Circuit Court for Wicomico County
Case No. 22K16000001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1970

September Term, 2016

TRAVIS JONES

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Alpert, Paul E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 3, 2017

Following the heartrending death of then two-year-old Ayden Andrews, a jury in the Circuit Court for Wicomico County convicted Travis Jones ("Appellant") of involuntary manslaughter, first-degree child abuse resulting in the death of a child, and related offenses on July 20, 2015.[1] Appellant asks two questions on appeal:

> 1. "Did the trial court err when it denied Mr. Jones's motion to suppress two of the statements he gave to the police?"
>
> 2. "Did the trial court abuse its discretion when it permitted the State to introduce unduly prejudicial autopsy photographs?"

For the reasons stated below, we answer the second question in the negative and conclude that Appellant waived the first issue at trial. Accordingly, we affirm.

BACKGROUND

A. Motion to Suppress

Prior to trial, Appellant moved to suppress two among the several pre-trial statements he made to police. Specifically, Appellant moved to exclude a statement he made to police at the hospital on July 20, 2015, and most of the statements he made to police later when he was interrogated at the police station on January 4, 2016. He argued that the July 20 interview was a custodial interrogation without *Miranda* rights, and that he invoked his right to silence during the January 4 interrogation.

[1] We note that Ayden's name is spelled "Aiden" in the transcripts, but the documentary evidence demonstrates that the correct spelling is "Ayden."

On May 6, 2016, the circuit court held a hearing on Appellant's motion. Maryland State Police Corporal Donna Hale testified first.[2] Corporal Hale testified that on July 20, 2015, she responded to Peninsula Regional Medical Center ("PRMC") after receiving a call that a two-year-old, Ayden, was unresponsive. When Corporal Hale arrived, Ayden was pronounced dead. After viewing Ayden's body and speaking with the Medical Examiner, Corporal Hale "learned preliminarily that there was significant bruising all over Ayden's body"; "[t]hat he was extremely dehydrated"; and that "[h]e arrived [at PRMC] with a diaper filled with feces and urine[] [a]nd the skin on his buttocks was sloughed off from being in the diaper that he was in for a prolonged period of time."

After speaking with Sergeant Crockett of the Salisbury Police Department, Corporal Hale learned that Appellant, who was seated outside of Ayden's room, had been home with Ayden and had called 911 requesting emergency medical assistance. Corporal Hale approached Appellant and asked to speak to him. Appellant agreed to speak with Corporal Hale and the two went into a small conference room at PRMC.

Appellant was not handcuffed or physically restrained; he sat on a couch in the conference room across from Corporal Hale. According to Corporal Hale, "[i]t was not a custodial environment. He was not under arrest. It was an interview, and he was free to leave at any time." Although Corporal Hale was carrying a weapon, it was concealed under her suit jacket. At some point during the interview, a second plain-clothes officer entered the room, and a uniformed officer was stationed in the hallway. The interview lasted about

[2] At the time of the events in this case, Corporal Hale was a trooper first class. We will refer to her by her current rank.

45 minutes and ended with Corporal Hale informing Appellant that she would be in touch once she had more information.

The investigation progressed for several months, over which the police executed two search warrants of Appellant's home and one of his phone records. Eventually, the Medical Examiner determined Ayden's cause of death and, with that information, an indictment was filed on January 4, 2016, charging Appellant with Ayden's murder.

That same day, Corporal Hale served Appellant with his indictment, read him his *Miranda* rights, and interviewed him (along with Detective Daniel Schultz of the Wicomico County Sheriff's Office) for a second time. During that interview, the following exchange took place between Detective Schultz and Appellant:

> Q So what happened? Something happened, Travis?
>
> A All the bruises on Ayden were all through that whole week, when Ayden goes to the playground, when Ayden falls [playing] with [his older sister] Amira, when Ayden fell out of the car. You guys are trying to tell me that I beat him that day.
>
> Q No, no, no. Because—no.
>
> A And it's not happening.
>
> Q No.
>
> A I'm not falling for it.
>
> Q Well there's nothing to fall for.
>
> A Okay.
>
> Q I just want to know, because—
>
> A **Well, then take me back over [to Wicomico County Detention Center** (where he was being held on a traffic offense)]—

Q Because here's the thing—

A **—because I'm tired of talking because you don't want to listen to me.**

Q **I am listening. I'm not yelling at you. I'm listening.**

A **I'm done talking to—**

Q I think that you're upset with the fact that you said that you had to keep the secret. And it must be tough. It's got to be hard. This has got to be hard to keep this secret.

