UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2232
September Term, 2014

DESHAWN RYDEL SCOTT
v.
STATE OF MARYLAND

No. 2322
September Term 2014

JONATHAN BERNARD HINTON
v.
STATE OE MARYLAND

Wright,
Kehoe,
Berger,
JJ.

Opinion by Kehoe, J.

Filed: December 15, 2015

In this consolidated appeal, we consider several assertions of error presented by Jonathan Bernard Hinton and Deshawn Rydel Scott regarding their convictions of carjacking and related offenses after a jury trial in the Circuit Court for Montgomery County.[1]

[1]Hinton's convictions and sentences were:

Offense	**Sentence**	**Concurrent/ Consecutive**
Armed Carjacking	30 years, suspend all but 25 years	
First-degree Assault	15 years, suspend all but 10 years	Concurrent
Armed Robbery	20 years, suspend all but 15 years	Concurrent
Unlawful Possession of a Firearm	15 years, suspend all but 10 years	Concurrent
Use of a Firearm in the Commission of a Felony/Crime of Violence	10 years, suspend all but 5 years	Consecutive
Conspiracy to commit carjacking	10 years	Concurrent
Conspiracy to commit armed robbery	10 years	Concurrent
Conspiracy to use of a firearm in the commission of a crime of violence	10 years	Concurrent
Total Term of Imprisonment	**30 years**	

Scott's convictions and sentences were:

Offense	**Sentence**	**Concurrent/ Consecutive**
Armed Carjacking	30 years, suspend all but 20 years	
Armed Robbery	20 years, suspend all but 15 years	Concurrent
Unlawful Possession of a Firearm	10 years, suspend all but 5 years	Concurrent
Use of a Firearm in the Commission of a Felony/Crime of Violence	10 years, suspend all but 5 years	Consecutive

(continued...)

Between them, appellants present five issues on appeal, which we have re-worded:

1. Did the trial court err by instructing the jury that it need only decide whether appellants possessed a firearm on the day in question because appellants stipulated they are prohibited persons under Md. Code Ann. (2003, 2011 Repl.) § 5-133(c) of the Public Safety Article ("PS")?

2. Did the trial court err in issuing a curative jury instruction reiterating the reasonable doubt standard to the jury following Scott's counsel's closing argument?

3. Were appellants improperly sentenced for multiple conspiracies?

4. Did the trial court err in denying Scott's motion for a mistrial?

5. Did the trial court err in allowing the State to examine Dujaun Braithwaite regarding a letter he purportedly received from Scott several months after the commission of the crimes in question?

We believe that some of appellants' contentions as to the merger of their conspiracy convictions are well-founded. We will otherwise affirm the judgment of the trial court.

[1](...continued)

Conspiracy to commit carjacking	10 years	Concurrent
Conspiracy to commit carjacking	10 years	Concurrent
Conspiracy to commit armed robbery	10 years	Concurrent
Conspiracy to use of a firearm in the commission of a crime of violence	10 years	Concurrent
Total Term of Imprisonment	**30 years**	

Because appellants do not challenge the sufficiency of the evidence, we will not provide a rendition of the facts that gave rise to their arrest and conviction. *See Joyner v. State*, 208 Md. App. 500, 503 n. 1 (2012).

Analysis

1. The Jury Instruction Regarding Appellants' Stipulations (Scott and Hinton)

Appellants were charged with unlawful possession of a firearm pursuant to PS § 5-133(c).[2]

Pursuant to this statute, the State must prove three things: (1) possession; (2) of a regulated firearm; and (3) a prior conviction of a crime of violence. *Nash v. State*, 191 Md. App. 386, 394 (2010). Appellants stipulated, prior to trial, that they had previously been convicted of disqualifying offenses. Appellants contend on appeal that the court's jury instruction regarding this stipulation was improper. When the trial court and counsel were discussing jury instructions, the following colloquy ensued:

[2]Section 5-133(c) provides, in pertinent part that:

> (1) A person may not possess a regulated firearm if the person was previously convicted of:
>
> (i) a crime of violence;
>
> (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612; § 5-613 or § 5-614 of the Criminal Law Article; or
>
> (iii) an offense under the laws of another state or the United States that would constitute one of the crimes listed in item (i) or (ii) of this paragraph if committed in this State.

