Circuit Court for Baltimore City
Case Nos. 115314020, 115314021,
& 115314022

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2335

September Term, 2016

JERROD BATTLE

v.

STATE OF MARYLAND

Berger,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: March 26, 2018

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

Following a three-day trial, a Baltimore City jury convicted appellant Jerrod Battle of second-degree murder; use of a firearm in the commission of a crime of violence; wearing, carrying, or transporting a handgun; and possession of a regulated firearm after a disqualifying conviction. The court sentenced Battle to an aggregate term of 65 years of imprisonment. He noted this timely appeal. We affirm.

FACTUAL AND PROCEDURAL HISTORY

At about midnight on the morning of Thursday, October 15, 2015, Terrance Johnson was shot near the intersection of Harford Road and Northern Parkway in Baltimore City. He died from his wounds.

Shortly after midnight, Officer Nicholas Chapman and Officer Trainee Johnny Cardenas responded in a marked patrol car to a call concerning the shooting. The officers canvassed the surrounding area for the shooter, who was described as a black male with dreadlocks who was wearing a red t-shirt.

About 15 minutes after the call, when the officers were on a residential street three or four blocks from Harford Road and Northern Parkway, they saw Battle coming from the direction of the scene of the crime. Battle was not wearing a red shirt, but he wore bright red shoes, had dreadlocks, and appeared to be "disheveled," as if "something had happened." The officers observed that Battle was in a residential area, not on a major thoroughfare where they might expect someone to be out walking at that late hour. The officers also observed that when Battle saw them, he looked "almost like a deer in a [sic] headlights."

Although Battle did not perfectly match the description of the suspect (he was not wearing a red shirt), Officer Chapman was suspicious of him. The officer explained that "people can easily take off a shirt, especially after a shooting[]"; that, in his experience, criminal suspects often alter their appearance, by, for example, discarding the top layer of their clothing to avoid detection by law enforcement; and that many people match their shoes to their shirts – and Battle's shoes were red.[1]

Based on their suspicions about Battle's appearance, the partial match of the broadcast description, Battle's proximity in time and distance from the scene of the shooting, and his reaction to the sight of uniformed officers in a marked patrol car, the officers pulled in front of Battle and attempted to stop him.[2]

Officer Chapman ordered Battle to approach the vehicle, telling him to "come here" or asking him if he "could talk to [him] for a second." Battle ignored the officer and continued walking, but did not run. The officers got out of their car, and Officer Chapman called for expedited back-up because Battle refused to submit to his orders and because of the violent nature of the call that he and his colleague were investigating.

[1] The police later discovered that Battle had discarded a red hooded sweatshirt after the shooting. *See infra* pp. 4-5.

[2] At a pretrial hearing on a motion to suppress, Battle's attorney elicited a concession that when the officers first observed him, Battle did not display the characteristics of an armed gunman. It was later discovered, however, that Battle had discarded his weapon before he encountered the officers. *See infra* p. 5.

As Battle continued to walk and (at one point) to run ahead of them, Officer Chapman and Officer Trainee Cardenas followed him on foot at a distance of five to ten feet. At one point, Officer Chapman heard Battle talking on the phone to a woman, who told him to comply with the officers. During this time, the officer repeatedly ordered Battle to stop, but Battle responded that he would not.

At least three times while the officers were following on foot, Battle turned and "square[d] up" in "a boxing stance." At least once, he looked as though he was ready to charge at the officers. The officers took a "defensive stance," but each time Battle turned and ran away.

The second time Battle turned and assumed a fighting stance, Officer Chapman believed that "a fight [was] imminent." Officer Trainee Cardenas deployed his Taser, but Battle turned and ran away. It was unclear to the officers whether the shot missed Battle or whether it hit him, but had little or no effect.