A **There's no secret to keep.**

Q There is.

A **Let me tell you something.**

Q You've already told us there was a secret.

A **Let me tell you something. Let me—listen to me good.**

Q I'm going to listen, but I'm telling you—

A I serve a higher power greater than me.

Q Well, that' fine.

A And God knows that I don't—

Q So he knows what you did.

A Right.

Q So he knows about it.

A And God knows that I didn't kill my son.

(Emphasis added).

Following Corporal Hale's testimony, Appellant argued that the court should suppress a statement he made during his first interview with Corporal Hale at PRMC on the day Ayden died. He contended that the interview amounted to a custodial interrogation and Corporal Hale never provided him the proper warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).[3] Second, Appellant sought to suppress a statement he made after the above-quoted exchange with Detective Schultz during the January 4, 2016, interview. He argued that he had invoked his right to silence during the interview, and any statements he made after this invocation should be suppressed. The suppression court denied the motions.

B. Appellant's Trial

On the morning of July 20, 2015, Melissa Andrews, Ayden's mother, woke up around 8:00 A.M. to get ready for work. She lived in Salisbury in a two-story home with her children – Ayden and a then four-year-old daughter whom we shall refer to as "the daughter" – and Appellant. At the time, Ms. Andrews had been dating Appellant for approximately two years, and they were engaged. Ms. Andrews testified, however, that the relationship was "rocky," she had argued with appellant, and she had asked Appellant to leave, but he refused. There was no central air conditioning in the house, but there were

[3] "Specifically, police must warn a suspect that 'he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.'" *Lee v. State*, 418 Md. 136, 149 (2011) (quoting *Miranda*, 384 U.S. at 479).

two window air conditioning units – one downstairs for the living room, and one upstairs in the master bedroom. The children's bedrooms were upstairs.

Prior to leaving the house around 9:15 A.M., Ms. Andrews checked on her children. Ayden had a dirty diaper, and she informed Appellant, who stayed home to take care of the children during the day. Ms. Andrews and Appellant communicated via text message during the day, which was routine. Around 7:00 P.M., Ms. Andrews called Appellant to let him know she was coming home.

When Ms. Andrews got close to home, however, she noticed several police cars passing her, and she saw many officers around her house. At that time, Appellant called Ms. Andrews and informed her that something had happened to Ayden and that she should come to PRMC. When she got to there, Appellant attempted to explain what had happened, but Ms. Andrews told him to "get the F out of my face." Ms. Andrews was then able to see Ayden, who was wearing the same clothes as he was before she left the house, and she observed several bruises that had not been visible that morning. Doctors informed her that Ayden had passed away.[4]

In a phone call with Appellant later that evening, Appellant told Ms. Andrews that he did not know what had happened, but he blamed the daughter. Ms. Andrews broke off the engagement and has not spoken with Appellant since August 2015.

Corporal Hale responded to the PRMC around 7:40 P.M., and conducted the first interview with Appellant as explained *supra*. Corporal Hale audio-recorded the interview,

[4] Indeed, Dr. Brian Delligatti, an emergency medicine physician at PRMC, testified that the victim was "clinically deceased" when he arrived at the hospital at 7:25 P.M.

and the State played this recording for the jury at trial. Corporal Hale testified that Appellant was initially upset, but he quickly regained his composure and was even "jovial."

