UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1694

September Term, 2015

ISA MANUEL SANTIAGO

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Wright,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: January 24, 2017

In 2004, a grand jury in the Circuit Court for Charles County indicted Isa Manuel Santiago, the appellant, for the murder of Latoya Taylor and related crimes. Taylor was last seen alive on June 13, 2003, in Washington, D.C. On June 19, 2003, her body was found in a field in Newburg, in Charles County.

This appeal is from the judgments entered in Santiago's third trial, in which he was convicted of second degree murder, use of a handgun in the commission of a felony or crime of violence, and possession of a firearm after being convicted of a disqualifying crime. The court sentenced him to an aggregate term of 55 years in prison.

On appeal, Santiago presents three questions, which we have reworded:

I. Did the trial court err by admitting the expert opinion testimony of Allen Hagy?

II. Did the trial court err by refusing to give the jury instruction the defense proposed on expert witness testimony?

III. Did the trial court err by admitting evidence of Santiago's silence during an investigation by his automobile insurer?

We shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

Santiago's first trial, on February 28, 2006, ended abruptly with a mistrial before any evidence was presented. His second trial commenced the next day, March 1, 2006 ("the 2006 trial"). He was acquitted of first degree murder and convicted of second degree murder, use of a handgun in the commission of a crime of violence, and being a felon in possession of a firearm. After sentencing on April 25, 2006, Santiago noted an appeal.

On November 18, 2008, a panel of this Court filed an unreported opinion reversing the judgments based on the trial court's failure to either hearken or poll the jury. We remanded the case for a new trial. *Santiago v. State*, No. 0663, September Term 2006, filed November 18, 2008 ("*Santiago I*"). The State filed a petition for writ of *certiorari*, which the Court of Appeals granted. On December 21, 2009, that Court filed its opinion affirming our decision and holding that "a jury verdict, rendered and announced in open court, that is neither polled nor hearkened is not properly recorded and is therefore a nullity." *State v. Santiago*, 412 Md. 28, 32 (2009) ("*Santiago II*").

On remand, the State re-charged Santiago with first degree murder and the offenses for which he was convicted in the 2006 trial. Santiago moved to dismiss the first degree murder charge on double jeopardy grounds. After the court denied his motion, he noted an appeal to this Court. On March 11, 2013, a panel of this Court filed an unreported opinion reversing the circuit court's order on the ground that double jeopardy barred the State from re-trying Santiago for first degree murder. *Santiago v. State*, No. 0634, September Term 2010, filed March 11, 2013 ("*Santiago III*"). We explained that even though the Court of Appeals had held in *Santiago II* that the jury verdict in the 2006 trial was a nullity, the verdict on first degree murder nevertheless was an acquittal for double jeopardy purposes. We remanded for further proceedings.

Santiago's third trial commenced on September 14, 2015. The State called 47 witnesses and presented hundreds of exhibits. The defense called 10 witnesses. Santiago did not testify. The following evidence was adduced.

Taylor and Santiago were romantically involved for most of the decade before her death. They had met in high school. Their relationship was marked by several incidents of domestic violence by Santiago against Taylor, including as recently as 2001. During their relationship, Santiago met and married another woman. Also during their relationship, Taylor gave birth to a child who she claimed was Santiago's. In March of 2003, Taylor filed a paternity suit against Santiago, seeking child support. A hearing in that suit was scheduled for June 18, 2003. Santiago's wife did not know about Taylor's child until she was served with papers in the paternity suit.

On the morning of June 13, 2003, Taylor and Santiago spoke over the phone about the child support dispute. At about 12:30 p.m. that day, Taylor was seen leaving the IRS building in Washington, D.C., where she worked, and getting into the passenger side of a "box-type black truck." Security-camera footage captured her getting into the vehicle. That was the last time she was seen alive.

A few minutes before 5:40 p.m. that same day (June 13, 2003) a witness saw a black Jeep pulling out of a wooded area off Route 301 in Newburg, Charles County, slightly north of the toll booth for the Harry Nice Bridge. The witness could pinpoint when he saw the Jeep because his EZ Pass records showed that he went through the toll booth at 5:38 p.m.

Around 4:00 a.m. on June 14, 2013, police responded to a vehicle fire on Spring Road, in Northwest Washington, D.C. They discovered a black Jeep Cherokee engulfed in flames. A gas can was on the curb next to it. The Jeep was registered to Santiago. At

noon that day, Santiago reported to the police and to State Farm, his automobile insurance company, that his Jeep had been stolen.

Barely a half hour later, Lieutenant Robert Black of the Prince George's County Police Department interviewed Santiago about the stolen vehicle report at his home. Santiago told him that he had returned home from a nightclub in Northeast Washington, D.C., at 3:00 a.m. (June 14, 2003) and parked his Jeep on the street near his house. When he went to take the trash out at noon, he noticed that the Jeep was missing.

Later that evening, the police again interviewed Santiago at his home, this time about Taylor's disappearance. He told them that he had worked the night shift at Walter Reed Medical Center on June 12, 2003. The next morning (June 13, 2003), he spoke on the phone with Taylor and then took a nap until the early afternoon. He woke up from the nap to run some errands with his wife. He went to dinner that night before heading to the nightclub in D.C.

Other evidence contradicted this account of Santiago's whereabouts on June 13, 2003. Santiago's child's daycare provider testified that at 4:27 p.m. that day, at the time he claimed to have been running errands with his wife, Santiago called and told her he would not be able to pick up his child due to an emergency. (Santiago's cell phone records documented that call). A few minutes later a surveillance camera filmed him alone, withdrawing cash from a Bank of America ATM in Prince George's County. Other evidence showed that at around 7:30 p.m. that same evening Santiago and his wife briefly stopped by the home of Paris Jefferson on Spring Road in Northwest D.C.—the

same location where Santiago's Jeep was discovered hours later on fire. And, after 3:00 a.m. the next morning (June 14, 2003), when Santiago claimed to have returned home in his Jeep, he was spotted outside a D.C. nightclub with his motorcycle.

On June 19, 2003, Taylor's decomposing body was found in a field in Newburg, behind the woods where the witness had seen the black Jeep at approximately 5:40 p.m. on June 13. Her body was wrapped in trash bags. Her cell phone was under her body. She had been shot in the back of the head.[1] A set of tire tracks lead directly to her body.