Battle said something to the effect that the Taser "wasn't going to have any effect on him," and the trainee fired the Taser again. Battle sprinted ahead, but then turned, for a third time, to assume a fighting stance. At that point, both officers made physical contact with him, taking him to the ground to handcuff him. Officer Chapman became more certain that he had encountered the shooting suspect as he wrestled with Battle to take him into custody.

During a search incident to Battle's arrest, the officers recovered a cell phone. In executing a search warrant for information stored on the phone, the authorities found

photos depicting Battle wearing a red sweatshirt and a blue New England Patriots cap with a red bill. A similar cap was recovered at the crime scene. A red sweatshirt, with Battle's DNA on it, was recovered from a grill in the backyard of a house less than two blocks from the scene of the shooting. A Glock handgun, with Battle's DNA on it, was found in a trash can next door to the house where the sweatshirt was found; a firearms examiner ascertained that two shell casings found at the murder scene had been fired from the Glock.

Battle was transported to a hospital for treatment for minor injuries and then to the police station for questioning. At the station, Detective Moran assumed responsibility for the investigation. Battle was placed in an interrogation room and was initially interviewed by Detective Moran alone. While gathering routine booking information, the detective established that Battle could read and write in English, had completed the eleventh grade, and had previously had a *Miranda* rights and waiver form read to him.

Detective Moran made several attempts to have Battle read the *Miranda* waiver form aloud. Each time, however, Battle refused, asking why he was there and stating that he already knew his rights. Several times, Detective Moran replied that he would like to discuss why Battle was at the police station, but that they first needed to review the waiver form. When the detective asked Battle to read aloud the first of the five, brief warnings on the form, Battle looked at the form and said, "Same thing it always says." After some additional discussion, the detective observed Battle read at least the first line

of the waiver form, make checkmarks next to each advisement on the form, and sign his name on the signature line below an acknowledgement and waiver statement.[3]

During the ensuing interview, which was recorded on video, Battle said that he had been at a friend's house near the scene, having an argument with his son's mother. Battle also said that he had left the house minutes before the officers tried to stop him. When the detective asked for contact information about his son's mother, so that they could verify the alibi, Battle refused to provide it, offering instead to call her himself. The interview ended shortly thereafter.

Battle was indicted for murder; use of a firearm in the commission of a crime of violence; wearing, carrying, or transporting a handgun; second-degree assault of Officers Chapman and Cardenas; resisting arrest; failure to obey a lawful order; and unlawful possession of a regulated firearm.

During a pretrial motion to suppress, Battle sought the suppression of his video-recorded statement to Detective Moran and any evidence obtained as a result of the search incident to his arrest. Following the hearing, the trial judge issued a memorandum and order denying Battle's motion.

The trial began the next day. In addition to Officer Chapman's testimony, the cell phone photographs of Battle wearing the Patriots cap and a red sweatshirt, the cap, sweatshirt, and gun that were found (with Battle's DNA on them) near the crime scene, and the testimony that the shell casings at the crime scene had been fired from that gun,

[3] A copy of the executed form is appended to this opinion.

the State called two eyewitnesses; both of the eyewitnesses identified Battle as the assailant. The State also played a surveillance video from a business near the scene of the shooting; the video showed Battle walking away from the scene, still wearing the red sweatshirt. Finally, the State introduced a dreadlock, apparently similar to one of Battle's dreadlocks, that was found at the scene.

Battle was acquitted of premeditated first-degree murder, but convicted of second-degree murder, use of a firearm in the commission of a crime of violence, wearing, carrying, or transporting a handgun, and possession of a regulated firearm after a disqualifying conviction.

We shall discuss additional facts as they become relevant to the issues on appeal.

QUESTIONS PRESENTED

Battle presents two questions for review, which we have reorganized and restated as follows:

1. Did the trial court err in finding that Battle was validly arrested without a warrant?

2. Did the trial court err in finding that Battle knowingly and intelligently waived his *Miranda* rights?[4]

Finding no error in the trial court's decisions, we affirm.