THE COURT: [S]tipulations of fact or testimony. Now, this was a, I believe, based on a discussion, states what the parties had agreed to and also using the language that was suggested, regarding the prohibited person from possessing a firearm, are those stipulations correct?

[SCOTT'S COUNSEL]: Your Honor, given the last sentence there, these facts are now not in dispute and should be considered proven. I think the first stipulation should only be the first sentence. The stipulation is, in fact, that they're prohibited, under Maryland law, from possessing a firearm.

It's unnecessary to say, therefore, don't worry about this, it's an element. I think the jury can apply that stipulation to the elements of possession of a firearm by a prohibited person, but I think it's inappropriate to tell them that they needn't worry about one of the elements of the offense.

THE COURT: Well, you stipulated to one of the elements of the offense. Why shouldn't (sic) they worry about that element of the offense?

[SCOTT'S COUNSEL]: Well my, the stipulation is that they have the, is that they have the prior conviction. It's not part, we can't stipulate that—

THE COURT: You stipulated that they are prohibited, under Maryland Law, from possessing a firearm.

[SCOTT'S COUNSEL]: Right.

THE COURT: One of the elements is whether they are prohibited under the law from possessing a firearm. So that is an element that the jury does not need concern itself with.

[SCOTT'S COUNSEL]: But the stipulation shouldn't include this, what we agreed to is that they have the prior conviction. It's then the jury's job to say, well, given that stipulation, then that satisfies the element.

* * * *

THE COURT: All right, well I'm going to take that as an objection to the way that it is written by defendant's counsel, and I assume [appellant's counsel], you're going to join in that?

[HINTON'S COUNSEL]: We'll join.

THE COURT: All right, and I'm going to overrule that objection. . . .

The subject of the stipulations came up twice in the court's instructions. First, the court discussed appellants' stipulations in general (emphasis added):

> Now, there have been some stipulations entered into by both sides in this case. The State and the Defense have agreed that the defendants, Mr. Jonathan Hinton and Mr. Deshawn Scott, are prohibited persons, under Maryland Law, from possessing a firearm.
>
> Therefore, as to the charge of possession of a firearm by a prohibited person, *the only issue for you to consider, is whether or not the State has proven that Mr. Hinton and/or Mr. Scott possessed a firearm on the day in question*.

Later, as part of its instruction on the elements of the crime of possession of a firearm by a prohibited person, the court stated (emphasis added):

> Possession of firearm by prohibited person; the defendants are each charged with possession of a firearm by a prohibited person. *In order to convict the defendant, the State must prove that each defendant is prohibited from possessing a firearm*. *Although, there was a stipulation entered into by the parties, acknowledging or agreeing that both of the defendants are prohibited from possessing a firearm.* And also, the State must prove that each defendant possessed the firearms.

Appellants argue that the court erred when it informed the jury that "the only issue for you to consider, is whether or not the State has proven that Mr. Hinton and/or Mr. Scott possessed a firearm on the day in question." Scott asserts in his brief (citations omitted):

> In the case at bar, the major point of contention arose when the parties discussed how the jury would be instructed with respect to this crime and what effect the stipulation should have on that instruction. The State argued, and the trial court agreed, that the stipulation effectively satisfied the required element of a previous conviction and that the jury should only be

> instructed to determine whether or not the defendants possessed a regulated firearm. In effect, this is a bifurcation argument.

Appellants rely on this Court's opinion in *Nash* and the Court of Appeals decision in *Carter v. State*, 374 Md. 693 (2003) in support of their contentions.

In *Carter*, the Court established the principle that it is improper to bifurcate the elements of the crime when a defendant elects to have a jury trial. 374 Md. at 709–15. Instead, the "entirety of the charge" should be presented to, and decided by, the jury. *Id.* at 713.

In *Nash*, we applied *Carter's* teachings to a scenario that appellants assert is factually indistinguishable from what occurred in the present case. We do not agree.