Police and forensic investigation revealed that the ignition on Santiago's Jeep had not been tampered with; the Jeep was set on fire with gasoline; the fibers found on the trash bags covering Taylor's body were "consistent" with the carpet fibers in Santiago's Jeep; and plants found on the undercarriage of Santiago's Jeep were identical in species to plants growing in the field where Taylor's body was discovered.

The State introduced cell phone evidence showing that on June 13, 2003, between 5:00 p.m. and 6:30 p.m., Taylor's and Santiago's cell phones connected to cell towers near Newburg. We shall describe that evidence in detail below.

Santiago's defense was lack of criminal agency. He pointed to the absence of blood, DNA, or fingerprint evidence linking him to Taylor's body or to the alleged theft and burning of his Jeep. He called lay and expert witnesses to challenge the State's theory that his Jeep was the vehicle Taylor was spotted getting into in the front of the IRS

[1] The weapon used in Taylor's shooting was never found.

building on June 13, 2003, and was the vehicle in which her dead body was transported to the field in Newburg.

After conviction and sentencing, Santiago noted this timely appeal.

Additional facts will be included throughout the opinion as necessary.

DISCUSSION

I. The Testimony of Allen Hagy[2]

A.

In June 2003, Cingular Wireless ("Cingular"), now part of AT&T, was Santiago's cell phone service provider. In 2005, the State issued a subpoena to Cingular for the call data records ("CDRs") for Santiago's cell phone for periods including portions of May and June 2003.

In 2005, Cingular's fraud and billing department, located in Florida, was the entity responsible for generating cell phone records, including CDRs, in response to subpoenas. CDRs document the time and duration of every call made to and from the requested cell phone number within the requested time frame. For each call, the CDR identifies the following equipment used by the cell phone to make the call: 1) the "switch," *i.e.*, the "device that controls the cell [towers]" and links the call to the "general network of calls"; 2) the physical "cell site" (such as a cell tower); and 3) the "radio channel" on the radio attached to the cell site. In Cingular's network configuration at that time, four

[2] Allen Hagy had testified at the 2006 trial as well. None of the questions raised on appeal in *Santiago II* concerned his testimony or his expert opinions generally.

switches controlled cell sites in the "Washington D.C. Baltimore Metro area": switch 1 controlled Virginia; switch 2 controlled Montgomery County, Prince George's County, and Southern Maryland; switch 3 controlled Baltimore City and northern Maryland; and switch 4 controlled Washington D.C.

Once the fraud and billing department generated the records responsive to a subpoena, it was standard practice for it to send them to a local Cingular representative in the relevant geographical market for "validating." In the case of Santiago's cell phone records generated in response to the State's subpoena in 2005, the fraud and billing department sent the records to Cingular validator Allen Hagy. Hagy was Cingular's senior "Radio Access" network engineer for Maryland, Washington, D.C., Virginia, and West Virginia. He routinely validated records provided by the fraud and billing department. According to Hagy, CDRs had to be "validated" because they were not always "100 percent" accurate.

In June of 2005, Hagy received Santiago's cell phone records from the fraud and billing department. In the process of validating them, he spotted "geographical inconsistencies" between several call entries, which caused him to suspect that the CDRs were inaccurate. Specifically, calls placed only minutes apart on the afternoon of June 13, 2003, appeared to connect to cell sites many miles apart, in Baltimore and Virginia. Because cell phones are programmed to connect to the strongest signal available, and Santiago could not possibly have travelled from Baltimore to Virginia in the span of a

few minutes, Hagy determined that the CDRs had a "database issue." Hagy also noticed that "some of th[e] [cell] sites" listed "had [radio] channel numbers that did not exist."

Based on his years of experience designing and building Cingular's cellular network in the region, Hagy theorized that the switches in the CDRs were not accurately identified and this mistake was the source of the geographically impossible call entries. In 2003, when the calls were placed, Cingular was frequently—"on pretty much a monthly basis"—transferring cell sites from one switch to another to accommodate "increased growth" in its network. This process was known as "rehoming." Hagy had personal knowledge of this, as he was in charge of implementing the "rehoming" process. Although he was not familiar with the database the fraud and billing department used to generate CDRs, he knew that that department was responsible for billing Cingular customers for their *current* cell phone use. Hagy suspected that the CDRs the fraud and billing department had generated in response to the State's subpoena in 2005 possibly (and incorrectly) could have reflected the "rehomed" cell site configurations, in particular the switches, that existed in 2005 instead of the cell site configurations, including the switches, that existed when the calls documented in the CDRs were made in June 2003.

To test his theory, Hagy initiated a "data dump" from Cingular's operating software, ANET. Hagy routinely used "data dump[s]" from ANET in his "day to day operations" managing Cingular's network. The "data dump" Hagy initiated in this case was of Cingular's entire network configuration as it existed at the exact time the calls documented in the CDRs were made in June 2003. From that data, Hagy created a

spreadsheet that listed all corresponding switches, cell sites, and radio channel numbers (the "2003 channel list"). Using that information, Hagy performed an "engineering analysis" of the CDRs. Keeping the cell site and radio channel data variables unchanged, he compared each call documented in the CDRs to the information in the 2003 channel list to determine whether the switch listed for the call actually corresponded to the listed cell site and radio channel for the call. In doing so, he discovered that all the switch 3 calls were incorrect, *i.e.*, the cell site and radio channel numbers associated with those calls did not exist on switch 3. All the other calls were "validated." Using deductive reasoning, Hagy determined that the switch 3 calls in fact were switch 2 calls.

