Circuit Court for Dorchester County
Case No. C-09-CR-18-000051

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2491

September Term, 2018

LASONYA CORINNE SARGENT

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: May 11, 2020

A jury in the Circuit Court for Dorchester County convicted appellant, Lasonya Corinne Sargent, of first and second-degree murder, first-degree assault, and use of a firearm in the commission of a felony or crime of violence. The trial court sentenced Sargent to life plus twenty years in prison, after which she timely filed a notice of appeal. Sargent presents the following issues for our review:

1. Was it error to admit [a]ppellant's statement made during interrogation?
2. Was it error to deny the defense request for a missing evidence instruction?
3. Was it error to deny the defense request for a manslaughter instruction?
4. Was the evidence sufficient to sustain the verdict of first[-]degree, premeditated murder?

For the reasons that follow, we affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

In 2018, Sargent and her live-in boyfriend, Sharod Mack, had been in a relationship for approximately eight years. Sargent was aware that Mack was seeing other women, however, and was unhappy about this. Mack's mother encouraged Sargent to leave him. Sargent ignored that advice until she learned that Mack had impregnated another woman, Kysheia Anderson, and apparently planned to leave Sargent for her.

At approximately 7:00 A.M. on January 30, 2018, Mack conversed with Anderson by text message. By 2:45 P.M., Mack was dead and Sargent gravely injured. At Sargent's murder trial, the State presented its rendition of the events that transpired in those intervening hours. The evidence adduced at trial revealed the following.

The Cambridge Police Department responded to Sargent and Mack's residence at approximately 2:45 P.M. on January 30, 2018, in response to a 911 call regarding a shooting with two victims. When officers arrived, they found Sargent lying face down on the living room floor, bleeding, with a gunshot wound to her chest, and Mack, deceased with two gunshot wounds to the head, upstairs in bed. Mack was cold to the touch and the blood on his body was dry.[1]

The police officers observed a gun on the bed next to Mack. The gun had a casing lodged in the chamber, and the slide was "slightly askew," meaning it was unable to fire. Three cartridge casings were recovered in the bedroom, along with two bullets from inside Mack's pillow. The gun next to Mack's body had fired the bullets. Later testing connected Sargent's DNA to a blood stain on the gun.

Despite the January cold, a window was open in the bedroom, and the thermostat had been turned off, reflecting a temperature below 60 degrees.[2] There was no sign of forcible entry to the house and no signs of a struggle. When the police officers asked Sargent what had happened, she did not respond. At that point, the detectives believed that Mack had attempted to murder Sargent and then committed suicide.

Emergency medical personnel determined that Sargent's chest injury was severe enough to warrant helicopter transport to Shock Trauma in Baltimore. During the

[1] The medical examiner explained that the shots were fired at close range and that either of the two gunshot wounds independently would have been fatal.

[2] At trial, the State speculated that Sargent had turned off the thermostat and opened the window to slow the rate of Mack's decomposition and disguise his time of death.

ambulance ride to the landing zone, Sargent repeatedly stated that she was in pain and wanted to die. She also told a detective that two or three armed men had broken into her home looking for drugs and money, raped her, and then shot her and Mack.

Because of Sargent's rape allegation, a SAFE nurse conducted a forensic examination on Sargent. The examination revealed three small vaginal abrasions but no tearing, cuts, or bleeding. Vaginal swabs indicated the presence of Mack's semen, but did not indicate the presence of anyone else's DNA.

The police's theory of the case changed when they determined that Mack's killer had shot him "at close range." The detectives began to suspect Sargent's involvement in Mack's murder, and, believing they had probable cause to make an arrest, returned to Shock Trauma on January 31, 2018, to re-interview her.

In a recorded statement, Sargent told the detectives that "maybe last week," two or three men broke into her home through a downstairs window, woke her and Mack, and demanded to know "where the work at," but Mack told them he did not have what they were looking for.[3] After that incident, Sargent claimed that Mack bought a gun to keep in the house. Sargent's son, who lived with the couple, became fearful, moved out of the house, and asked his mother to also leave.[4]

[3] The interviewing detectives surmised, without correction by Sargent, that Mack sold narcotics.

[4] Sargent's son testified for the defense and corroborated that a break-in occurred on January 21, 2018. After that break-in, the son explained that he and Sargent planned to move out of the house, but whereas he moved in with his grandmother, Sargent ultimately stayed with Mack.

