the Criminal Investigations Division of the Frederick Police Station, where he was interviewed by Detectives Petruzzello and Kevin Forrest. At trial, the State played a video recording of the interview. Appellant waived his *Miranda* rights at approximately 4:46 AM. In the initial portion of the interview, Detective Petruzzello questioned appellant about his whereabouts at the time of the shooting. Appellant denied being at the scene of the

shooting on June 13, but later admitted to being present at a different time, after Detective Petruzzello's multiple statements that appellant was identified in surveillance footage.

After Detective Forrest joined the interview, the detectives continued to elicit a reason from appellant for the shooting. When they told the appellant he would be charged with first-degree murder, the following exchange ensued:

> "[DEFENDANT]: Can I smoke a cigarette, please?
>
> [DET. FORREST]: Yeah, we can probably get you --
>
> [DET. PETRUZZELLO]: Yeah, we'll get you one. We'll get you one, man.
>
> [DET. FORREST]: But, I mean, that's what I'm saying.
>
> [DEFENDANT]: I'll talk to you.
>
> [DET. FORREST]: Dude, that's why I'm here, man.
>
> [DEFENDANT]: *I'll talk to you with a lawyer* --
>
> [DET. FORREST]: Okay.
>
> [DEFENDANT]: -- because on some real shit, like, ain't that type of dude, man.
>
> [DET. FORREST]: I don't think you are. That's why we're here.
>
> [DEFENDANT]: I ain't that type of dude, man.
>
> [DET. FORREST]: That's why we are here.
>
> [DET. PETRUZZELLO]: You're not that type of dude. Just something enraged you --

> [DEFENDANT]: No. Damn, no.
>
> [DET. PETRUZZELLO]: -- changed you, enraged you for a moment in time --
>
> [DEFENDANT]: It wasn't, it wasn't --
>
> [DET. PETRUZZELLO]: -- and you got -- you fucked up, man.
>
> [DEFENDANT]: It wasn't rage.
>
> [DET. PETRUZZELLO]: Well, what was it?
>
> [DEFENDANT]: It wasn't rage.
>
> [DET. PETRUZZELLO]: What was it? You're worried about time now. I can tell you that. You're worried about the time you're going to have to serve. What I'm trying to tell you is this, and I'm not lying to you: You need to be honest now. Tell us the reason.
>
> [DEFENDANT]: So if I, if I tell -- if I told you-all, right --
>
> [DET. PETRUZZELLO]: Yeah.
>
> [DEFENDANT]: -- I mean, I tell you whatever, are you-all still going to hit me with first-degree?
>
> [DET. PETRUZZELLO]: Well, listen, we can't promise you anything. Listen, man --"

Appellant next requested and received a cigarette, after which the interview continued and he began incriminating himself. He admitted to firing one shot at, but missing, the decedent. Appellant said he acted out of fear from a previous armed robbery

by the decedent and threats made towards appellant's daughter. Appellant maintained that the fatal shots were fired by unidentified individuals standing behind him.

Appellant filed a pre-trial motion to suppress his statements to police. At the evidentiary hearing, appellant claimed that his self-incriminating testimony was obtained impermissibly after he requested unequivocally to speak with an attorney and it should have been suppressed. In denying appellant's motion, the court found as follows:

> "THE COURT: I do find that, at no time, was Mr. Lyles subject to any coercion or duress that would make any statement involuntary in a traditional sense. The issue is whether, in fact, his statement at approximately one hour into the interview about speaking with an attorney was sufficient to revoke, in a way, his earlier decision to waive *Miranda* and to make a statement.
>
> In making that determination, the standard is, you look at the whole circumstances, what was said, what were the circumstances being said, what led up to the statement, what is everybody's behavior accordingly.
>
> ***
>
> The statement, the crucial point is in the interview, occurs after Detective Forest, who was the lead detective, indicates and tells the defendant for the first time that he's charged with first degree murder.
>
> And it is clear, of course, at that time, that the officers are trying to elicit an explanation from the defendant. I believe the tenor of the questions were, you know, got to understand, you know, why you did this. This doesn't make any sense. You don't seem like the kind of person that did this kinds of things.
>
> The defendant says, "I'll talk," and then there's a pause, and then he says, "with my lawyer," pause.