[4] Battle formulated his questions as follow:

1. Did the lower court err in admitting a custodial statement where Mr. Battle was never orally advised of his Miranda rights, after he averred he knew his rights, and merely checked and signed a written waiver of those rights before speaking with police?

DISCUSSION

1. Battle's Arrest and Search

Battle contends that the trial court erred by admitting the photos obtained pursuant to a warrant for his cell phone, which was seized during a search incident to his arrest. Although he does not directly challenge the validity of the warrant, Battle argues that the police lacked probable cause to arrest him; that the State was able to obtain and execute a search warrant for the contents of the phone only because it had seized the phone in the allegedly unlawful arrest; and, hence, that these photos should have been suppressed, apparently as the fruit of the poisonous tree.

The State argues that Battle waived his right to raise this challenge on appeal because he did not challenge the validity of the search warrant in his suppression motion. According to the State, the photos were properly admitted, "regardless of the legality of [the] warrantless arrest," because they were obtained pursuant to a presumptively valid search warrant. We are not entirely convinced.

Battle's challenge to the warrant is premised on his challenge to the search incident to his arrest, which put the cell phone in the State's possession. If the arrest itself was invalid, then the search incident to the arrest was invalid too. *Ott v. State*, 325 Md. 206, 224 (1992). In that event, the State generally would have no right to search the phone, with or without a warrant. *See United States v. Richardson*, 949 F.2d 851, 859

2. Did the lower court err in finding that Mr. Battle was validly seized without a warrant?

(6th Cir. 1991) ("[i]f the search warrant was tainted by the illegal arrest, the evidence obtained from the search warrant should also have been suppressed"). For that reason, we shall proceed as though that the issue has been adequately preserved for review.

a. Warrantless Arrest

The trial court denied Battle's motion to suppress the cell phone photos on the ground that they were not the fruit of an unlawful arrest. In reaching its decision, the court reasoned that the arrest was not unlawful because the officers had probable cause to arrest Battle for failing to obey their lawful orders and for second-degree assault.

When reviewing the denial of a motion to suppress evidence, "'we must rely solely upon the record developed at the suppression hearing.'" *Raynor v. State*, 440 Md. 71, 81 (2014) (quoting *Briscoe v. State*, 422 Md. 384, 396 (2011)). We view the evidence and all reasonable inferences drawn therefrom "in a light most favorable to the prevailing party," *Lee v. State*, 418 Md. 136, 148 (2011), here, the State. "[W]e reverse a court's factual findings only when they are clearly erroneous." *Cooper v. State*, 163 Md. App. 70, 84 (2005). But "[a]lthough we extend great deference to the motion court's findings of fact, determinations regarding witness credibility, and weighing of the evidence, we make our own independent constitutional appraisal of the law as it applies to the facts of the case." *Id.* at 84-85.

"A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause." *Maryland v. Pringle*, 540 U.S.

366, 370 (2003). Probable cause "is a nontechnical conception of a reasonable ground for belief of guilt." *Collins v. State*, 322 Md. 675, 679 (1991). "A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." *Id.* "Probable cause exists where the facts and circumstances taken as a whole would lead a reasonably cautious person to believe that a felony had been or is being committed by the person arrested." *Id.* "Therefore, to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion." *Id.* (citing *State v. Lemmon*, 318 Md. 365, 380 (1990)); *accord State v. Wallace*, 372 Md. 137, 148 (2002).

"To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." *Donaldson v. State*, 416 Md. 467, 481 (2010) (quoting *Maryland v. Pringle*, 540 U.S. at 371 (citation omitted)).

To know which facts to consider, we must determine at what point Battle was arrested. Typically, an arrest occurs when four elements coalesce: "'(1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested.'" *Belote v. State*, 411 Md. 104, 116 (2009) (quoting *Bouldin v. State*, 276 Md. 511, 516 (1976)).

"An arrest requires *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority." *California v. Hodari D.*, 499 U.S. 621, 626 (1991).