Sargent explained that three masked men again broke into the house while she and Mack were sleeping. The men took her downstairs, where she heard a gunshot. The men told her, "We going to make you suffer. Where is it at? We know you know where it is." They then raped her. Afterwards, the men took Sargent upstairs, made her open a safe, laid her on the bed next to Mack, and shot her with Mack's gun. She woke up in the bedroom after some indeterminate amount of time, called 911, and went downstairs to await the police.

Sargent conceded to the detectives that she knew Mack had impregnated another woman. She nevertheless insisted that they had "gotten past it" and were "working out the issues." Sargent denied shooting Mack.

The theory the State presented to the jury was that Sargent shot Mack twice in the head while he was sleeping on the morning of January 30, 2018, and sometime later that day attempted to commit suicide. The gun jammed, however, and Sargent was unable to kill herself. The State also presented evidence that Sargent had been suspended from her job pending termination on January 29, 2018, and was in a bad state of mind the next day. The State surmised that Sargent invented the story about home invaders and rapists to conceal the murder. As stated above, the jury convicted Sargent of first and second-degree murder, and related offenses, and she timely appealed. We shall provide additional facts as necessary.

DISCUSSION

I. Motion to Suppress

Sargent's first argument on appeal is that the suppression court erred in denying her motion to suppress statements she made to the police on the grounds that her statements were not voluntary under Maryland nonconstitutional law. Specifically, she contends that she lacked the mental and physical capacity to render voluntary statements to the police because of her injuries and the physical pain she was experiencing.

Our review of a trial court's denial of a motion to suppress is ordinarily limited to "information contained in the record of the suppression hearing and not the record of the trial." *Dashiell v. State*, 374 Md. 85, 93 (2003) (quoting *State v. Collins*, 367 Md. 700, 706-07 (2002)). When, as here, the motion to suppress has been denied, we consider the facts in the light most favorable to the State as the prevailing party on the motion. *Id.* at 93 (quoting *Collins*, 367 Md. at 707). We do not engage in *de novo* fact finding. Instead, we "extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous." *Padilla v. State*, 180 Md. App. 210, 218 (2008) (quoting *Brown v. State*, 397 Md. 89, 98 (2007)). "[A]s to the ultimate conclusion of whether an action taken was proper, we must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Collins*, 367 Md. at 707.

"In Maryland, a defendant's confession is only admissible if it is (1) voluntary under Maryland nonconstitutional law, (2) voluntary under the Due Process Clause of the Fourteenth Amendment of the United States Constitution . . . and (3) elicited in

conformance with the mandates of [*Miranda v. Arizona*, 384 U.S. 436 (1966)]." *Hoey v. State*, 311 Md. 473, 480 (1988). "A confession is voluntary under Maryland nonconstitutional law if it is 'freely and voluntarily made at a time when [the defendant] knew and understood what [she] was saying.'" *Id*. at 480-81 (first alteration in original) (quoting *Wiggins v. State*, 235 Md. 97, 102 (1964)). "The first step in determining whether a confession is voluntary under Maryland nonconstitutional law is to determine whether the defendant was mentally capable of making a confession." *Id*. at 481. The second step is to determine whether the confession was given "freely and voluntarily." *Id*. at 483.

In *Hoey*, the Court of Appeals was tasked with deciding whether Hoey's confession was inadmissible under Maryland nonconstitutional law. There, Hoey was suspected of throwing a Molotov cocktail at a building. *Id*. at 477. When police determined Hoey to be a suspect, detectives brought him to the police station to interview him. *Id*. at 477-78. While at the station, Hoey waived his *Miranda* rights and orally confessed. *Id*. at 478.

Prior to trial, Hoey's attorney moved to suppress his confession on the ground that it was involuntarily elicited because Hoey suffered from schizophrenia. *Id*. The attorney argued that this mental disorder prevented Hoey from knowingly, voluntarily, and intelligently waiving his rights. *Id*. Hoey also alleged that a detective promised him leniency in exchange for his confession. *Id*.