> Officer Forest [sic] then says, "Okay."
>
> And the Mr. Lyles goes, "because I'm not that kind of a guy," and then goes back into the kind of discussion that was had before.
>
> The question, the legal question, the pertinent question is whether that comment, "I'll talk," pause, "with my lawyer," pause, "because I'm not that kind of a guy," under all those circumstances, is a clear indication that he's invoking his right to counsel and he does not want to speak with officers further. I cannot find that that is an invocation of the right to counsel under all those circumstances.
>
> Would it, perhaps, have been a better practice for the police to verify if he wanted to continue talking without a lawyer? Yes. But the law is clear that when there is an ambiguous statement, the officers are not required to ask further about whether he wants counsel. And Mr. Lyles continued to talk in the same way that they had been talking for the past hour.
>
> Under *Davis v. United States* and *Wimbash*, it says, if the defendant invokes a right to counsel is when he makes some statement that can reasonably be construed as an expression of a desire for an assistance of an attorney. But if the reference is ambiguous or equivocal, in that a reasonable officer, in the light of the circumstances presented, would have understood that the suspect might be invoking counsel, must clearly articulate a desire, sufficiently clearly that a reasonable police officer would understand that the statement was a request to obtain an attorney.
>
> And I just can't find, under the totality of the circumstances here that, in fact, that was a clear invocation of the right to counsel."

The jury convicted appellant on all counts.

This timely appeal followed.

II.

In this appeal, appellant contends that the circuit court erred in denying his motion to suppress his post-arrest statements by holding that his request for counsel was equivocal and was not a sufficiently clear invocation of his right to counsel to a reasonable police officer under the circumstances. In arguing that there was an unequivocal invocation of his right to counsel, appellant posits that his statement, "*I will talk to you with a lawyer*," indicated an immediate desire for the presence of an attorney during the interrogation. Appellant argues that Detective Forrest understood and acknowledged this request with his response, "Okay," yet continued to carry out the interrogation in violation of his rights under *Miranda v. Arizona*, 384, U.S. 436 (1966) and *Edwards v. Arizona*, 451 U.S. 477 (1981). Appellant also claims that in the context of the entire interrogation, his request for a lawyer was unambiguous. He alleges that the detectives' questioning and repeated disregard for his invocation of right to counsel dispelled any ambiguity as to the nature and sufficiency of the request. Finally, appellant argues that his statements were involuntary under the Due Process Clause of the Fourteenth Amendment and Article 22 of the Maryland Declaration of Rights because the detectives "misled [him] concerning the right to counsel" and "[overbore] his free will" through unrelenting interrogation tactics.

Appellant also contends on appeal that the circuit court erred in sentencing him to a term of life without the possibility of parole because (1) Maryland Criminal Law Article §

2-304 entitles him to the right to be sentenced by a jury and (2) the statutory scheme for sentences of life without parole is unconstitutional.

The State counters that the circuit court denied the motion to suppress appellant's statements properly because appellant did not clearly assert a "present desire" for counsel. The State contends that a reasonable officer could have construed appellant's statements as indicating a desire to reveal more information in the future with a lawyer. Although the State recognizes that suspects under interrogation are often disadvantaged for an assortment of reasons, it argues that appellant's statements were voluntary under the totality of the circumstances because he was advised of and waived his *Miranda* rights, and the detectives did nothing to mislead him or overbear his will.

Finally, the State relies on *Bellard v. State*, 452 Md. 467, 473-74 (2017), which rejected appellant's current arguments against the trial court's sentencing authority and the constitutionality of a life without parole sentence. The Court of Appeals affirmed this court's holdings that (1) Criminal Law Article §2-304 does not guarantee a right to jury sentencing and (2) the statutory sentencing scheme is constitutional.

III.

Ordinarily, an appellate court reviews the denial of a motion to suppress based solely upon the record of the suppression hearing. *Ferris v. State*, 355 Md. 356, 368 (1999). In doing so, we review the facts and reasonable inferences as found by the trial court in the light most favorable to the State as the prevailing party on the motion. *Cartnail v. State*,

359 Md. 272, 282 (2000); *see also State v. Sizer*, 230 Md. App. 640, 644 (2016) (stating that when there is a conflict between the versions of evidence presented by the State and by the defense, appellate review should favor the prevailing party).

Because the trial judge is in the best position to evaluate the credibility of the witnesses, we extend great deference to the fact-finding of the hearing judge as to the credibility of witnesses and to weighing and determining first-level facts. *In re Tariq A-R-Y*, 347 Md. 484, 488 (1997). We accept the facts as found by the hearing judge unless those facts are clearly erroneous. *State v. Collins*, 367 Md. 700, 707 (2002). On review, we do not defer to the suppression hearing court's legal determinations. *Turkes v. State*, 199 Md. App. 96, 113 (2011). We make our own independent *de novo* review with respect to ultimate, conclusory, or mixed questions of law and fact. *Charity v. State*, 132 Md. App. 598, 607 (2000).

IV.

We agree with appellant and hold that the officers continued questioning improperly after appellant invoked unequivocally his right to counsel during an interrogation.