> The word "seizure" readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful. ("She seized the purse-snatcher, but he broke out of her grasp.") It does not remotely apply, however, to the prospect of a policeman yelling "Stop, in the name of the law!" at a fleeing form that continues to flee. That is no seizure.

Id.

Both parties correctly recognize that Battle was not arrested until Officer Trainee Cardenas first deployed his Taser. *See Reid v. State*, 428 Md. 289, 293 (2012). The orders and commands that preceded the deployment of the Taser were merely a show of authority, not a seizure within the purview of the Fourth Amendment. *See, e.g.*, *Williams v. State*, 212 Md. App. 396, 408 (2013). Thus, to evaluate whether the suppression court erred in concluding that the officers had probable cause to arrest Battle, we consider the totality of the circumstances from their first observations of him until Officer Trainee Cardenas deployed his Taser.

b. Probable Cause Permitting a Warrantless Arrest was Established by a Misdemeanor Committed in Officer's Presence

The suppression court determined that Battle was properly arrested without a warrant because he committed two crimes in the officers' presence: failure to obey a lawful order of a law enforcement officer (Md. Code (2002, 2012 Repl. Vol.) § 10-201(c)(3) of the Criminal Law Article) and second-degree assault. We need not consider whether the officers had probable cause to believe Battle was disobeying a lawful order

made to prevent a disturbance to the public peace,[5] because the officers had probable cause to arrest Battle for second-degree assault.

The intent-to-frighten form of second-degree assault "requires that the defendant commit an act with the intent to place another in fear of immediate physical harm, and the defendant had the apparent ability, at that time, to bring about the physical harm." *Snyder v. State*, 210 Md. App. 370, 382 (2013). The victim "must be aware of the impending battery, and there must be an apparent present ability to commit the battery." *Id.* (citation omitted).

Here, the officers followed Battle at a distance of between five and ten feet. On three occasions, Battle turned and adopted a fighting stance, leading the officers to believe that they were about to be attacked. Officer Chapman testified that he feared for his safety and believed a fight to be imminent. Because Officer Chapman perceived Battle's intention to do harm, and because it was readily apparent that Battle had the

[5] A violation of § 10-201(c)(3) of the Criminal Law Article "requires that the defendant willfully fail to obey a reasonable and lawful order of a law enforcement officer, made to prevent a disturbance of the public peace." *Attorney Grievance Comm'n of Md. v. Mahone*, 435 Md. 84, 105 (2013). It is, however, less than clear that the officers gave the orders in this case to prevent a disturbance of the public peace, because their encounter with Battle occurred on a deserted street in the middle of the night. *See Lamb v. State*, 141 Md. App. 610, 640 (2001) (finding insufficient evidence of failure to obey lawful order made to prevent a disturbance to public peace, where there was no evidence of gathering crowd during confrontation between officer and defendant); *see also Reese v. State*, 17 Md. App. 73, 80 (1973) ("the gist of the crime [of disturbing the public peace] . . . is the doing or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathered in the same area"); *cf Okwa v. Harper*, 360 Md. 161, 187-88 (2000) (reversing grant of summary judgment in a civil rights action because officers would not have had probable cause to arrest plaintiff for disturbing the peace if, as he contended, the public was not present to be disturbed).

capability of attacking, the officers had probable cause to arrest him for second-degree assault.

In challenging that conclusion, Battle argues that his actions were "the product of the orders for him to stop, and a response to the police activity in approaching him and ordering a detention *without cause* for that seizure." (Emphasis added.) We interpret Battle to mean that his aggressive responses (squaring off as if to fight and acting as though he were about to charge) are irrelevant, because the officers lacked probable cause or reasonable suspicion to order him to stop in the first instance. He is incorrect: the inquiry into whether the officers had the authority to seize Battle turns on what the officers knew when he yielded to the show of authority, not when the show of authority first occurred. *Williams v. State*, 212 Md. App. at 410. Hence, even if we were to accept the dubious proposition that the officers did not even have reasonable suspicion to stop Battle when they first encountered him, we may still consider his ensuing conduct in evaluating whether the officers had probable cause to arrest him when they ultimately did. *Id.*[6]