The State maintained that Hoey's confession was voluntary. *Id*. at 479. At the suppression hearing, the State presented the testimony of the officer who stopped Hoey the day he was charged. *Id*. This officer testified that "Hoey appeared cognizant of his surroundings and responded normally to questions and directives." *Id*. The detective to

whom Hoey confessed at the station corroborated that testimony, indicating that Hoey appeared to "understand what was happening and answered questions responsively." *Id.* That same detective "expressly denied making any promise of leniency to Hoey in exchange for a confession." *Id.* The suppression court found that Hoey had received no promises of leniency, and found that Hoey's confession was made freely and voluntarily. *Id.*

On appeal, the Court of Appeals affirmed that Hoey's confession was voluntary under Maryland nonconstitutional law. *Id.* at 480-81. In doing so, the Court first verified that Hoey was "mentally capable of making a confession." *Id.* at 481. In deciding whether Hoey was mentally capable of making a confession, the Court considered *McCleary v. State*, 122 Md. 394 (1914), a case where "the defendant claimed that his confession was inadmissible because he was mentally irresponsible at the time he confessed." *Hoey*, 311 Md. at 481. The *Hoey* Court explained that in *McCleary*, McCleary testified that on the night of his confession "he heard groans, saw ghosts, and thought he was fighting wild beasts." *Id.* Additionally, McCleary produced testimony that he was speaking "irrationally and incoherently" the day after the confession. *Id.* The State's Attorney and a jail physician, however, testified that although McCleary may have appeared "excited" on the day of his confession, "he was far from being irrational." *Id.* Accordingly, there was sufficient evidence to support the conclusion that McCleary was mentally capable of understanding his confession. *Id.*

The *Hoey* Court next considered the circumstances in *Wiggins*. *Id.* There, the defendant claimed that he was mentally incapable of making a confession due to alcohol

withdrawal. *Id*. Although Wiggins testified that on the day of his confession he told police "he had rabbits in his hands and had pulled 'angel's hair' from his body[,]" several police officers testified that Wiggins's "speech was coherent and his answers were rational on the day of his confession." *Id*. at 481-82.

The *Wiggins* Court determined that "[t]he crucial question was not whether [the defendant] was suffering from the effects of withdrawal from excessive alcoholic indulgences when he gave [his confessions], but whether his disclosures to the police were freely and voluntarily made at the time when he knew and understood what he was saying." *Id*. at 482 (alterations in original) (quoting *Wiggins*, 235 Md. at 102).

From these two cases, the *Hoey* Court stated the following in determining whether a defendant's mental capacity affected the voluntariness of the confession,

> it is clear that under Maryland nonconstitutional law a defendant's mere mental deficiency is insufficient to automatically make his confession involuntary. *Rather, a confession is only involuntary when the defendant, at the time of his confession, is so mentally impaired that he does not know or understand what he is saying*.

Id. at 482 (emphasis added). In light of the testimony that Hoey "understood questions, spoke coherently and rationally, followed commands, and did not act peculiarly at the time he was arrested[,]" there was sufficient evidence in the record to support the trial court's determination that Hoey "was mentally capable of understanding what he was saying." *Id*. at 483.

The Court then turned to the second step of the Maryland nonconstitutional voluntariness analysis: whether Hoey's confession was given "freely and voluntarily." *Id*. The Court stated, "Under Maryland nonconstitutional law, a confession is inadmissible

unless it is 'shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary.'" *Id*. (quoting *Hillard v. State*, 286 Md. 145, 150 (1979)). The Court explained, "Thus, a confession is involuntary if it is induced by force, undue influence, improper promises, or threats." *Id*. (citing *Hillard*, 286 Md. at 151).

The *Hoey* Court rejected the argument that Hoey's confession was not given freely and voluntarily. *Id*. at 484. Hoey alleged that his confession was not voluntary for two reasons: 1) a detective had promised leniency in exchange for the confession, and 2) the detective suggested Hoey reduce his confession to writing to avoid any subsequent confusion regarding its content. *Id*. Because the trial court expressly found that the detective never made such promises, the Court of Appeals summarily concluded that Hoey's confession was given freely and voluntarily. *Id*.

Against this backdrop, we turn to the voluntariness of the statements at issue in the instant case. In her brief, Sargent only claims that her statements were involuntary because she was in pain, had received pain medication, and was "in and out of consciousness," and therefore lacked "the mental and physical capacity to handle the interrogation and make voluntary statements[.]" Accordingly, Sargent does not appear to dispute, nor shall we consider, whether her statements were given "freely and voluntarily" because she does not allege that the statements were induced by force, undue influence, improper promises, or threats—the second part of the Maryland nonconstitutional voluntariness test. *Id*. at 483.