Nash also involved a conviction of violating PS § 5-133(c). Before trial, the parties entered into an agreement stipulating that the defendant was a prohibited person under the statute. 191 Md. App. at 395. The defense subsequently requested that the circuit court not disclose any information regarding the predicate offense to the jury because Nash had stipulated that this element was satisfied. *Id.* The circuit court agreed, and instructed the jury as follows (emphasis added):

> Now, if you look at your verdict sheet, there's one question that you're asked. And the charge here is possession of a firearm under certain circumstances. *As a matter of law, I am the one that determines what the "certain circumstances" are. The only issue that you're faced with is whether or not the defendant possessed a firearm*. And that must be proven to you by the State beyond a reasonable doubt. A handgun is a regulated firearm.

Id. at 393. After the jury returned its verdict of guilty as to the possession charge, the court referred to the stipulation, stating "we'll stipulate he was a convicted felon, right?" The State responded in the affirmative and introduced into evidence docket entries showing two prior convictions for robbery. *Id.*

On appeal, Nash asserted that the court's instruction had the effect of removing the question of whether he was a prohibited person from the jury's consideration and that this amounted to a bifurcation. The State contended that the parties did not agree to submit the element to the judge, but rather that both parties stipulated that the element of a qualifying conviction was satisfied. *Id.* at 397.

We concluded that the circuit court erred regardless of whether the judge decided or parties stipulated that the element was satisfied. We then went on to analyze the issue under both the appellant's and the State's theories.

As to Nash's theory—that the judge did not submit the element of being a prohibited person to the jury and ruled upon that issue itself—we concluded that such a bifurcation of the elements was error. *Id*. at 399 (*Carter* "makes clear that bifurcating the elements of the offense, i.e., having the jury consider solely the issue of possession of the firearm, with the issue of the prior conviction to be determined at a later time, will not be sanctioned."). Turning to the State's theory, we concluded that the instruction was erroneous because the court did not inform the jury of one of the elements of the crime—that the defendant had to be a prohibited person under the statute. *Id.* at 400.

In arriving at this conclusion, we relied on *Carter*, which stated that "when the defendant admits or the parties stipulate to the previous conviction element of a charge under PS § 5-133(c), the trial judge should inform the jury that the defendant admits that he or she has been convicted of a crime for which he or she is prohibited from possessing a regulated firearm under the law."(quoting *Carter*, 374 Md. at 722).

In summary, *Nash* stands for two propositions: (1) a court cannot explicitly bifurcate the decision-making process of reaching a verdict in an unauthorized possession case by allowing two of the three elements of the offense to be decided by the jury and the third element to be decided by the court; and (2) a court must fully inform the jury of all of the elements of the charge so that the jury may fully understand the criminal charge it is considering.

Returning to the present case, the trial court's jury instructions were not problematic under either scenario. We conclude that neither of these circumstances were present in the trial court's explanation to the jury of the significance of the stipulation. We recently discussed the nature and effect of a stipulations in criminal cases in *Smith v. State*, No. 2554, September Term, 2013, filed November 25, 2015. We stated:

> "A stipulation constitutes an express waiver made . . . preparatory to trial by the party or his attorney conceding for the purposes of trial the truth of some alleged fact . . . thereafter to be taken for granted; so that the one party need offer no evidence to prove it and the other is not allowed to disprove it . . . ."

Slip op. at 11 (quoting *United States v. Harrison*, 204 F.3d 236, 240 (2000)). If a defendant in an unlawful firearm possession case offers to stipulate that he has been previously convicted of a disqualifying crime, the trial court must present the stipulation to the jury and the State may not present further evidence regarding the disqualifying conviction. *Carter*, 374 Md. at at 720 n.8.

However, the jury should not be left to speculate as to the effect of the stipulation. When the trial court instructed the jury that, as a result of the stipulation, "the only issue for you to consider, is whether or not the State has proven that Mr. Hinton and/or Mr. Scott possessed a firearm on the day in question," the court was doing nothing more than explaining how the stipulation should affect its deliberations, *viz*, that appellants' status as prohibited persons was to be "taken for granted; so that the [the State] need offer no evidence to prove it and [appellants are] not allowed to disprove it."[3] Additionally, there can be no doubt that the court explained all of the elements of the crime to the jury later in the instructions. There was no error by the trial court.