In this interview, Appellant said that he gave the children breakfast. Then, the children played in the living room while he cleaned the dishes and did chores around the house. At some point, the children built a fort in the living room. Ayden had a bologna and cheese sandwich for lunch and a piece of a "Hot Pocket" for a snack around 3:00 P.M. Around 5:30 P.M., Ayden was underneath the coffee table with pillows all around him, and Appellant thought he was taking a nap. Appellant said the last time he saw Ayden awake was at 3:00 P.M. After Ms. Andrews called around 7:00 P.M., Appellant tried to wake up Ayden, but he would not respond. Appellant then splashed cold water on Ayden's face and called 911.

Appellant also told Corporal Hale about an incident a few days prior when Ayden fell onto the coffee table because he was holding Appellant's thirty-pound cat. Appellant stated that Ayden "plays hard," jumps off things, and bruises easily.

Corporal Hale then looked at Ayden's body. She noted that Ayden was in a dirty diaper, that his skin was "sloughing away," and that he had bruises on his arms, legs, face, and head. In executing a search warrant at Ms. Andrews's home, Corporal Hale stated that there was no evidence of a pillow fort underneath the coffee table, and the toys were lined up against the wall. She did note, however, that the water was running in a bathroom sink. Later, in a phone call with Appellant, a recording of which was played for the jury at trial, Appellant said that the children's father was homosexual and had passed on some disease that had caused Ayden's death.

Dr. Russell Alexander, who testified as an expert in forensic pathology, performed an autopsy on July 21st. He stated that Ayden died as a result of dehydration and blunt force trauma, and the manner of death was homicide.[5] Dr. Alexander noted that there was "extensive" bruising all over Ayden's body. In fact, Dr. Alexander counted fifteen "impact sites" on the head and torso and did not count the bruises on the extremities because there were "so many." Dr. Alexander testified that the bruises appeared to be "fresh" and were not consistent with slips and falls or wrestling with a four-year-old sibling. Dr. Alexander also stated that there was evidence of diaper rash.

On July 23rd, Detective Schultz interviewed Appellant. The State played the audio recording of this interview for the jury at trial. Detective Schultz testified that in this interview, Appellant was "unsympathetic, worried about himself." Appellant's July 23rd interview was similar to his July 20th account. Appellant denied finding Ayden in his crib and stated that the daughter had cleaned up the toys. He also denied hitting or physically disciplining Ayden. Appellant said that Ayden had gotten into a bucket of water and disinfectant a few days prior to his death and that he also fell from his car seat to the curb. Appellant claimed that he was awake the day of the incident and had not fallen asleep at any point during the day.

Corporal Hale interviewed Appellant again on January 4, 2016. The State also played this audio-recorded interview for the jury at trial. In this interview, Appellant said that sometime after lunch, he picked up Ayden and carried him upstairs to his crib.

[5] The parties stipulated that it was 95 degrees on July 20th. Dr. Alexander testified that children may become dehydrated faster than adults.

Appellant then fell asleep in his room for three or four hours. He said that he awoke around 4:00 P.M. when Ms. Andrews called him saying she was getting off work. When Appellant went to check on Ayden in his crib, he was unresponsive. Appellant also claimed that he and Ms. Andrews had spanked Ayden on the evening of July 19th.[6]

The State charged Appellant with first-degree murder, second-degree murder, two counts of first-degree child abuse, second-degree child abuse, first-degree assault, second-degree assault, two counts of reckless endangerment, child neglect, and contributing to rendering a child a child in need of assistance ("CINA").[7] The court granted a motion for a judgment of acquittal as to rendering a child a CINA, and the State *nol prossed* one of the reckless endangerment counts.

At trial, Pandora Barkley, Appellant's mother, testified that she babysat the children sometimes. She stated that Ayden was "rambunctious," and he had a bruise on his face on July 17th. Appellant's counsel also introduced into evidence a report written by a Children's Advocacy Center employee who had interviewed the four-year-old daughter following Ayden's death. In this report, the daughter reported no physical abuse and said that she did not see Appellant hit Ayden. The daughter said that Ayden had been sick in his crib all day, and that Appellant also was upstairs most of the day.