[6] Because the circuit court did not decide whether the officers had probable cause to arrest Battle or reasonable suspicion to stop him when they first encountered him, we need not decide that issue. Nonetheless, it is notable that Battle matched the description of the assailant, except for the absence of the red shirt, which Officer Chapman knew a suspect might discard. Furthermore, Battle's red shoes suggested that he may have had (but may have discarded) a red shirt. Not only was Battle coming from the direction of the crime scene, but he was in close physical and temporal proximity to it (he was three to four blocks away from an incident that had occurred about 15 minutes earlier). No one but he was out walking on that residential street after midnight on a weekday night. He appeared disheveled (perhaps as though he had been in a struggle), and he was alarmed when he noticed the police. In these circumstances, it is more than merely arguable that

2. *Miranda* Waiver

In addition to challenging the lawfulness of his arrest, Battle challenges the introduction of his statement to Detective Moran. In support of that challenge, Battle contends that the State did not discharge its burden of proving a valid waiver of his *Miranda* rights.

The suppression court found that Battle had knowingly, intelligently, and voluntarily waived his *Miranda* rights. Consequently, the court denied the motion to suppress his statement.

On appellate review, we defer to the court's factual findings unless they are clearly erroneous, but we make our own appraisal of the constitutional issues and the application of the relevant legal principles to the facts. *See Gonzalez v. State*, 429 Md. 632, 647-48 (2012).

The *Miranda* advisements act as "a set of prophylactic measures to protect a suspect's Fifth Amendment rights [against self-incrimination] from the 'inherently compelling pressures' of custodial interrogation." *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010) (quoting *Miranda v. Arizona*, 384 U.S. 436, 467 (1966)); *accord State v. Luckett*, 413 Md. 360, 377 (2010). They inform the subject of a custodial interrogation 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,

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the officers had reasonable suspicion to believe that Battle may have committed a crime and, hence, that they could have briefly detained and questioned him. *Terry v. Ohio*, 392 U.S. 1 (1968); *Wilson v. State*, 409 Md. 415, 440 (2009).

> and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Miranda v. Arizona, 384 U.S. at 479.

"*Miranda* itself indicated that no talismanic incantation was required to satisfy its strictures." *California v. Prysock*, 453 U.S. 355, 359 (1981) (per curiam). Hence, "[n]o particular wording or 'precise formulation' need be used to impart the nature of the Fifth Amendment rights to the suspect.'" *Gonzalez v. State*, 429 Md. at 650 (quoting *Duckworth v. Eagan*, 492 U.S. 195, 202 (1989)). "'Reviewing courts therefore need not examine *Miranda* warnings as if construing a will or defining the terms of an easement.'" *Rush v. State*, 403 Md. 68, 85 (2008) (quoting *Duckworth v. Eagan*, 492 U.S. at 203). The relevant inquiry is "'whether the warnings reasonably conve[y] to [a suspect] his rights as required by *Miranda*.'" *Gonzalez v. State*, 429 Md. at 651 (alterations in original) (quotation marks omitted) (quoting *Duckworth v. Eagan*, 492 U.S. at 203).

The *Miranda* rights can be waived, "provided the waiver is made voluntarily, knowingly and intelligently." *Miranda v. Arizona*, 384 U.S. at 444. But the State has the burden of proving waiver "'by a preponderance of the evidence.'" *Gonzalez v. State*, 429 Md. at 650 (quoting *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010)). "[T]he State 'must show that the waiver was knowing, intelligent, and voluntary under the "high standar[d] of proof for the waiver of constitutional rights [set forth in] *Johnson v. Zerbst*,"' 304 U.S. 458 (1938)." *Id.* (alterations in original) (quoting *Maryland v. Shatzer*, 559 U.S. at 104).