[3] *Compare* MPJI-Cr 3:02A: STIPULATIONS OF FACT OR TESTIMONY

> The State and the defense have agreed that (agreed facts). These facts are now not in dispute and should be considered proven.

2. The Curative Instruction Reiterating the Reasonable Doubt Standard (Scott)

Scott argues that the trial court improperly limited his trial counsel's closing argument by issuing a curative instruction that reiterated the reasonable doubt standard to the jury. A key witness in the State's case was the victim, Dujuan Braithwaite, whose credibility was vigorously attacked during cross-examination. In closing, Scott's trial counsel stated:

> Would you gamble your freedom on the word of Dujuan Braithwaite? Would you gamble [Scott's]? Because that's what this case comes down to, ladies and gentlemen, the word of Dujuan Braithwaite. Without corroboration, without confirmation. The case comes down to his word, and his word alone.

The prosecution did not object immediately. However, it did object when Scott's counsel revisited the same theme later in his argument: "[T]he jury's verdict is final. It's for that reason, ladies and gentlemen, that I asked you the first question that I did. Would you gamble, without reservation, your liberty . . . ." The prosecution objected on the grounds that defense counsel was not allowed to ask the jury to "put themselves in the defendant's shoes," essentially making a "golden rule," argument.[4] The State requested a curative instruction reiterating the reasonable doubt standard, which the trial court

[4] *See Lee v. State*, 405 Md. 148, 171 (2008) ("A 'golden rule' argument is one in which a litigant asks the jury to place themselves in the shoes of the victim . . . or in which an attorney appeals to the jury's own interests[.]") (internal citations omitted).

granted. The trial court permitted Scott's counsel to finish his closing argument prior to issuing the following curative instruction to the jury:

> All right, ladies and gentlemen, during the course of counsel's argument, he stated, or he suggested that you put yourself in the shoes of the defendant, and that is not appropriate. That is not the standard for you to use.
>
> The standard for you to use, as was indicated earlier in his address to you, was that proof beyond a reasonable doubt was a proof that would convince you of the truth of the fact to the extent that you would be willing to act on such belief without reservation in an important matter in your own business and personal affairs.
>
> So I want you to understand that that is the standard, and not what counsel intimated that time.

Scott argues that it was improper for the trial court to issue this curative instruction. He contends that his closing argument was proper and not a "golden rule" argument, and was entirely in accordance with the jury instruction regarding the reasonable doubt standard.

Specifically, Scott argues that his argument did not fit into the "golden rule" category because the golden rule prohibition prevents prosecutors from asking jurors to place themselves in the shoes of the *victim*, but *does not* preclude a defendant from asking the jury to place itself in *his* shoes. Thus, he argues it was error for the court to limit his closing argument. He asserts that the trial court had no discretion to preclude him from presenting relevant arguments to the jury.

The State counters that the court did not err in issuing the curative instruction because a) the circuit court did not limit Scott's counsel's argument, and b) it had

discretion to re-explain the reasonable doubt standard to the jury. We agree with the State.

First, we disagree with appellant's premise that his statements were not a golden rule argument. Although Maryland's appellate decisions have typically addressed the golden rule issue in the context of inappropriate argument by prosecutors, the rule prohibits against asking jurors to decide cases based on personal interests rather than the evidence. *See Lawson v. State*, 389 Md. 570, 594 (2005) ("[S]uch arguments are impermissible because they encourage the jurors to abdicate their position of neutrality and decide cases on the basis of personal interest rather than the evidence.") (internal quotations omitted). Improper argument is improper argument, regardless whether it is made by defense counsel as opposed to the prosecutor.

Second, assuming *arguendo* that Scott's counsel's argument was within proper bounds, we perceive no error on the trial court's part.