[6] Ms. Andrews, however, testified that she never physically disciplined her children. She stated that Appellant would discipline the children by "yell[ing]."

[7] A CINA is a child "who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardians, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Maryland Code (1973, 2013 Repl. Vol., 2014 Suppl.), Courts & Judicial Proceedings Article ("CJP"), § 3-801(f).

Appellant also testified. He described his relationship with Ayden as "close." He said that on July 20th, he was doing chores "[t]hroughout the house," and he never got angry or upset with Ayden. He testified that at one point he "hollered" downstairs at Ayden, but he denied hitting Ayden. He stated that shortly after noon he saw Ayden lie down on the floor next to the coffee table, and he took Ayden upstairs and placed him in his crib. Three or four hours later, Appellant went to check on Ayden, and he was unresponsive. Appellant tried splashing Ayden with cold water and performed CPR before calling 911. Appellant claimed that he had changed his story of the events because he had "never witnessed a tragedy," and his "mind went somewhere."

The jury convicted Appellant of involuntary manslaughter, two counts of first-degree child abuse, second-degree child abuse, second-degree assault, reckless endangerment, and child neglect. The court merged the convictions for assault, reckless endangerment, and child neglect into the manslaughter conviction and also merged the child abuse convictions for sentencing purposes. The court then sentenced Appellant to forty years in prison for the child abuse conviction and a consecutive ten years for involuntary manslaughter. This appeal followed.

We include additional facts where necessary in the following discussion.

DISCUSSION

I. Motion to Suppress

Before this Court, Appellant maintains that the suppression court erred because the July 20th interview amounted to a custodial interrogation, and police did not provide him the required *Miranda* warnings. Appellant also contends that he properly invoked his right

to silence during the January 4th interview, but that the police continued questioning him in violation of his constitutional rights. According to Appellant, the court's error was not harmless because the State's case against him was circumstantial and relied on the inconsistency of the stories he told throughout the various police interviews.

The State responds that Appellant waived this issue because he made no objection at trial to the admission of the statements. If the issue is not waived, then the State maintains that the suppression court properly denied Appellant's motion because he was not in custody for the July 20th interview, and he did not unambiguously invoke his right to silence during the January 4th interview. The State also contends that any error in the court's admission of the January 4th statement was harmless because the statements made after Appellant purportedly invoked his right to silence were not inconsistent with his prior statements.

In *Jackson v. State*, 52 Md. App. 327, 331 (1982), this Court, in interpreting a predecessor to Rule 4-252,[8] held: "We conclude . . . that whenever a motion is filed seeking to suppress one of the types of evidence specified in [the predecessor rule], the lower court's ruling on the motion is . . . preserved for appellate review, even if no contemporary objection is made at trial." This Count continued, however, to remark that the "right of appellate review can be waived in many ways." *Id.* One method of waiving review occurs where "a pretrial motion is denied and at trial appellant says he has **no objection** to the

[8] Rule 4-252 provides that defendants must file a motion to raise certain issues, including matters concerning "[a]n unlawfully obtained admission, statement, or confession." Rule 4-252(a)(4).

admission of the contested evidence[.]" *Id.* at 332 (emphasis added); *see also Scott v. State*, 64 Md. App. 311, 321-22 (1985).

In this case, we conclude that Appellant has waived this issue for review. When the State sought to play the recording of the July 20th interview for the jury, the court asked if there were objections to the playing of the statement, and Appellant's counsel said that she had "[n]one, Your Honor." Similarly, before the State played the January 4th interview at trial, Appellant's counsel advised that she had no objection to the introduction of a transcript of the interview, and, later, when the State sought to play the entirety of the interview, Appellant's counsel stated that she had no objection. Accordingly, we conclude that Appellant has affirmatively acquiesced in the introduction of this evidence and has waived this issue for appellate purposes. *See Exxon Mobil Corp. v. Ford*, 433 Md. 426, 462 (2013) (defining waiver as "'a voluntary act of a party which is inconsistent with the assignment of errors on appeal [which] normally precludes that party from obtaining appellate review'" (emphasis and citation omitted)).