At trial, the prosecutor summarized Hagy's reasoning process for the June 13, 2003 calls (as Hagy had testified), as follows:

> [S]tart with the 5:16 [p.m.] call…. [Hagy] looks through [the 2003 channel list] based on this radio channel number because that is the most specific information in regard to each of [the cell site] towers and that site number on which of the four switches that…Cingular has in the Washington/Baltimore area has that cell site with that radio channel? He comes up with two, neither of which is switch 3. One is switch one in Great Falls, Virginia, and one is switch two, which is Bryantown in Charles County, Maryland. That by itself doesn't tell you enough to make any sort of changes. So, what happens next? We got [sic] to the next [call]. This call right here at 5:27 [p.m.]….What is that? That is cell number or site number 22, radio channel 21. Which of the four switches has that radio channel related to that cell site number[?] And, the answer is only one. Switch 2. And, where does that put [Santiago] and where does that put that phone call? La Plata sector one. Remember he tells you how the sectors are oriented. Sector one opens up to true north…north of La Plata. Now, if you go back to 5:[17]. There were two options for that. Technologically, you can't make a distinction. So, how can you say at 5:17 [Santiago's] got to be Bryantown and not Great Falls, Virginia? You heard from Sergeant Monarek who, unfortunately, had to basically drive across the DC Metro area. What an awful job. But, what does he tell you? Great Falls, Virginia

> is a whole heck of a lot more than nine minutes away from La Plata, Maryland. We know that tower is La Plata because it can't be anywhere else. So, what about the one before it? Is it going to be Great Falls, or is it going to be Bryantown? You tell me. That's the type of analysis that Mr. Hagy used. What about the third call? 3:22. Same thing. Says it's Harbor Tunnel. Can that be right? Cell site 22, radio channel 6. Looks that up. What comes up? How many switches have that one? One. Switch two. And, guess where that is? La Plata, sector two. And, now we've got two that could only, only connect to a tower in Charles County, Maryland. Cannot connect to any tower north of Baltimore.

Thus, Hagy used the 2003 channel list and a process of elimination based on geographical logistics to determine that all the switch 3 calls in fact were switch 2 calls. This correction completely eliminated the geographical impossibilities in the CDRs. Hagy recorded this process, which he called an "engineering analysis," in a spreadsheet document that compiled the corrected switch 3 calls and surrounding call entries. Hagy explained that he typically conducted such "engineering analys[es]" on subpoenaed CDRs, as it assisted him in "becoming[ing] familiar with the call record information" and helped him verify the CDRs' accuracy.

With Hagy's corrections, the CDRs revealed that, between 5:00 p.m. and 6:30 p.m. on June 13, 2003, nine calls were made to or from Santiago's cell phone, all of which connected to cell sites near Newburg in Southern Maryland. This placed Santiago in the location where Taylor's body later was discovered, on the day she disappeared.[3] It

[3] In the uncorrected CDRs, the nine calls appeared to originate in Baltimore.

also corresponded with the time that Taylor's cell phone first connected to a cell tower in Newburg—just before 6:00 p.m.[4]

1. Motion to Exclude Hagy's Testimony

When Hagy testified at the 2006 trial, he had with him the 2003 channel list he had created and used to correct Santiago's CDRs. Sometime after Santiago's 2006 conviction, the 2003 channel list was destroyed. Immediately before the 2015 trial date, Santiago moved to exclude Hagy's testimony and "any evidence or argument that purport[ed] to alter" Santiago's CDRs on the ground that the 2003 channel list no longer was available. He argued that without the 2003 channel list Hagy's testimony had no "sufficient factual basis to be helpful to a jury" and therefore was not admissible expert testimony under Rule 5-702. He maintained that because Hagy's engineering analysis had not been published and could not be reproduced and tested, Hagy's expert testimony was not based on a "reliable methodology[.]" He further argued that any expert testimony by Hagy without the 2003 channel list would constitute inadmissible hearsay under Rule 5-802, would be fairly prejudicial, and would violate his Sixth Amendment confrontation right by "insulat[ing]" Hagy "from effective cross-examination."[5]

[4] The State presented uncontroverted evidence through an engineer for Nextel, Taylor's cellular service provider in June 2003, that the contents of Taylor's CDRs showed that on June 13, 2003, she travelled from the IRS Building in Washington, D.C. to Newburg, Maryland. Her CDRs also showed that calls to her cell phone first connected to a Newburg cell tower at 5:56 p.m.

[5] In the memorandum in support of his motion, Santiago also asserted that the uncorrected CDRs generated by Cingular's fraud and billing department were (Continued…)

The court held a hearing on Santiago's motion on September 9, 2015. The prosecutor argued that there was an adequate factual basis for Hagy's expert opinions notwithstanding the destruction of the 2003 channel list. She explained that Hagy would testify about the methodology he used to determine that the CDRs needed to be corrected, including that Cingular "utilized" databases and channel lists identical to the ones Hagy used in this case "in their day to day basis [sic] and their day to day operations of the network[.]" To emphasize this point, the prosecutor provided a copy of a channel list from 2001 that Hagy had created and still had in his possession.

The prosecutor further argued that, under Rule 5-1004, Hagy could testify about the contents of the 2003 channel list. That rule permits a party to prove "[t]he contents of a writing, recording, or photograph" by "evidence other than the original" if the original

(…continued)
exculpatory evidence corroborating his own account to the police of his whereabouts on June 13, 2003:

> The reliability of the nine Baltimore hits [on Santiago's cellular phone in the CDRs] is corroborated by [Santiago's] own statements, provided long before he ever received and reviewed the subpoenaed Cingular records as part of the discovery in this case. For example, during a June 17, 2003 interview, [Santiago] informed police that he was in Baltimore having dinner on June 13 at the time in question, before returning to Washington, D.C. that evening.

Attached to the memorandum was an exhibit entitled "Summary of Isa Santiago Interview." The exhibit appears to be a summary of a police interview of Santiago on June 17, 2003, in which Santiago told the unidentified interviewer that "his wife pick[ed] him up from home that evening [of June 13, 2003] and the two went to the Baltimore Harbor for dinner." Santiago did not mention this assertion at the motion hearing, and there was no evidence introduced at the 2015 trial (or at the 2006 trial) that Santiago ever told the police that he was in Baltimore the night of June 13, 2003.

has been "lost" or "destroyed" and its destruction was not the result of "bad faith" by the proving party. The 2003 channel list no longer existed, the prosecutor maintained, because its business utility to Cingular (and later, AT&T) ceased after Santiago's conviction in 2006:

> [B]ecause [the 2003 channel list is] a business record and [Cingular is] a business, as they no longer need those documents they move on in transition. And, again . . . they don't need that data anymore because the data is not relevant to what they're doing some twelve years later. So, we're going back and asking them for data that they no longer need to retain. And, this stuff…was not created for [the] purpose of this litigation. This data was created for purposes of their regular business practices of examining what they need to do to possibly....maximize their system. And so over time . . . [Hagy's] superiors . . . have gone through and they said, okay, let's move . . . let's upgrade systems. I mean, we all upgrade systems all the time . . . all kind of . . . technology improves, computer systems improves. And, so that information . . . is not retained. I mean, the Court will also remember the verdict…the . . . the reversal of this case doesn't come until 2009 when we get the . . . final Opinion from the Court and it brings it back.