The Court of Appeals has made it clear that a trial court is required to "adhere 'closely' to Maryland Criminal Pattern Jury Instruction 2:02 when instructing the jury on the reasonable doubt standard," in order to "eliminate confusion and foster fairness to defendants, the state, and jurors alike." *Ingram v. State*, 427 Md. 717, 728–29 (2012). To the extent that Scott's closing argument muddied the concept, and we conclude that it did, the trial court did not abuse its discretion in reiterating the reasonable doubt instruction in order to minimize the potential for confusion.

3. Multiple Conspiracy Convictions (Hinton and Scott)

Appellants were convicted of conspiracy to commit carjacking; conspiracy to commit armed robbery; and conspiracy to use a firearm in the commission of a crime of violence. They argue that two of the conspiracy counts should merge with the third. The State agrees, as do we. *See Savage v. State*, 212 Md. App. 1, 13 (2013) ("The unit of prosecution for conspiracy is the agreement or combination, rather than each of its criminal objectives.") (quotations marks and citation omitted). Of the three underlying felonies, carjacking is the most serious. *Compare* Crim. Law § 3-405(d) (maximum term of imprisonment for carjacking is 30 years) § 3-402(b) (maximum term for armed robbery is 15 years); and § 4-204(c) (maximum term for use of a firearm in a crime of violence is 20 years).

The parties part company, however, as to the proper appellate remedy. Appellants contend that we should reverse the conspiracy convictions and vacate their accompanying sentences, while the State asserts that we should only vacate two of the conspiracy sentences. We agree with the State. *See Carroll v. State*, 202 Md. App. 487, 518 (2011) ("[W]here merger is deemed to be appropriate, this Court merely vacates the sentence that should be merged[.]"). We will vacate the sentences for the conspiracy to commit armed robbery and the conspiracy to use a firearm in the commission of a crime of violence convictions.

4. The Testimony of Detective Thomas Thompson (Scott)

Scott's fourth contention is based on the following testimony of Detective Thompson:

> [PROSECUTOR]: When you spoke to, well, when you, at some point did you come into contact that evening Mr. Hinton and Mr. Scott?
>
> [DETECTIVE THOMPSON]: Yes.
>
> [PROSECUTOR]: And do you remember the booking information that you used to process them?
>
> [DETECTIVE THOMPSON]: I took them both, well, first I advised both of them of their Miranda rights. *Mr. Hinton requested a lawyer—*
>
> [SCOTT'S COUNSEL]: Objection.
>
> [HINTON'S COUNSEL]: Objection.
>
> [SCOTT'S COUNSEL]: May we approach please?
>
> THE COURT: Yes.
>
> (Bench conference follows)
>
> [SCOTT'S COUNSEL]: I'm asking for a mistrial. That was a question that was calculated to get that very response and an answer that was calculated to get that response. There has been indication of counsel in front of the jury, which is wildly inappropriate. Prosecutor has thrown this trial by that question, and the detective by his answer.
>
> [HINTON'S COUNSEL]: (Unintelligible).
>
> [PROSECUTOR]: Your Honor, we did not intentionally, and I can't speak to Mr. Han, but I know that we did not intentionally seek to get that information out. What we were asking these questions are geared to is the information about the booking information, the height, the weight, the physical descriptors that he included in the statement of charges.
>
> THE COURT: Right.
>
> [PROSECUTOR]: That are consistent with the victim's description of the two individuals responsible for that. The question was not targeted, it didn't ask for any kind of response to any kind of statements that were provided.

. . . .