Although her brief is not the model for clarity, we perceive that Sargent challenges the admissibility of two groups of statements: 1) statements she made to Detective Chris

Phillips on January 30, 2018, both during her ambulance ride and later at Shock Trauma in Baltimore; and 2) the statement she provided to Detective Sergeant John Lewis the next day, on January 31, 2018. We shall address these statements in turn.

A. Statements Made to Detective Phillips on January 30, 2018

At the suppression hearing, Detective Chris Phillips testified that he responded to the crime scene on January 30, 2018. He explained that, as emergency personnel were transporting Sargent away from the scene, his supervisors ordered him to stay with her in the event that she made a dying declaration regarding the shooting.

Detective Phillips testified that, during the ambulance ride to the helicopter landing zone, he attempted to converse with Sargent about what had happened. He testified that Sargent told him two or three men had broken into the house looking for drugs and money and had shot her and Mack. During this ride, Sargent told Detective Phillips that she was in pain and that she wanted to die. At that point, Detective Phillips ceased asking Sargent questions.

Although he did not attempt to speak further with Sargent in the helicopter, Detective Phillips testified that he was able to question Sargent within approximately thirty minutes after their arrival at Shock Trauma, after medical personnel had tended to her most urgent injuries. From approximately 4:00 P.M. to 11:00 P.M., Detective Phillips spoke with Sargent several times, as frequently as he could without interfering with medical staff or Sargent drifting off to sleep.

Although Sargent continually told Detective Phillips that he could not relate to her pain and asked him to let her die, her answers "seemed logical" and "coherent" and not

confused.[5] Detective Phillips further testified that there was never a point at which Sargent seemed "like she was in outer space" nor any point where she appeared unaware of her location. When Sargent's family members arrived at the hospital to see her, she was able to identify each of them, further demonstrating her mental awareness. Detective Phillips testified that he made no threats or promises to induce any statement, and Sargent did not ask why he was questioning her or seek to end the interview. Detective Phillips observed, however, that Sargent appeared more forthcoming in answering the Shock Trauma medical team's questions than his own. For example, Detective Phillips testified that Sargent was "curious" about the extent of her injuries, and seemed to understand what the hospital staff told her regarding the nature of her injuries.

Sargent argues that the suppression court erred in ruling admissible her statements to Detective Phillips because her mental and physical capacity rendered her statements involuntary. We disagree.

In *Hoey*, the Court of Appeals made clear that,

> under Maryland nonconstitutional law a defendant's mere mental deficiency is insufficient to automatically make his confession involuntary. Rather, a confession is only involuntary when the defendant, at the time of his confession, is so mentally impaired that he does not know or understand what he is saying.

[5] To Detective Phillips, Sargent confirmed that she was in a relationship with Mack and repeated that very early that morning, while she and Mack were sleeping, two or three men broke into the house through a back door, looking for drugs and money. When they found some money in Mack's pants, they shot him, took her downstairs, and raped and tortured her. Afterward, they brought her upstairs, made her open a safe, and shot her. She then called 911 and went back downstairs to wait for the first responders.

311 Md. at 482. As in *Hoey*, here, regardless of the fact that Sargent was apparently in pain and may have been on pain medication or drifting in and out of consciousness at times, the evidence fails to show that she was so impaired that she did not know or understand what she was saying. On the contrary, Detective Phillips's uncontroverted testimony indicated that Sargent's answers to his questions "seemed logical" and "coherent" and not "confused." Accordingly, Sargent's physical condition, "standing alone, was insufficient to make [her] confession involuntary." *Id*. at 483.

B. Statement Made to Detective John Lewis on January 31, 2018

We next address the statement Sargent provided to Detective Lewis on January 31, 2018. Detective Lewis testified that on January 30, 2018, he theorized Sargent had shot Mack, and determined it was necessary to speak with her. Accordingly, the next morning, Detective Lewis, another detective, and an Assistant State's Attorney returned to Shock Trauma to further question Sargent.

When they arrived, Sargent was sitting up in bed, talking to family members. The detectives explained that they wished to speak with her, and Sargent's mother and son asked Sargent whether she wanted to do so. Sargent indicated that she wanted to answer the detectives' questions, and her family members left the room.