According to the prosecutor, the fact that the 2003 channel list no longer existed went to the weight, not the admissibility, of Hagy's testimony:

> And, again, when you look at the call detail records, as the defense wants to stand in and of themselves and on their own, they don't work. If they want to put an expert up there to say they work, that's fine. They can certainly do that. If they want to challenge [Hagy] as to why it is he is changing the records, that's fine. They can certainly do that. And, they can bring up the fact that the database doesn't exist. They can bring up all of that in cross-examination.
>
> * * *
>
> We did not seek to exclude their cellular expert. He is perfectly entitled to testify as to the records as he sees them, and as to the issues he potentially sees with [Hagy's] analysis. That's going to go before the jury. And, ultimately, it's a matter of weight for [the jury] in terms of what it is that they're going to do with [Hagy's testimony], and how they're going to interpret it.

The prosecutor further countered that Santiago's Sixth Amendment Confrontation Clause argument lacked merit, pointing out that Santiago had had the opportunity to request the 2003 channel list and question Hagy about its contents at the 2006 trial. Accordingly, the prosecutor argued, Santiago's confrontation rights could not be violated by allowing Hagy to give the exact same testimony at the 2015 trial:

> [Defense] Counsel mentioned the right to confrontation. Again, [Santiago] had a prior trial. He had that opportunity. I can't speak as to why it is that [Santiago's former defense attorney] did or did not do anything. But, the reality was, the [2003 channel list] was available at that particular point in 2006 when [Santiago] was facing trial. And, ultimately, that information, for whatever reason, was not sought…was not looked to be questioned…was not the subject of cross-examination for [Hagy.]

Finally, the prosecutor argued that Hagy's testimony and related exhibits fell under the business records exception to the rule against hearsay.

The court continued the hearing until the next day and asked the State to provide more information on the exact circumstances surrounding the destruction of the 2003 channel list. When the hearing resumed, the prosecutor reported that the ANET database, which Hagy had used to create the 2003 channel list, was decommissioned in 2008, when Cingular "completely dismantled" its old network technology, which ANET had controlled, in favor of new, more advanced systems. In addition, Hagy informed the prosecutor that he likely destroyed his physical copy of the 2003 channel list in 2011, when he cleaned out his office to begin telecommuting; and his digital copy was no longer available because it would have been kept on one of his work computers, which

were leased by Cingular and routinely wiped of information when returned to the computer leasing companies.

The court granted Santiago's motion, ruling that the State was precluded from presenting any evidence, including expert testimony by Hagy, that was based on the CDRs as corrected by Hagy. The court found that the destruction of the 2003 channel list was fatal to the admission of Hagy's testimony, even though the State had not acted in bad faith and Santiago's defense counsel had had the opportunity to obtain the 2003 channel list prior to and during the 2006 trial but had failed to request it. The court also found that Rule 5-1004 did not apply because Hagy's account of the contents of the 2003 channel list was not a sufficient "second source" of that information. The court made clear that its ruling was based primarily on assuring fairness to the defense.

The State filed a motion for reconsideration of the court's ruling on September 14, 2015. The court heard the motion that same day (the first day of trial). To support the motion, the prosecutor called Hagy to testify about the facts (recounted above) regarding his engineering analysis and corrections to Santiago's CDRs for the June 2003 calls. Thereafter, the prosecutor reiterated his prior arguments, emphasizing that the methodology and data Hagy testified about employing in his engineering analysis provided a sufficient factual basis for his expert opinion under Rule 5-702:

> [T]he bar for the factual basis that is necessary for an expert to testify is quite frankly very low. You can use almost anything as I said. You can use inadmissible hearsay. You can use admissible hearsay. Opinions of others in certain circumstances….But we're not even going that far here. Everything that [Hagy] had testified to today would be admissible. And that forms a factual basis for his testimony.

The prosecutor further clarified that the unavailability of the 2003 channel list was not relevant to whether Hagy's testimony was admissible under Rule 5-702; rather, it only was relevant to Santiago's confrontation and due process rights under the Sixth Amendment. The prosecutor argued that there would be no violation of Santiago's right to confrontation (or his due process rights) because Hagy was available for cross-examination, the 2003 channel list was not "on it's [sic] face exculpatory[,]" and the destruction of the 2003 channel list was through no bad faith of the State. Finally, the prosecutor urged the court to consider the unfairness to the State if Hagy's testimony were excluded:

> It would be very ironic if—you know the State hasn't done anything wrong in this case. Even the overturning of this case. [Santiago] had his fair trial. He had two weeks worth of a trial. He had a competent attorney who got the charge down from first degree murder to second degree murder. He killed Latoya Taylor. Okay. The State hasn't done anything wrong in this situation. And it would be ironic and tragic quite frankly if at this stage because of a[n] 11th hour request and demand by [Santiago] about a database that he knew about. And when I say he, his attorney knew about it so he knew about it. Knew about it 10 years ago. [The Defense] didn't put anybody on notice that they wanted it and now they come in here and say hey, we've got to have it. And it would be very ironic and tragic if the Court was persuaded by these arguments to gut the State's case and this man would walk after killing Latoya Taylor when again, the State has done zero wrong in this case. We gave him his fair trial. Had provided him all the information that he needed to defend himself. And now we're going to say because [defense counsel] wanted it and for whatever reason along the way [they] didn't think to ask for it and now we have three, well six years after it's been destroyed. Never in the possession of the State. We want to talk about fair? State's entitled to some fairness as well Your Honor.

The court vacated its ruling from the day before and, relying on the prosecutor's arguments, determined that Hagy's anticipated expert testimony was admissible.