> [SCOTT'S COUNSEL]: He's a 20 year detective, he knows better than this.
>
> THE COURT: Well, the fact that he requested an attorney doesn't mean anything. I'll instruct the jury to disregard that last answer, and I'll deny your motion for mistrial.
>
> [SCOTT'S COUNSEL]: And so I would continue to ask for mistrial, but the curative instruction should be that I would ask for, and this does not in any way substitute, in my view, for a mistrial, that they should discount the answer and that the defendants have a constitutional right to ask, to have an attorney, to ask for an attorney, and to ask for an attorney does not in any way suggest that they are guilty of any crime.
>
> THE COURT: All right—
>
> [PROSECUTOR]: We're satisfied with that, Your Honor.
>
> THE COURT: Okay.
>
> (Bench conference concluded).
>
> THE COURT: All right, ladies and gentlemen, the witness just gave an answer regarding an invocation of the right to counsel. That is not probative of anything in this case, and I ask you to disregard that from your considerations. You also need to be aware, you probably are, that any individual arrested is advised that he or she has a right to counsel and is free to invoke that right. And it does not mean anything, it is not proof of anything. And so you should not take it as proof or inference of anything regarding guilt or innocence in this case.

Scott contends that the detective's reference to Hinton's request for an attorney mandated a mistrial. He argues that (1) it is impermissible under Maryland law for the State to offer into evidence a criminal defendant's request for counsel in order to show a consciousness of guilt; and (2) the curative instruction was insufficient to cure the prejudicial effect of the testimony. Scott's first contention is unarguably correct. We turn to his second.

The trial judge in the present case was dealing with what is sometimes referred to as a "blurt"—a nonresponsive statement made by a witness that conveys prejudicial and inadmissable information. At a minimum, a blurt generally warrants an instruction from the trial court to disregard the testimony in question. Often that remedy is sufficient. Sometimes, however, the blurt is so damaging to the defendant that a mistrial is required. What remedy to apply in a specific case is a matter of the trial court's discretion. *Cooley v. State*, 385 Md. 165, 173 (2005) There is no shortage of Maryland appellate decisions dealing with blurts and, read together, they have set out an analytical paradigm for dealing with the issue. *See Washington v. State*, 191 Md. App. 48, 100–04 (2010) (collecting and analyzing cases).

In *Carter v. State*, 366 Md. 574, 590 (2001) , the Court of Appeals listed several factors for consideration when determining whether a blurt requires a mistrial:

> whether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; whether a great deal of other evidence exists . . . .

Carter, 366 Md. at 590 (quoting *Rainville v. State*, 328 Md. 398, 408 (1992) and *Guesfeird v. State*, 300 Md. 653, 659 (1984)). The Maryland cases are clear that "'these factors are not exclusive and do not themselves comprise the test.'" *Rainville*, 328 Md. at 408 (quoting *Kosmas v. State*, 316 Md. 587, 594 (1989)). Instead, the factors assist the

reviewing court to decide whether "the damage in the form of prejudice to the defendant transcended the curative effect of the instruction[.]" *Kosmas,* 316 Md. at 594.

In applying the *Carter/Rainville* factors to the present case, we conclude:

(1) The reference to Scott's invocation of counsel was an isolated statement and not part of a larger pattern to discredit him through inadmissible evidence.

(2) Although Scott's trial counsel stated that the State's question was "calculated to get that very response," Scott does not argue on appeal—nor does our reading of the transcript support the notion—that the prosecutor's question was intentionally framed to solicit the inadmissible evidence.

(3) If, as defense counsel asserted, Thompson was a 20 year veteran of the police force, then he should have known that testimony regarding Scott's invocation of his right to counsel was inadmissable. However, it is less clear to us that his inadmissable testimony was a calculated ploy or the result of inadvertence.

(4) Detective Thompson was not the critical witness in the case, and there was a great deal of other evidence presented at trial.

(5) Credibility was a primary issue in the case because the defense largely rested on the credibility of Mr. Braithwaite as the primary witness.

Of these factors, only the third weighs in favor of a mistrial. However, a "mistrial is no ordinary remedy and '[a] request for a mistrial in a criminal case is addressed to the sound discretion of the trial court . . . .'" *Cooley*, 385 Md. at 173 (quoting *Wilhelm v.*

State, 272 Md. 404, 429 (1974)). Thompson's statement was isolated and promptly corrected by the trial court's curative instruction to the jury. In light of isolated nature of blurt and the curative instruction, we cannot say that the court abused its discretion in denying the motion for a mistrial.