We observe that even if Appellant had not waived this issue, however, we fail to discern any error in the suppression court's rulings. In regard to the July 20th interview, we are persuaded that the totality of the circumstances of the interview indicate that there was no custodial interrogation necessitating *Miranda* warnings.[9] *See Brown v. State*, 452 Md. 196, 210-11 (2017) (discussing factors relevant to determination of whether an

[9] The suppression court commented on the interview as follows: "They [Corporal Hale, another officer, and appellant] were in a room at the hospital. The Defendant came to the room freely, of his own will. He was free to leave at any time. He, in fact, left freely after the interview was concluded."

individual is in custody and remarking that the question is "in light of 'the objective circumstances of the interrogation,' whether a 'reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave'" (internal citations omitted)). According to the evidence and testimony presented before the suppression court, when Corporal Hale arrived at the hospital, Jones was seated outside the room where Ayden had been treated. She "approached Jones and asked him if he would speak to [her]." Jones agreed to speak to Corporal Hale in a family consultation room with a door that was closed for privacy and not locked. Detective Fisher joined the meeting at some point, and neither officer was in uniform—although they were wearing badges and identified themselves as law enforcement. Corporal Hale testified that she made no threats or promises during the interview, and that she and the other officer never drew their weapons or tried to physically restrain Appellant. Indeed, he departed on his own after 45 minutes and was not arrested until five months later. Clearly this interview was not custodial in nature, as Appellant was questioned "in a public place from which he was more than capable of extricating himself in the face of hard questioning[.]" *Owens v. State*, 399 Md. 388, 430 (2007). There were no restrictions upon Appellant's freedom of movement to the degree associated with formal arrest. Therefore, *Miranda* warnings were not required. *Robinson v. State*, 419 Md. 602, 615 (2011).

In regard to the January 4th interview, we are not persuaded that Appellant effectively invoked his right to silence. "The essential inquiry . . . is whether the invocation is clear or ambiguous. The test applied, generally, using an objective standard, is whether

a reasonable police officer in the circumstances would understand the statement to be an invocation of the right to silence." *Williams v. State*, 445 Md. 452, 475 (2015).

At one point in the January 4th interview, Appellant said, "I'm tired of talking *because you don't want to listen to me.*" Detective Schultz insisted he was listening, to which Appellant replied, "I'm done talking to – ". After Detective Schultz commented that Appellant was upset, the interview continued. Rather than a clear, unambiguous invocation of his right to silence, Appellant clearly injected ambiguity. His immediate explanation for saying he was done talking was "*because* [Detective Schultz] d[id]n't *want to listen to [him]*," was to demand three times that Detective Shultz listen to him. Appellant then persisted in telling Detective Schultz: "Let me tell you something. . . . Let me tell you something. Let me—listen to me good." It appears from this exchange that Appellant was not clearly and unambiguously invoking his right to silence, but, instead, he was expressing dissatisfaction with Detective Schultz's assessment of his credibility. Appellant's insistence that Detective Schultz listen as he continued talking, at best, left unclear whether Appellant actually intended to invoke his right to silence when he said he wished to stop speaking. A reasonable police officer could have concluded that Appellant did not intend to invoke his right to silence. *See Williams*, 445 Md. at 475-76.

II. The Autopsy Photographs

At trial, during the direct testimony of Dr. Alexander, the State sought to introduce several photographs of Ayden's body taken during the autopsy. Appellant's counsel objected to some of the pictures. Specifically, counsel noted that some of the pictures depicted "cut-downs," wherein Dr. Alexander had peeled back the skin to ascertain

whether or not Ayden had bruises. Appellant's counsel argued that these images were more prejudicial than probative and should be excluded. The State maintained that the pictures helped illustrate Dr. Alexander's testimony because they "show[] the depth of the bruises and where they are and what bruising looks like under the skin." The court admitted the photographs.