2. Contentions on Appeal

Santiago contends the trial court's ruling was an abuse of discretion. He reiterates the arguments made below: 1) there was an insufficient factual basis for Hagy's expert opinions, under Rule 5-702, because his analysis relied on a "speculative assumption" that the switches in Santiago's CDRs were incorrect and the radio channel numbers were correct; and because his analysis was "based on his untestable assertions about the content of the destroyed June 2003 channel list"; 2) the expert testimony was inadmissible hearsay that "merely report[ed] a conclusion drawn from unintroduced records"; and 3) the destroyed 2003 channel list "shielded" Hagy's testimony "from effective cross-examination," in violation of Santiago's Sixth Amendment confrontation right. Santiago maintains that the court's abuse of discretion was not harmless beyond a reasonable doubt given that the State had conceded in its motion for reconsideration that exclusion of Hagy's expert testimony would "gut the State's case."

The State responds that the factual basis required for expert testimony under Rule 5-702 only "excludes 'mere' speculation or conjecture" and does not "stamp out all inferential reasoning[.]" It cites *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 481 (2013) (in turn quoting *CSX Transp., Inc. v. Miller*, 159 Md. App. 123, 202–03 (2004)), for the proposition that an expert witness need only "'provide a sound reasoning process'" or "rational explanation" for arriving at his or her conclusion. It maintains that Hagy's testimony satisfied these requirements, as his conclusion that the switches in the CDRs were wrong was an informed one based on his work experience; moreover, the missing

2003 channel list did not render Hagy's expert opinion inadmissible because it is "not meaningfully different from any other study built on inaccessible data." Quoting 6 Lynn McLain, Maryland Practice: Maryland Evidence State and Federal § 703:1(a) (3d ed. 2013), the State also argues that Hagy's testimony did not violate the rule against hearsay because Rule 5-703 expressly allows expert testimony to be based on "'first-hand knowledge, hearsay, or a combination of the two.'" Finally, the State maintains that Santiago's right of confrontation was not infringed because whether Santiago had his "preferred documental weapon for cross-examination" is "beside the point[.]" Defense counsel had every opportunity to cross-examine Hagy about the missing 2003 channel list at trial. Accordingly, "the jury was not left without sufficient information to make a discriminating appraisal of Hagy's testimony."

i. Factual Basis for Hagy's Expert Opinion Testimony

The admissibility of expert testimony "'"is within the sound discretion of the trial court[.]"'" *Hall v. State*, 225 Md. App. 72, 85 (2015), *aff'd*, 346 Md. 679 (1997) (quoting *Brown v. Contemporary OB/GYN Assocs.*, 143 Md. App. 199, 252 (2002) (in turn quoting *Pepper v. Johns Hopkins Hosp.*, 111 Md. App. 49, 76 (1996))). Here, we only will disturb the court's decision to admit Hagy's expert testimony if it was "'"founded on an error of law or some serious mistake, or if the trial court clearly abused its discretion[.]"'" *Id.* (citations omitted).

In ruling whether to admit expert testimony, the trial court "shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or

education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony." Md. Rule 5-702. Santiago's challenge to the trial court's ruling focuses on the third factor, sufficient factual basis. The Court of Appeals has interpreted that factor to include two sub-factors, "factual basis and methodology." *Exxon Mobil Corp*, 433 Md. at 478 (citing *CSX Transport, Inc.*, 159 Md. App. at 189). Together they require that "sufficient facts . . . underlie the expert's opinions that indicate the use of 'reliable principles and methodology in support of the expert's conclusions' so that the opinion constitutes more than mere speculation or conjecture.'" *Id*. (quoting *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 182–83 (2003)); *see also Giant Food, Inc.*, 152 Md. App. at 182–183 ("An expert's opinion testimony must be based on [an] adequate factual basis so that it does not amount to 'conjecture, speculation, or incompetent evidence.'") (quoting *Uhlik v. Kopec*, 20 Md. App. 216, 223–24 (1974)). As stated in *Days Cove Reclamation Co. v. Queen Anne's Cty*, 146 Md.App. 469, 488–89 (2002):

> It is well established that an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant. An expert opinion derives its probative force from the facts on which it is predicated, and these must be legally sufficient to sustain the opinion of the expert.

(Internal citations and quotations omitted.) In short, experts may not "simply hazard guesses, however educated, based on their credentials." *Porter Haydon Co. v. Wyche*, 128 Md.App. 382, 391 (1999).

These cases make clear that there was a sufficient factual basis for Hagy's expert opinion testimony. For many years, Hagy had worked as a radio network engineer and as a validator for Cingular. From his substantial experience, he had specialized knowledge about how cell sites and cell phones broadcast and seek signals. He also had experience with and personal knowledge of Cingular's "re-homing" process and familiarity with the particular cell sites involved in this case. His knowledge and experience enabled him to recognize that Santiago's CDRs produced geographical impossibilities that could not be accurate and that the switch numbers, which were subject to rehoming at the relevant time, were the likely culprit. By using a logical reasoning process in comparing the CDRs to a database he used as part of his day-to-day job managing Cingular's network, Hagy was able to deduce that calls designated as being made in switch 3 in fact were made in switch 2. Hagy's analysis was far from the speculation, conjecture, and guesswork that Rule 5-702 is meant to guard against.

Santiago insists that Hagy's analysis was factually deficient because it rested on an "unsupported assumption" that the switches, not the radio channel numbers, were inaccurate. In support, he points to Hagy's concession on cross-examination that, "if the radio channel information were incorrect, his 'entire analysis goes out the window.'"

Santiago mischaracterizes Hagy's analysis. Merely because it is technically true, as Hagy acknowledged, that his analysis would be meaningless if the radio channel numbers were in fact incorrect does not mean that his conclusion that the switches were the source of the problem was "unsupported." As discussed above, there was a good

reason Hagy focused on the switches in theorizing why the CDRs showed several geographically impossible calls. He personally knew from his work experience at Cingular that the calls in question were made at a time when Cingular was frequently "re-homing" cell sites from one switch to another. In addition, he knew from work experience that the fraud and billing department's primary function was billing current customers, and therefore it easily could accidentally generate CDRs based on "re-homing" changes made after the 2003 calls, when those re-homing changes should not have been applied. Moreover, as Hagy explained, the radio channel number was the most specific piece of identifying data for each call entry, while the switch number was the least specific. It made logical sense, therefore, for him to begin his analysis by testing the accuracy of the broadest data point, the switch numbers. In addition, Hagy "validated" that every single non-switch 3 call in the CDRs was accurate according to the 2003 channel list. Santiago was free to point out on cross-examination that Hagy had to assume the accuracy of the radio channel and cell site numbers as part of his analysis. That did not transform Hagy's analysis into mere conjecture, however.