5. Braithwaite's Testimony About Scott's Letter (Hinton and Scott)

Scott allegedly sent a letter to Braithwaite several months after the carjacking took place. Braithwaite subsequently either lost or destroyed the letter. The State wished to question Braithwaite on its contents. Prior to trial, Scott's counsel filed a motion to exclude testimony concerning the letter. After weighing the potential probative value of the letter's contents with its potential for prejudice, the trial court decided that it would not allow the State to present evidence of the letter in its case-in-chief, but reserved ruling on whether the letter could be used on rebuttal.

During Scott's counsel's cross-examination of Braithwaite, he elicited testimony regarding his relationship with Scott. The line of questions revealed that Braithwaite had known Scott in elementary school and that the two had been friends, or at least friendly acquaintances, at that time. Additionally, Braithwaite testified that he followed Scott on Instagram. Secondarily, the line of questions revealed that when the police questioned Braithwaite about the events that occurred on February 4th, 2014—the date of the crime—Braithwaite did not identify Scott as a perpetrator. (Braithewaite had previously testified that the carjackers wore masks.)

The State subsequently requested a bench conference and requested permission to elicit testimony on re-direct regarding the letter. Initially, the court questioned whether introducing evidence of the letter would be relevant for rehabilitating Braithwaite, at which point the State explained:

> I think it's specifically under rehabilitation [Md. Rule] 5-616, that that's permissible rehab given what defense counsel has gone through on cross-examination. He knows him. He knows his family. He went to school with him. He knows the sister, third grade, their friends on instagram. And he repeatedly asked several questions like, oh, and you just happen to not mention that to the officers when you heard Scott [was] involved in it. That night you made no mention to the police officers that night that you know Deshawn Scott.

After which, the circuit court asked the State to specify the questions it intended to ask Braithwaite:

> THE COURT: . . . . All right. Tell me what you're going to ask him about the letter?
>
> [PROSECUTOR]: I'm going to ask him did you know, did you realize you knew Deshawn Scott on February 4, 2014? And the answer to that would be, no.
>
> THE COURT: Yes, yes, and he's going to say, no.
>
> [PROSECUTOR]: Did there come a time later that you realized that you did know Deshawn Scott?
>
> THE COURT: Yes. Okay.
>
> [PROSECUTOR]: The letter itself, we don't want to get into the contents, but is it because you were contacted by Deshawn Scott and that made you realize that you, in fact, did go to third grade with him or whatever?
>
> THE COURT: You're going to object to that. I'm going to deny your objections.
>
> [HINTON'S COUNSEL]: Jonathan Hinton objects to that too.

THE COURT: All right. I'm going to allow them to just do what you said, no more.

The State then proceeded to ask Braithwaite the following questions on re-direct:

[PROSECUTOR]: Okay. Approximately how long ago was that that you lived the area and knew of him?

[BRAITHWAITE]: I was in like the, I was probably like fresh [sic] in sixth grade or something, and he was probably like third grade or something like that. I don't remember. I know when I met him I was middle school, he was in elementary school.

[PROSECUTOR]: Okay. So it had been several years since you had seen him last?

[BRAITHWAITE]: Yeah, right.

[PROSECUTOR]: Okay. And you testified that you did not tell police officers, February 4, 2014, that Deshawn Scott could have been involved in this incident, is that right?

[BRAITHWAITE]: Right.

[PROSECUTOR]: Okay. And why is that? Did you not know that Deshawn Scott was involved in this incident?

[BRAITHWAITE]: No.

. . . .

[PROSECUTOR]: Okay. Did there come a time that you later realized that you did, in fact, know who Deshawn Scott was?

BRAITHWAITE: Right.

[PROSECUTOR]: Okay. And do you recall when you realized that? Was it several months after February 4, 2014?

[BRAITHWAITE]: It was when I got a letter to my house.

[PROSECUTOR]: Okay. And do you recall when you got the letter, was it several months after this incident, was it right after this incident?

[BRAITHWAITE]: I don't know, like, I would say like two months.

[PROSECUTOR]: Okay, and when you got the letter to your house, what, if anything did that make you realize?