Detective Lewis testified that he provided Sargent with a *Miranda* form, and that she signed the form and agreed to speak with the detectives. During this questioning, Sargent assured the detectives that she knew where she was and what was happening. She explained the circumstances of the first home invasion that had occurred a week earlier, recited the combination to the safe in her house (later verified as accurate), and

acknowledged that she had gone to the store to buy cigarettes the morning she was shot (which the detectives also later corroborated by viewing the store's security video footage). Detective Lewis testified that at all times, Sargent appeared to be alert and was able to hold a conversation. He stated that she "gave reasonable answers to the questions that [they] were asking[,]" which made him "believe that she understood everything [they] were saying."

When Detective Lewis told Sargent that he believed she had shot Mack, she became aggressive and asked to end the interview, after which the detectives ceased asking questions. At that point, the police planned to charge her, and she was no longer free to leave the hospital or have visitors.

Sargent's estranged husband, mother, and son also testified at the suppression hearing. They stated that, on January 31, 2018, prior to Detective Lewis's arrival, Sargent was in and out of consciousness and unable to hold an entire conversation. Sargent also testified at the hearing, but only offered that she could not remember anything from the moment of the shooting until she woke up at Shock Trauma with her son next to her in the hospital. Sargent indicated that she did not remember signing a *Miranda* form, but did recall the fact that the detectives accused her of murdering Mack.

Regarding the January 31, 2018 interview with Detective Lewis, the suppression court found that,

> Throughout the interview, [Sargent] remained awake. Her speech was not slurred, and her responses to police questions indicated she understood the questions being asked to her. When asked by police if she knew which hospital she was in, [Sargent] indicated that she was in the hospital in Baltimore, Maryland. [Sargent] provided several pieces of information

> during the interview that were later confirmed as accurate by police, such as the code to the safe in the residence and the time period a paternity notice was sent to the residence. The accuracy of this information supports the notion that [Sargent's] physical and mental state was not so diminished that she did not knowingly and intelligently waive her rights under *Miranda*. . . . Absent any evidence of a promise by police for leniency, [Sargent's] post-*Miranda* statements were also voluntary under Maryland common law.

We perceive no error in the suppression court's determination that Sargent's statement on January 31, 2018, was voluntary under the totality of the circumstances. When the detectives arrived at Shock Trauma that day, Sargent agreed to speak with them, even after her mother and son asked her whether she was sure she wanted to. Although Sargent was in pain and on medication, the evidence showed that she was capable of understanding the questions being asked of her. Prior to the interview, Sargent had been sitting up in bed, conversing with her family. The court credited Detective Lewis's testimony that, after her family members left the room, Sargent was lucid and awake for the questioning and that her answers were clear and logical. In fact, the evidence showed that on at least two occasions, Sargent corrected the detectives' inaccurate understanding of circumstances relating to the amount of money stolen from her house during the earlier home invasion and the time frame in which she learned that Mack had impregnated another woman. She also accurately provided the detectives with the combination to the safe in her home.

Like her January 30, 2018 statements, the evidence supports the suppression court's finding that Sargent was not so mentally impaired that she failed to understand what she was saying. *Hoey*, 311 Md. at 482. On the contrary, Sargent's ability to determine whether she wished to speak with the police, and her ability to recall information that the police

were later able to verify as accurate demonstrated that she possessed the mental capability to voluntarily provide the statements regardless of her level of pain. *Id*. at 481; *see also Gorge v. State*, 386 Md. 600, 621-22 (2005) (affirming a suppression court's determination that a statement was voluntary, under a totality of the circumstances, when the interrogating detective's uncontroverted testimony established that the defendant was lucid at the time of interrogation, despite the fact that the interrogation took place in the defendant's hospital room "while he was recovering from serious injuries").

We conclude that Sargent's statements to the detectives on January 30 and 31, 2018, were voluntary under Maryland nonconstitutional law. Accordingly, the suppression court did not err in denying Sargent's motion to suppress her statements to police.

II. Missing Evidence Instruction

Sargent next argues that the trial court abused its discretion in denying her request to instruct the jury about missing evidence, namely, the notes Detective Phillips took on his phone during his interview with her at Shock Trauma on January 30, 2018. Sargent argues that, because Detective Phillips admitted, without explanation, to deliberately deleting his phone notes after drafting his report, the court should have provided a jury instruction that the missing evidence did not support Detective Phillips's later version of the interview. We disagree.