The inquiry into the validity of a waiver "has two distinct dimensions." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Id.* "Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* "[T]he court must consider 'the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused.'" *Gonzalez v. State*, 429 Md. at 651 (quoting *Johnson v. Zerbst*, 304 U.S. at 464). "Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Moran v. Burbine*, 475 U.S. at 421 (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

a. A Knowing and Voluntary Waiver

Here, Battle does not argue that his waiver was obtained through intimidation, coercion, or deception. He could not sincerely argue that if he had read or been read the rights that were printed on the waiver form, the advisement would have been constitutionally insufficient.[7] Instead, Battle argues that he could not have knowingly and intelligently waived his *Miranda* rights (1) because the detective did not read all of

[7] Indeed, the waiver form expressed the four rights from *Miranda* and more, explicitly stating that if the subject of an interrogation agrees to answer questions, he or she can "stop at any time and request an attorney and no further questions will be asked."

the *Miranda* rights to him (after he interrupted the detective and said that he knew his rights) and (2) because the detective could not be certain that Battle had actually read all of the rights on the printed form in front of him when he signed his name beneath a statement that said: "I have been advised of and understand my rights. I freely and voluntarily waive my rights and agree to talk with the police without having an attorney present."

Battle is correct that if the investigators stop advising a person of his *Miranda* rights when he interrupts and says that he knows his rights, the advisement may be insufficient. *See generally United States v. Patane*, 542 U.S. 630 (2004). However, that is not what happened here. The detective did not merely take Battle's word that he understood his rights. He gave Battle the opportunity to read the rights printed on the form; Battle read the form, as he said he was able to do, and checked the blank lines after each of the five advisements, which range from seven to 25 words of three syllables or less; and he signed on the signature line below the acknowledgement that he understood and freely and voluntarily waived his rights, agreeing to talk without an attorney present. In these circumstances, the detective adequately conveyed the *Miranda* warnings to Battle.

Even though Battle interfered with the effort to orally advise him of his *Miranda* rights by interrupting the detective, he asserts that the warnings were ineffective because they were not given orally. He is incorrect: numerous courts have held that it is unnecessary for *Miranda* warnings to be given in oral, rather than written, form. *See*,

e.g., *State v. Strobel*, 164 N.C. App. 310, 314 (2004) (collecting authorities); *State v. Fisher*, 210 Conn. 619, 625 (1989); *State v. Appleton*, 459 A.2d 94, 96 (R.I. 1983).

Battle also asserts that the warnings were inadequate because the detective could not have known whether he had read the entire document before he checked the boxes and signed his name. The detective, however, was not required to channel Battle's subjective thought processes for the circuit court to find that Battle had been adequately informed of his *Miranda* rights. Not only did Battle check the boxes next to each of the warnings, but he signed his name to affirm that he had been "advised of and understood [his] rights." In addition, Battle told the detective that, because of his prior experiences with the criminal justice system, he already knew what the form said.

In these circumstances, "the trial court was not required to take leave of its common sense." *State v. Fisher*, 210 Conn. at 626. The court could reasonably infer that Battle had been adequately informed of his *Miranda* rights because he had experience with the criminal justice system, was able to read, was given an opportunity to read the *Miranda* warnings, and initialed and signed a document to indicate that he understood them. *See id.* From those facts, the court could also infer that Battle knowingly, intelligently, and voluntarily waived his rights.