On appeal, Appellant contends that the court abused its discretion in admitting the "cut-down" pictures because they were highly prejudicial and only remotely probative. Appellant notes that there was no dispute that Ayden's body had bruises. As such, Appellant posits, there was no reason for the State to admit the "cut-down" photographs because the jury did not need to determine if there were bruises. Moreover, Appellant contends, these pictures were substantially prejudicial, and their admission was not harmless.

The State maintains that the court did not abuse its discretion in admitting all of the autopsy photographs.[10] The State argues that the "cut-down" photographs had "substantial probative value" because they clarified the testimony of Dr. Alexander and helped to support his expert conclusions as to Ayden's cause and manner of death. The photographs were important evidence to support the doctor's opinion that bleeding beneath Ayden's scalp was from "significant impacts," and that the purple discoloration beneath the skin on Ayden's arms "really was bruising" and not "just the settling of blood, it really was a

[10] The State notes that the autopsy photographs were compiled on a CD, which was admitted into evidence, and hard copies of some of the pictures were admitted as a separate exhibit and shown to the jury. Appellant objected to only 12 of the 77 autopsy photographs.

traumatic impact-type injury." Moreover, the State contends, the photographs were helpful in the jury's determination of the extent of Appellant's guilt.

Rule 5-403 provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." As to the admission of photographs, this Court has commented: "'[T]he general rule regarding admission of photographs is that their prejudicial effect must not substantially outweigh their probative value. This balancing of probative value against prejudicial effect is committed to the sound discretion of the trial judge.'" *Lovelace v. State*, 214 Md. App. 512, 548 (2013) (quoting *Ayala v. State*, 174 Md. App. 647, 679 (2007)). Accordingly, the trial court's decision as to the admission of photographs "'will not be disturbed unless plainly arbitrary . . . because the trial judge is in the best position to make this assessment.'" *Id.* (quoting *Ayala*, 174 Md. App. at 679).

Specifically addressing crime scene and autopsy photographs, we have remarked that these pictures may be "'relevant to a broad range of issues, including the type of wounds, the attacker[']s intent, and the *modus operandi*.'" *Ayala*, 174 Md. App. at 680 (quoting *State v. Broberg*, 342 Md. 544, 553 (1996)). Furthermore, "'photographs [may be] relevant and possess probative value even though they often illustrate something that has already been presented in testimony. . . . [I]n some cases photographs present more clearly than words what the witnesses were attempting to describe.'" *Id.* (quoting *Broberg*, 342 Md. at 553-54). In certain cases, the Court has also noted that these types of photographs may be helpful "'to allow the jury to visualize the atrociousness of the crime

– a circumstance of much import where the factfinder must determine the degree of murder.'" *Id.* (quoting *Johnson v. State*, 303 Md. 487, 502 (1985)). We note, too, that appellate courts "'seldom [find] an abuse of a trial judge's discretion in admitting [relevant photographs] into evidence,' even when such evidence tends to be 'more graphic than other available evidence.'" *Roebuck v. State*, 148 Md. App. 563, 599 (2002) (quoting *Hunt v. State*, 312 Md. 494, 505 (1988)).

In this case, we are not persuaded that the court abused its discretion in admitting the "cut-down" autopsy photographs. Although Appellant contends that there was no dispute as to the bruises on Ayden's body, the depth of the bruising and extent of Ayden's injuries may have helped inform the jury's verdict. Indeed, Appellant was convicted of involuntary manslaughter, but he had been charged with first and second-degree murder. Appellant's version of events was that Ayden suffered his bruises playing and falling from the car. Dr. Alexander testified that the cut down photos showed that Ayden suffered deep bruising from "significant" and "traumatic" impact injuries to his limbs and head. The pictures may have helped to illustrate his testimony and helped to explain his findings. We, therefore, perceive no abuse of discretion in the admission of these pictures.

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