Similarly, the destruction of the 2003 channel list did not divest Hagy's testimony of a sufficient factual basis. The Court of Appeals has declined to hold that "expert scientific testimony and a scientific report can never be admissible unless the opponents have been furnished with the raw data on which the testimony and report are based."

U.S. Gypsum Co. v. Mayor of Baltimore, 336 Md. 145, 172 (1994).[6] In that case, defendant Asbestospray unsuccessfully sought to exclude the testimony of Dr. S. Levin about "the results of a clinical survey which he . . . conducted regarding the incidence of asbestos-related disease among New York City school custodians." *Id.* at 170. Asbestospray argued that the testimony should be excluded because it "did not have access to any of the underlying data contained in the custodian study[,]" *i.e.*, medical questionnaires and test results. *Id.* Before the trial court and the Court of Appeals, Asbestospray "conceded that Dr. Levin was entitled to withhold the underlying data on the ground of confidentiality." *Id.* at 171 n.8. It argued, however, that because it did not have access to the data underlying Dr. Levin's opinions, "Dr. Levin should not have been permitted to testify . . . nor should the study itself have been admitted into evidence." *Id.* Rejecting this argument, the Court noted that it was not aware of any cases, "in this State or elsewhere, holding inadmissible expert testimony based on scientific research on the ground that the other side did not have access to the data underlying the research." *Id.* at 172. It held that Asbestospray's "asserted lack of access to the data goes only to the weight the jury might give to [Dr. Levin's] study and to Dr. Levin's testimony rather than to the admissibility of such evidence." *Id.* at 173.

[6] The Court defined the issue before it as "whether an expert witness may testify as to the results of research efforts, and whether that expert's written findings may be admitted into evidence, when the underlying scientific data was not voluntarily given to the opposing party and when the opposing party made no effort under the rules of procedure to obtain the underlying data." *U.S.* Gypsum, 336 Md. at 171.

U.S. Gypsum is on point. Dr. Levin's study and expert opinion about asbestos-related disease among New York City school custodians were admissible without the underlying data being accessible. Likewise, Hagy's engineering analysis and opinion about Santiago's CDRs was admissible without the 2003 channel list being accessible. While its destruction certainly is unfortunate, the fact that Santiago could not access the 2003 channel list did not render Hagy's "engineering analysis" and expert opinion inadmissible. It only was relevant to the weight the jury might give Hagy's testimony.

Our conclusion is in accordance with Rule 5-703, which provides:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Md. Rule 5-703(a) (emphasis added). That Rule memorializes the long established concept that the "factual basis" for an expert's opinion "'may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions.'" *Taylor v. Fishkind*, 207 Md.App. 121, 143 (2012) (quoting *Sippio v. State*, 350 Md. 633, 653 (1998)). It also "embodie[s]" the common law principle that an expert witness may "express an opinion that is based, in part, on hearsay if the hearsay is of a kind that is customarily relied on by experts in that particular calling." *Kent Village Assoc. Joint Venture v. Smith*, 104 Md. App. 507, 524 (1995).

Hagy personally compiled the 2003 channel list from Cingular's ANET database and personally used it to analyze and validate Santiago's CDRs. He testified to its contents and purpose: it was a spreadsheet of Cingular's network configuration during a specific time frame, which Hagy ordinarily used to perform his job managing and growing Cingular's network and to validate other subpoenaed CDRs. Accordingly, the fact that the 2003 channel list no longer existed and therefore could not be admitted into evidence did not deprive Hagy's testimony of an adequate factual basis, under Rules 5-702 and 5-703.

ii. Hearsay

For the same reason, Santiago's hearsay argument lacks merit. Santiago relies on *Goodman v. State*, 2 Md.App. 473 (1967), for the proposition that "testimony that merely reports a conclusion drawn from un-introduced records—like the destroyed June 2003 Channel List—is inadmissible hearsay." *Goodman* is inapposite. That case involved the testimony of a lay witness who reported his conclusions from business records that he did not prepare and that had not been admitted in evidence. We concluded that the business records exception to the rule against hearsay did not permit such testimony without the records in evidence. The factual basis of an expert's opinion was not before us. As we already have explained, under Rule 5-703 expert witnesses may base their opinions and conclusions on inadmissible evidence, including hearsay, under certain circumstances, which have been met here.

iii. Sixth Amendment Confrontation Right

Santiago's Sixth Amendment Confrontation Clause argument also fails. The "'main and essential purpose' of the Confrontation Clause is to ensure that the defendant has an opportunity for effective cross-examination of adverse witnesses, 'which cannot be had except by the direct and personal putting of questions and obtaining immediate answers.'" *Taylor v. State*, 226 Md. App. 317, 332 (2016) (quoting *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974)). Article 21 of the Maryland Declaration of Rights likewise guarantees criminal defendants the same opportunity for effective cross-examination. *Marshall v. State*, 346 Md. 186, 192 (1997). The Supreme Court has emphasized that "the right to confrontation is a *trial* right, designed to prevent improper restrictions on the types of questions that defense counsel may ask during cross-examination." *Pennsylvania v. Ritchie*, 480 U.S. 39, 52 (1987) (additional citations omitted). It "does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony." *Id.* at 53. It "only guarantees 'an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *Id.* (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985)).