Battle himself does not contend that his waiver was involuntary; he argues only that the record was insufficient to support the suppression court's finding of a knowing waiver. To the contrary, Battle was 29 years of age when he signed the form; he said that he could read the English language and that he had completed the eleventh grade; when

shown the form, he told the detective that he already knew what it says; when the detective asked him to read it aloud, he said, "Same thing as it always says"; and when given an opportunity to read the form to himself, he checked the boxes next to each *Miranda* warning and signed beneath a statement affirming that he had been "advised of and understood [his] rights." While it would be preferable to give both oral and written warnings when it is reasonably possible to do so,[8] the suppression court did not err in concluding, on these facts, that Battle knowingly and intelligently waived his *Miranda* rights.

b. Harmless Error

Even if the trial court erred by permitting the State to introduce Battle's video-recorded statement, which we do not believe it did, we would still be required to evaluate whether the admission contributed to Battle's conviction before we could determine Battle's entitlement to a new trial. *See generally Dorsey v. State*, 276 Md. 638, 659 (1976) (concluding that reversal is "mandated" "when an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict"); *see also United States v. O'Keefe*, 128 F.3d 885, 894 (5th Cir. 1997) ("'To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record'") (quoting *Yates v. Evatt*, 500 U.S. 391, 403 (1991)).

[8] *See, e.g., United States v. Sledge*, 546 F.2d 1120, 1122 (4th Cir. 1977).

In deciding whether an error was harmless, we consider, among other things, "whether the evidence presented in error was cumulative evidence.'" *Potts v. State*, 231 Md. App. 398, 408 (2016) (quoting *Dove v. State*, 415 Md. 727, 743 (2010)). "'The essence of this test is the determination whether the cumulative effect of the properly admitted evidence so outweighs the prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded.'" *Id.* at 744 (quoting *Ross v. State*, 276 Md. 664, 674 (1976)).

In arguing that the admission of his statement was not harmless, Battle asserts that the statement "provided critical insight into his presence near the vicinity of the shooting (and did so in a uniquely prejudicial way, as he admitted to a domestic altercation with the mother of his child that evening)." In our view, however, the statement was almost entirely cumulative and, hence, harmless beyond a reasonable doubt.

There was ample, independent evidence that Battle was not only near the scene of the crime, but that he shot the victim. Not only did the officers detain Battle about four blocks from the scene and about 15 minutes after the shooting occurred, but two eyewitnesses identified him, in pretrial photo arrays and in court, as the shooter. The witnesses said that the shooter wore a red hooded sweatshirt; a surveillance video captured an image of Battle wearing a red hooded sweatshirt moments after the shooting; and a red hooded sweatshirt yielding a DNA profile consistent with Battle's was found near the scene. Additionally, a handgun that was linked to shell casings found at the

scene was found in a trash can near the sweatshirt; the analysis of that handgun also yielded Battle's DNA. A New England Patriots cap was found at the scene, and Battle's cell phone contained pictures of him wearing such a cap (and a red hooded sweatshirt). Finally, a dreadlock was found at the scene, and Battle had long dreadlocks at the time of the shooting. Because Battle's presence at the scene was established by two eyewitness, in addition to multiple sources of forensic evidence, we hold that the court's admission of the video-recorded interview, even if erroneous, was both cumulative and harmless beyond a reasonable doubt.

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

APPENDIX

Explanation and Waiver of Rights
Form 007305

POLICE DEPARTMENT
BALTIMORE, MARYLAND

EXPLANATION AND WAIVER OF RIGHTS

CC# 5/15/61 6350

NAME: Jerrod D. Hill

DATE/TIME: 10-15-15 4:15 AM

LOCATION: Homicide Office Room # 7

YOU ARE ADVISED THAT:

1. You have the right to remain silent. ✓
2. Anything you say or write may be used against you in a court of law. ✓
3. You have the right to talk with an attorney before any questioning or during any questioning. ✓
4. If you agree to answer questions, you may stop at any time and request an attorney and no further questions will be asked of you. ✓
5. If you want an attorney and cannot afford to hire one, an attorney will be appointed to represent you. ✓

I have been advised of and understand my rights. I freely and voluntarily waive my rights and agree to talk with the police without having an attorney present.

Signature

Officer's Printed Name | Officer's Signature | Det | 6731 | Seq. # 6

Witnesses:

STATE'S EXHIBIT 29A
5 VID
115214010-11