Detective Phillips testified that as he spoke with Sargent on January 30, 2018, he took notes on his phone to memorialize her statements, but deleted the phone notes after he drafted his official police report the next day. He explained that he used these notes to "stir" his memory of the conversation and "not for anybody else." He explained that the

substance of the notes appeared in his report, and once written into the report, "those notes no longer [had] any value."

Later, defense counsel requested that the court give the jury a missing evidence instruction based on the fact that Detective Phillips admitted to destroying his notes of the January 30, 2018 interview with Sargent.[6] The prosecutor responded that the notes were not "really evidence" and "certainly not the type of evidence that . . . would be collected." In addition, the prosecutor continued, it was questionable whether the detective's notes were discoverable and whether anything in them was exculpatory or relevant. Furthermore, the prosecutor noted that the State had provided the defense with Sargent's statement, in the form of the formal report Detective Phillips completed the next day, which Detective Phillips verified was consistent with his notes.

The court ruled:

> So in the case of the bar [sic] one can conclude that detective's rough notes are not evidence at all. The testimony reveals that during the time Detective Phillips was at the hospital the defendant was considered a victim, not a suspect. What's also in here is that the evidence, as defense calls it, was her statements saying that she and Mr. Mack were the victims of a home invasion. Her statements were, if anything, exculpatory. They were not inculpatory statements.
>
> To give the missing evidence instruction about exculpatory statements is nonsensical. If the detective, detective's former report indicated she

[6] It appears that the discussion concerning the missing evidence instruction occurred off the record in the trial judge's chambers, so we cannot specify the wording of the instruction sought by the defense. Such an instruction typically provides, however, that when there is evidence that is peculiarly within the power of the State to produce but is not produced, and its absence is not sufficiently accounted for, the jury may decide that the evidence would have been unfavorable to the State. *See Patterson v. State*, 356 Md. 677, 688 (1999).

> confessed to the murder, but the notes contain exculpatory statements; that would be a different story. Those facts are not present here.
>
> So the requested instruction coming out of *Cost v. State* [, 417 Md. 360 (2010)], will not be given. It's just inappropriate.

Generally, the decision to give a missing evidence instruction rests within the sound discretion of the trial court. *McDuffie v. State*, 115 Md. App. 359, 366 (1997). Because a trial court normally is not required to instruct on the presence, or not, of factual inferences, however, a missing evidence instruction "generally need not be given," and "the failure to give such an instruction is neither error nor an abuse of discretion." *Patterson*, 356 Md. at 688; *see also Lowry v. State*, 363 Md. 357, 375 (2001) (holding that when a trial court declined to give requested missing evidence instruction but allowed defense to argue the inference to the jury during closing, "[t]hat is all to which petitioner was entitled").

Nonetheless, the Court of Appeals has held that in an "exceptional" case, a trial court may abuse its discretion by not providing a requested missing evidence instruction if the missing evidence is: highly relevant and "goes to the heart of the case;" the type of evidence that ordinarily would be collected and analyzed, and "completely within State custody." *Cost v. State*, 417 Md. at 378, 380. The Court of Appeals emphasized, however, that trial courts are not required to give missing evidence instructions "as a matter of course, whenever the defendant alleges non-production of evidence that the State might have introduced." *Id.* at 382.

Against this backdrop, we find no error of law or abuse of discretion in the trial court's refusal to give the requested instruction. The detective's deleted notes, if they may be construed as evidence, were created solely to "stir" Detective Phillips's memory when

he returned to the police station from Shock Trauma the next morning to draft his formal report. That report, which Detective Phillips testified was entirely consistent with the deleted notes, was produced to the defense. In addition, although defense counsel questioned Detective Phillips about the creation, substance, and deletion of his notes, that examination failed to reveal any inconsistency between the notes and the written report.

To the extent the notes had any potential use to the defense, such use was at best marginal. The notes did not address the heart of the case and were not "highly relevant" to Sargent's defense. We therefore hold that this is not an exceptional case requiring a missing evidence instruction, and the trial court did not err in declining to provide this instruction.

III. Manslaughter Instruction

Sargent's third argument on appeal is that the court abused its discretion in declining to provide the jury with a manslaughter jury instruction. She claims that this instruction was proper because "[a] reasonable juror could conclude that, after months of humiliation caused by Mr. Mack's infidelity, on the morning that she learned Mr. Mack was planning to abandon her for the other woman, [Sargent] reached the 'snapping' point." We disagree.