A defendant's right to confrontation may be violated when defense counsel is "prohibited from engaging in otherwise appropriate cross-examination designed . . . 'to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.'" *Delaware v. Van Arsdall*, 475 U.S. 673, 680

(1986) (quoting *Davis*, 415 U.S. at 318). The defendant must show that "[a] reasonable jury might have received a significantly different impression of [the witness's] credibility had respondent's counsel been permitted to pursue his proposed line of cross-examination." *Id.*

In *Delaware v. Fensterer*, 474 U.S. 15 (1985), the defendant argued that his confrontation right was infringed when the State's expert witness acknowledged in his testimony that he could not remember the basis for his expert opinion. The Supreme Court rejected this argument, holding that defense counsel was able to meaningfully cross-examine the expert to "demonstrate[] to the jury that [he] could not even recall the theory on which his opinion was based." *Id.* at 20. In addition, "through its own expert witness, the defense was able to suggest to the jury that [the State's expert] had relied on a theory which the defense expert considered baseless." *Id.*

In *U.S. Gypsum*, the Court of Appeals similarly concluded that Asbestospray had not been deprived of meaningful cross examination of Dr. Levin, where Asbestospray's defense attorney had the opportunity to expose the assumptions and inaccessible data underlying Dr. Levin's opinion:

> Asbestospray makes the general complaint that its inability to view the underlying data precluded it from engaging in any meaningful cross-examination of Dr. Levin. Nevertheless, the record discloses that, based on the information contained in the study itself, counsel for the defendants below were able to cast doubt on a number of the study's findings during their cross-examination of the author, Dr. Levin. Furthermore, the defendants fully cross-examined Dr. Levin with regard to the assumptions which he made in shaping his research. The fact that the defendants did not have the underlying data was fully revealed to the jury on cross-examination, and it was emphasized in closing argument.

336 Md. at 172–73.

Fensterer and *U.S. Gypsum* support the State's position. As Santiago concedes, his defense counsel had the opportunity to expose Hagy's assumption that the switches were incorrect and the radio channel numbers were correct during cross-examination. Defense counsel's questioning also revealed on numerous occasions that the 2003 channel list, central to replicating Hagy's analysis, had been destroyed. Defense counsel took advantage of this in closing argument. There is nothing in the record to suggest that there was some prohibited line of questioning that would have given the jury a "significantly different impression" of Hagy's "credibility[.]" *Van Arsdall*, 475 U.S. at 680. There was no Confrontation Clause violation arising out of the unavailability of the 2003 channel list.

II.

The court and counsel conferred about proposed jury instructions. The court proposed giving the following instruction about expert opinion testimony:

> An expert is a witness who has knowledge, skill, experience, education or special training in a given field. You should consider an expert's opinion together with all of the other evidence. In weighing the opinion of an expert, in addition to the factors that are relevant to any witness's credibility, you should consider the expert's knowledge, skill, experience, training or education, as well as the expert's knowledge of the subject matter about which the expert is expressing an opinion. You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert's opinion.

This instruction is identical to the Maryland Criminal Pattern Jury Instruction ("MPJI-CR") 3:14, Expert Opinion Testimony, then in effect.

Defense counsel objected, arguing that the proposed instruction only addressed the expert's "qualifications." He asked the court to give a modified instruction that told the jurors to consider the "factual basis" for the expert's opinion and the "reasonableness of any assumptions" the expert relied on. Defense counsel's requested instruction was as follows:

> An expert is a witness who has special training or experience in a given field. *You should give expert testimony the weight and value you believe it should have. You are not required to accept any expert's opinion. You should consider an expert's opinion together with all the other evidence.* In weighing the opinion of an expert, you should consider: (1) the expert's experience, training, and skills; (2) the expert's knowledge of the subject matter about which the expert is expressing an opinion; (3) the factual basis of the expert's opinion; and (4) the reasonableness of any assumptions that the expert relies upon in reaching his opinions.

The italicized sentences are identical to the language in MPJI-Cr 3:14 but appear in a different order. The first sentence fails to include that an expert witness can be a witness who has knowledge, skill, or education in a given field. The fourth sentence omits that in weighing the opinion of an expert, the jurors are to consider the factors relevant to any witness's credibility and further changes what the jurors should consider by omitting some of the language of MPJI-Cr 3:14 and adding that the jurors should consider "the factual basis of the expert's opinion" and "the reasonableness of any assumptions that the expert relies upon in reaching his opinions."

The prosecutor opposed defense counsel's instruction as a legally improper attempt to put before the jury "factors" relevant to the admissibility of an expert's opinion testimony under Rule 5-702, which is a determination solely for the court. The court

agreed and declined to give the requested instruction, saying that defense counsel could argue in closing "the lack of factual basis and lack of reasonableness of assumptions." Defense counsel did so.

Santiago contends the court abused its discretion by refusing to give the requested instruction, particularly "[i]n light of the trial court's ruling on reconsideration that [Hagy's] testimony would be admitted and that questions about the factual basis for and assumptions underlying his opinions would go to the weight, instead of the admissibility, of the evidence[.]" He argues that under those circumstances, the court was required to give the instruction defense counsel requested.

The State counters that if there was not an adequate factual basis for Hagy's expert opinion, the court would not have admitted it into evidence; and that Santiago's argument is "simply a redux of his challenge to the admission of Hagy's testimony[.]" It maintains that the instruction as given "sufficiently allowed the jury to consider Santiago's challenges to the testimony" by telling them to "(1) weigh Hagy's knowledge of the subject matter about which he expressed his opinion; (2) assess the weight and value of Hagy's opinion; and (3) feel free to reject Hagy's opinion[.]" Accordingly, the court was within its discretion to decline to give Santiago's requested instruction.

We will not disturb the trial court's decision to deny a requested jury instruction unless it constitutes an abuse of discretion. *Carroll v. State*, 202 Md. App. 487, 501–02 (2011). Rule 4-325(c) provides that, "at the request of any party," the trial court "shall[] instruct the jury as to the applicable law and the extent to which the instructions are

binding" but "need not grant a requested instruction if the matter is fairly covered by instructions actually given." Thus, it would be an abuse of discretion for a trial court to deny a requested instruction that is a correct statement of the law, is generated by the evidence, and is not fairly covered by the instructions given. *Cost v. State*, 417 Md. 360, 368–69 (2010); *see also Carroll*, 202 Md. App. at 501.

The instruction requested by Santiago was not a correct statement of the law. He has cited no cases, nor have we found any, holding that jurors must be instructed to consider the factual basis of an expert's opinion and the reasonableness of the expert's assumptions in weighing the expert's opinion. The State correctly points out that those considerations are before the court in ruling on the admissibility of the opinion to begin with; it is not for the jurors to reassess factors going to admissibility. The proposed instruction also was an incorrect statement of the law because it omitted the expert's knowledge and education as considerations for the jurors to weigh, as well as factors relevant to any witness's credibility.