> [BRAITHWAITE]: That he had something to do with it, or that he was involved because –
>
> [PROSECUTOR]: Let me just rephrase.
>
> [SCOTT'S COUNSEL]: Objection, move to strike.
>
> THE COURT: The objection, the answer will be stricken and the jury will disregard the answer.
>
> [PROSECUTOR]: Did you receive a letter to your house from defendant Deshawn Scott?
>
> [BRAITHWAITE]: Yes.
>
> [PROSECUTOR]: Okay. And when you received that letter several months after February 4, 2014, did it then make you realize that you did know someone growing up by the name of Deshawn Scott?
>
> [BRAITHWAITE]: Yeah.
>
> [PROSECUTOR]: So that made you realize you did know who that person as?
>
> [BRAITHWAITE]: Right.
>
> [PROSECUTOR]: Okay, prior to receiving that letter, had you made that connection?
>
> [BRAITHWAITE]: No.

Appellants contend that the trial court erred in permitting the State to question Braithwaite about the letter. They argue that the testimony did not rehabilitate him because Braithwaite testified that the letter reminded him that he knew Scott *generally*, which did not rehabilitate him for the questions on cross as to why Braithwaite did not tell the police that he personally knew Scott. Appellants also assert that evidence regarding the letter was highly prejudicial to appellants, because, as the court later described when it declined to allow appellants' counsel to re-cross on the letter:

> It seems to me that this jury is going to wonder, well what the hell was in that letter. And God knows what they're going to think was in that letter.

> Maybe the letter was, you know, if you take this further, it could be threats, it could be admissions . . . . We're just opening a whole field, right?

Thus, appellants argue that any relevance which the letter may have had for rehabilitating Braithwaite was outweighed by its prejudicial effect.

We review a trial court's determination of whether evidence is relevant *de novo* because a court is without discretion to admit irrelevant evidence. *State v. Simms*, 420 Md. 705, 725 (2011) (quoting *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619 (2011)). However, if we determine that evidence is relevant, a trial court's "assessment of the admissibility of relevant evidence is reviewed under an abuse of discretion standard." *Brooks v. State*, 439 Md. 698, 708 (2014). Under the abuse of discretion standard, we will not overturn a trial court's decision even if we would have arrived at a different conclusion. *Kusi v. State*, 438 Md. 362, 385 (2014).

Thus, we first must determine whether the evidence pertaining to the purported letter was relevant. We conclude that it was. Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 5-501. Braithwaite's testimony about the letter was relevant because it provided an explanation as to why Braithwaite did not identify Scott as one of the carjackers when he spoke to the police after the incident, but was later able to identify Scott. This evidence went toward rehabilitating his answers to Scott's counsel's cross-examination questions.

Second, we conclude that the court did not abuse its discretion in admitting the evidence. As noted *supra*, the circuit court thoroughly discussed the State's intended purpose of introducing evidence of the letter before allowing the State to admit it. Furthermore, it limited the scope of the State's questions, stating that it would allow the State to do "no more," than simply introduce the letter for the purpose of rehabilitating Braithwaite. In light of the court's careful attempts to reduce the likelihood of prejudice to appellants by restricting the extent to which the State could question Braithwaite on the letter, we conclude that the court did not abuse its discretion in allowing the State to introduce the evidence.

APPEAL NO. 2322, 2014 TERM (JONATHAN BERNARD HINTON):THE SENTENCES FOR CONSPIRACY TO COMMIT ARMED ROBBERY AND CONSPIRACY TO USE A FIREARM IN THE COMMISSION OF A CRIME OF VIOLENCE ARE VACATED. THE JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY ARE OTHERWISE AFFIRMED.

APPEAL NO. 2232, 2014 TERM (DESHAWN RYDEL SCOTT): THE SENTENCES FOR CONSPIRACY TO COMMIT ARMED ROBBERY AND CONSPIRACY TO USE A FIREARM IN THE COMMISSION OF A CRIME OF VIOLENCE ARE VACATED. THE JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY ARE OTHERWISE AFFIRMED.

COSTS TO BE PAID: 25% BY MONTGOMERY COUNTY; 75% BY APPELLANTS.