According to her brief, Sargent's counsel requested a manslaughter instruction in chambers. The court denied this request, and at the close of jury instructions, Sargent's counsel renewed the request for the manslaughter instruction, arguing that the jury should be permitted "to make an inference that there was a crime of passion or provocation given the allegations of the infidelity, the allegedly moving in with Kysheia Anderson right around then . . . ." The State disagreed, explaining that there was no evidence to support

the "sort of snapping" that would justify a manslaughter instruction.

In rejecting Sargent's request for a manslaughter instruction, the trial court stated:

> All right. Okay. Well, the court has heard the testimony, has observed the physical evidence. There appears to be no indication here that there was any type of self-defense, there was any sort of snapping where the gun was fired, there was not a conscious thought by the defendant for firing the weapon, if she was the one that fired it.
>
> So the court does not believe that manslaughter is an appropriate instruction and will not give that. The court will note your objection.

In order to determine whether murder should be mitigated to manslaughter, we look to the circumstances surrounding the homicide. To invoke the so-called "Rule of Provocation," the following requirements must be met:

1. There must have been adequate provocation;

2. The killing must have been in the heat of passion;

3. It must have been a sudden heat of passion—that is, the killing must have followed the provocation before there had been a reasonable opportunity for the passion to cool;

4. There must have been a causal connection between the provocation, the passion, and the fatal act.

Wilson v. State, 195 Md. App. 647, 680-81 (2010) (quoting *Whitehead v. State*, 9 Md. App. 7, 10 (1970)), *vacated on other grounds*, 422 Md. 533 (2011). "*Each of the four elements is a sine qua non for a defense of mitigation* based upon hot-blooded response to legally adequate provocation." *Id*. at 681 (quoting *Tripp v. State*, 36 Md. App. 459, 477 (1977)). To be entitled to a mitigation jury instruction,

> the defendant has the burden of initially producing some evidence on the issue of mitigation or self-defense . . . sufficient to give rise to a jury issue . . . . Once the issue has been generated by the evidence, however, the State

> must carry the ultimate burden of persuasion beyond a reasonable doubt on that issue.

Wilson v. State, 422 Md. 533, 541 (2011) (quotation marks omitted) (quoting *Simmons v. State*, 313 Md. 33, 39 (1988)). The Court of Appeals has described the "some evidence" standard as follows:

> *Some evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence is immaterial; it may emanate solely from the defendant. It is of no matter that the self-defense claim is overwhelmed by evidence to the contrary. If there is any evidence relied on by the defendant which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden. Then the baton is passed to the State. It must shoulder the burden of proving beyond a reasonable doubt to the satisfaction of the jury that the defendant did not kill in self-defense.

Dykes v. State, 319 Md. 206, 216-217 (1990).

In *Wilson*, the victim, Brian Adams, and his two friends encountered Wilson at a gas station. 195 Md. App. at 657. Adams and Wilson exchanged verbal barbs, including Adams threatening to shoot Wilson, and Adams's friends threatening to fight Wilson. *Id.* Stating that he did not want any conflict, Wilson left the gas station, and went to his grandmother's house. *Id*. While there, Wilson changed his clothes, called his cousin for "backup," and, after his cousin did not answer the phone, grabbed a steak knife for "backup." *Id*. at 667. Wilson then left his grandmother's house seeking to confront Adams and his friends. *Id.* Wilson came upon Adams and the two stared each other down. *Id*. at 672. Adams then pulled out a gun and, while smiling, pointed it at Wilson. *Id*. Somehow, Wilson grabbed the gun from Adams, and then pointed it at Adams. *Id*. Wilson would

later testify that although less than a minute elapsed after he pointed the gun at Adams, he did wait before he pulled the trigger. *Id*. Wilson testified that, at the moment he pulled the trigger, he "was scared, [he] was mad . . . [he] felt challenged . . . . [He] had a lot of emotion running through [his] head at that time." *Id*. (emphasis removed). "When asked why he shot Adams four times, [Wilson] explained that he 'was just caught in the moment.'" *Id*. at 673.

On appeal, this Court affirmed the trial court's decision not to provide a voluntary manslaughter jury instruction. In reviewing whether Wilson acted in the heat of passion, we noted,

> For the nonce, we are making the point that [Wilson] never really actually described a sense of hot-blooded rage, let alone attributed such a sense of overpowering rage to the actions of Adams at the crime scene. *No one else, moreover, testified as to such a sense of rage on his part. This element of the defense, the actual state of rage in the mind of the defendant, is a subjective requirement*.