The trial court did not abuse its discretion in declining to give Santiago's requested instruction on expert witness testimony.

III.

As noted, on June 14, 2003, Santiago made a claim with State Farm that his Jeep Cherokee had been stolen. State Farm investigated the claim and denied it. Its records show that the claim was denied because Santiago "failed to comply with the conditions of the policy requiring the assistance and cooperation of the insured in submitting to an

examination under oath" or in "providing material documents and information." The records also document that the State Farm adjusters believed there was "a question" as to "whether the cause and origin of the loss was accidental in nature[,]" and as to whether Santiago engaged in "concealment and material misrepresentation . . . following the loss."

Prior to trial, Santiago filed a motion in limine seeking to preclude the State from introducing the State Farm records into evidence. He argued that admission of the records would violate his Fifth Amendment right against self-incrimination. He complained that the State was presenting the records showing he would not submit to an examination under oath to impermissibly encourage the jury to "draw an adverse inference" of guilt based on his silence. In addition, he argued that the State Farm records were irrelevant; were needlessly cumulative in light of "law enforcement testimony regarding the facts and circumstances of the theft and fire"; and any probative value they might have was substantially outweighed by the likelihood of unfair prejudice.

The court held a hearing on Santiago's motion in limine on September 9, 2015. The State maintained that Santiago had set his Jeep on fire to destroy evidence of the murder and concocted the story that the Jeep had been stolen in the early morning hours of June 14, 2003, in an attempt to show that he had nothing to do with setting it on fire. The prosecutor argued that the State Farm records were relevant to undermine Santiago's position and to show consciousness of guilt. The prosecutor further argued that "there is no indication of a Fifth Amendment privilege and there is no police involvement. . . . No

one forced or compelled [Santiago], which is what the Fifth Amendment is about, to make the insurance claim."

The next day, the court denied Santiago's motion, ruling that the Fifth Amendment did not apply and the State Farm records were "highly" relevant:

> I find that here that there was no…there was no indication that [Santiago] was compelled to make any self-incriminating statements, and the Fifth Amendment only protects against compelled self-incrimination. He affirmatively called the police. He affirmatively made a claim. And, again, no one has tried to force him to testify. The evidence regarding this issue is highly relevant, and it is probative to show consciousness of guilt, and [Santiago's] actions created any prejudice. So, I do find that the prejudice is not outweighed by the probative value. So, that Motion is denied.

Santiago objected when the State introduced the State Farm records at trial.

Santiago contends the trial court erred in admitting the State Farm records because they were "not probative of consciousness of guilt[.]" Relying on *Weitzel v. State*, 384 Md. 451 (2004), and *Snyder v. State*, 361 Md. 580 (2000), he argues that his refusal to submit to an examination under oath is analogous to a defendant's pre-arrest silence in the presence of police or failure to follow up on a police investigation, which is not substantively admissible as probative of guilt. The State responds that Santiago's analogy is flawed because there was no police involvement in Santiago's voluntarily made claim against State Farm or his decision to cease cooperating in State Farm's claim investigation, and the State Farm records were probative of Santiago's consciousness of guilt and therefore were relevant.

In "weighing the relevancy of evidence[,]" trial judges "generally have 'wide discretion[.]'" *State v. Simms*, 420 Md. 705, 724 (2011) (quoting *Young v. State*, 370

Md. 686, 720 (2002)). They "do not have discretion to admit irrelevant evidence[,]" however. *Id.* (citing *Pearson v. State*, 182 Md. 1, 13 (1943)). On review of a trial court's decision to admit or exclude evidence based on relevance, we must consider:

> [F]irst, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403. During the first consideration, we test for legal error, while the second consideration requires review of the trial judge's discretionary weighing and is thus tested for abuse of that discretion.

Id. at 725 (internal citations omitted).

We agree with the State that the pre-arrest silence criminal cases such as *Weitzel* and *Snyder* are inapposite. In *Weitzel*, the Court held that "pre-arrest silence in police presence is not admissible as substantive evidence of guilt under Maryland evidence law" (384 Md. at 461) because it "is too ambiguous to be probative[.]" *Id.* at 456. Observing that "silence is the natural reaction of many people in the presence of law enforcement officers[,]" *id.* at 460, and recognizing the unique impact that police presence has on citizens, the Court explained:

> We cannot ignore the ubiquity with which depictions of police procedures appear in popular entertainment, particularly the "*Miranda* warnings," and the consequent understanding that any statement made in the presence of police "can and will be used against you in a court of law." Although the Supreme Court has required only that such warnings be given when police are engaging in custodial interrogation, the average citizen is almost certainly aware that any words spoken in police presence are uttered at one's peril. While silence in the presence of an accuser or non-threatening bystanders may indeed signify acquiescence in the truth of the accusation, a defendant's reticence in police presence is ambiguous as best.

Id. at 461.

In the case at bar, there was simply no police involvement whatsoever with State Farm's investigation into Santiago's insurance claim. State Farm is a private entity that was prompted to investigate the disappearance and destruction of Santiago's Jeep by Santiago himself. This is the exact scenario that the *Weitzel* Court specifically distinguished—"silence in the presence of an accuser or non-threatening bystander[s]" other than a police officer, which, it noted, "may indeed signify acquiescence in the truth of the accusation[.]" *Id.* at 461. *Snyder* is similarly inapplicable. There, the Court held that the defendant's "failure to inquire about the progress of the police investigation into his wife's murder" was "too ambiguous and equivocal" to be admissible as substantive evidence of his consciousness of guilt. 361 Md. at 596. It noted the absence of "evidence that the [defendant] was requested by the authorities to inquire regularly" or "evidence that [he] voluntarily stated that he would regularly inquire." *Id.* Here, the investigation in question was not being conducted by the police and was voluntarily initiated by Santiago. Further, Santiago's insurance policy with State Farm required his cooperation in any claim filing and investigation. The very evidence the *Snyder* Court found lacking is present in this case.

The State Farm records showed that Santiago filed a stolen vehicle claim for his Jeep and then refused to cooperate with State Farm by giving a requested examination under oath. This evidence tended to show that Santiago knew there was no factual basis for his stolen vehicle claim. It was probative of consciousness of guilt and was not unfairly prejudicial.

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