When a suspect is arrested, 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." *Ballard v.*

State, 420 Md. 480, 488 (2011) (quoting *Miranda*, 384 U.S. at 479). After a suspect is informed of his *Miranda* rights, he may respond to police questioning if he waives those rights. *See Edwards*, 451 U.S. at 483-84. Despite the waiver, a suspect may request counsel at any point, upon which police must immediately cease questioning until either (a) counsel is present or (b) the suspect initiates further communication. *Id.* at 484-85.

In interpreting a statement as an invocation of the right to counsel, it "must be sufficiently clear 'that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.'" *Billups v. State*, 135 Md. App. 345, 354 (2000) (quoting *Davis v. United States*, 512 U.S. 452, 459 (1994)). Additionally, courts are to "give a broad, rather than narrow, interpretation to a defendant's request for counsel . . ." *Id.* at 354.

Here, Detectives Petruzzello and Forrest advised appellant properly of his *Miranda* rights, and questioning continued in accordance with the appellant's waiver of those rights. The detectives continued questioning appellant improperly after he invoked his right to counsel, however. On its face, appellant's request, "I'll talk to you with a lawyer," was an unambiguous indication that he desired the presence of an attorney during questioning. The State cites to a string of cases in which the defendant's statements were insufficient requests for counsel under *Billups* and *Davis*: *Malaska v. State*, 216 Md. App. 492, 527-30 (2014), *cert. denied*, 439 Md. 696 (2014), *cert. denied*, 135 S. Ct. 1162 (2015) ("maybe I need an attorney"), *Wimbish v. State*, 201 Md. App. 239, 256 (2011), *cert. denied*, 424 Md.

293 (2012) ("What about my lawyer?"), *Minehan v. State*, 147 Md. App. 432, 444 (2002), *cert. denied*, 372 Md. 431 (2002) ("Should I get a lawyer?"), and *Matthews v. State*, 106 Md. App. 725, 738 (1995) ("Where's my lawyer?"). Unlike those statements, appellant's request was not a question or speculative thought. He did not inquire into the whereabouts or necessity of a lawyer, but stated his intention to speak with a lawyer then and there.

The State's contention that appellant's subsequent commentary, ". . . because on some real shit, like, I ain't that type of dude, man," represented an initiation of further communication that authorized the detectives to continue questioning under the *Edwards* rule is also without merit. Both the record and Detective Petruzzello's testimony support the premise that appellant's commentary was one sentence in conjunction with his request for a lawyer. Although a plain reading of the transcript might suggest that appellant continued the conversation with the detectives after his initial invocation of counsel, a closer look at the video presented at trial indicates that appellant's commentary was part of a complete thought. Additionally, Detective Petruzzello testified at the suppression hearing that appellant's statement was "[a]ll in one sentence," and the interview record shows that Detective Forrest interrupted, "okay," mid-sentence. Accordingly, any subsequent communication from the detectives was improper.

Finally, the State contends that a reasonable understanding of appellant's statement, "I'll talk to you with a lawyer," indicated a "willingness to reveal more about the crime at some *future* time," rather than an immediate desire for counsel. We reject this reading of

appellant's request in the context of the questioning. The officers here were seeking an immediate reason for the shooting, not discussing a future conversation or clarifying the appellant's request. Instead, the State relies on several cases showing defendants' future desire for counsel when officers were attempting to clarify their requests for counsel.

We do not agree with the State that any error was harmless. The standard in Maryland for evaluating harmless error was set forth by the Court of Appeals in *Dorsey v. State*, 276 Md. 638, 659 (1976):

> "[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of -- whether erroneously admitted or excluded -- may have contributed to the rendition of the guilty verdict."

The standard remains unchanged today. *See Robinette v. State*, 2017 Md. LEXIS 145 at *7 (2016); *State v. Hines*, 450 Md. 352, 386 (2016); *State v. Hart*, 449 Md. 246, 262-63 (2016). A jury's observation of appellant's confession and other statements after his invocation of counsel are unlikely to be harmless. *See Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) ("[A] full confession in which the defendant discloses the motive for and means of the crime may tempt the jury to rely upon that evidence alone in reaching its decision."). Appellant's self-incriminating statements after his attempted invocation of counsel were significant. At closing argument, the State told the jury, "Larnell Lyles admits it's Larnell Lyles." We cannot say, beyond a reasonable doubt, that the appellant's

inadmissible statements did not contribute to the verdict of guilty. The trial court's admission of this evidence was not harmless error.

We do not address whether appellant's statement was voluntary as it is unclear whether at any new trial appellant would testify in the event the State chooses to re-try appellant.[1]

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR A NEW TRIAL. COSTS TO BE PAID BY FREDERICK COUNTY.

[1]We need not address appellant's argument related to his sentence of life without parole on statutory and constitutional grounds for two reasons: first, the case is to be remanded for a new trial; and second, appellant's arguments were rejected in *Bellard*, 452 Md. at 473-74 (pending at time of appellant's brief).