Id. at 682 (emphasis added). We concluded, "In this regard alone, the issue of hot-blooded response to provocation was not generated." *Id*. at 683.

As in *Wilson*, Sargent failed to produce any evidence regarding her subjective mental state at the time of the murder indicating that she was enraged. Indeed, Sargent's defense was that she did not shoot Mack—her theory of the case involved intruders entering the home, raping her, and then shooting her and Mack. Because Sargent did not produce any evidence regarding her subjective mental state at the time of the murder, she failed to meet her burden. *See Wilson*, 422 Md. at 541. Accordingly, we see no abuse of discretion in declining to provide a manslaughter instruction.

IV. Sufficiency of the Evidence

Sargent's final argument on appeal is that the evidence was insufficient to sustain the jury's verdict of first-degree premeditated murder. Specifically, Sargent notes in her appellate brief that, in a murder case involving multiple gunshots, evidence of an interval between the first and second shot can constitute evidence of premeditation. Sargent argues that the State failed to prove the element of premeditation because the State failed to present any evidence showing an interval between the first and second shot. Not only did Sargent fail to preserve this argument for our review, but this argument is wholly unpersuasive.

This Court has recently reiterated the well-established principle that, in order to preserve a sufficiency argument for appellate review, a criminal defendant must raise the issue in the motion for judgment of acquittal. In *Redkovsky v. State*, we stated,

> Pursuant to Maryland Rule 4-324(a), a criminal defendant who moves for judgment of acquittal must "state with particularity all reasons why the motion should be granted[,]" and "is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302, 951 A.2d 87 (2008) (citations omitted). Thus, "the issue of sufficiency of the evidence is not preserved when [the defendant]'s motion for judgment of acquittal is on a ground different than that set forth on appeal." *Mulley v. State*, 228 Md. App. 364, 388-89, 137 A.2d 1091 (2016) (citations omitted). We have recognized, however, that a motion for judgment of acquittal may be sufficient to preserve an issue where the acquittal argument generally includes the issue raised on appeal.

240 Md. App. 252, 261 (2019) (alterations in original).

In the motion for judgment of acquittal, Sargent's counsel claimed that there is a presumption in Maryland that "homicide is murder in the second degree." Sargent's counsel argued,

> I would just submit to the court that the evidence of premeditation as to exactly what happened in the bedroom, even in the light most favorable to the State, is largely speculative. The State's case is largely about picking apart the defendant's statements rather than establishing evidence of exactly what happened.

Sargent's counsel concluded, "I would just submit to the court that the evidence of premeditation at this point is speculative, even in the light most favorable to the State and I would move for Motion for Judgment of Acquittal as to first[-]degree murder."

Whereas at trial Sargent argued that the State generally failed to establish the element of premeditation for first-degree murder, Sargent's appellate argument exclusively focuses on whether there was an appreciable interval between the first and second shots fired. Because Sargent failed to raise this theory at trial, she failed to preserve her appellate argument for our review.

Even assuming Sargent had preserved this argument for our review, we would nevertheless reject it. In her brief, Sargent quotes *Chisley v. State*, 202 Md. 87, 108 (1953), where the Court of Appeals stated,

> The jury could find that two or more shots were fired and that there was an appreciable interval between the first shot and the second, or more, and that the second was fired as [the victim] lay on the ground; the firing of two or more shots in such circumstances has been held by the Courts to be evidence for the jury of deliberation and premeditation.

Sargent argues that because there was evidence in this case that two shots were fired, but no evidence of an appreciable interval between the first and second shot, that the State failed to prove premeditation.

This argument presupposes that the State may only establish premeditation in a murder case involving multiple gunshot wounds by showing that there was an appreciable

interval between the first shot and any subsequent shots fired. We reject this illogical assertion. That there may have been insufficient time to form the requisite premeditation between the first and second gunshots does not mean that Sargent lacked premeditation for the first shot. Accordingly, we reject Sargent's argument that there was insufficient evidence to support her conviction for first-degree murder due to the lack of evidence regarding an appreciable interval between the gunshots, particularly where there was expert testimony that either of the two gunshot wounds in this case would have been fatal.

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