Circuit Court for Montgomery County
Case No. 132870C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2995

September Term, 2018

ELMER CAMPOS-MARTINEZ

v.

STATE OF MARYLAND

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 8, 2020

A jury, sitting in the Circuit Court for Montgomery County, convicted Elmer Campos Martinez, appellant, of first-degree murder. The court sentenced him to life imprisonment without the possibility of parole. On appeal, he presents the following five questions for our review:

1. Did the trial court err by refusing to grant a mistrial, or alternatively, precluding the State from using police body camera footage showing Jose Guerra Machado distraught after learning that his wife had been found deceased, when the recording was disclosed to the defense on the second day of trial?

2. Did the trial court err by precluding the admission of text messages in which Dania Mendez said that her husband beat her?

3. Did the trial court err by allowing Detective Eric Glass, the lead investigator, to comment as to how, during the course of the investigation, police developed appellant as a suspect?

4. Did the trial court err by limiting the testimony of Detective Sergeant Paul Reese?

5. Did the trial court err in denying appellant's motion to suppress?

Finding no reversible error, we shall affirm the judgments of the circuit court.

BACKGROUND

On November 5, 2017, Dania Mendez, the victim in this case, and appellant worked the evening shift at a Kentucky Fried Chicken restaurant ("KFC") located on University Boulevard in Wheaton, Maryland. According to a KFC timecard report, Ms. Mendez worked from 4:56 p.m. until 12:22 a.m., while appellant worked from 3:57 p.m. until 11:53

p.m. When Ms. Mendez did not return home after her shift, her husband, Jose Guerra Machado, reported her missing.

As part of their investigation into Ms. Mendez's disappearance, the police obtained a search warrant for her Facebook account, and discovered exchanges between appellant and her, the content of which suggested that they had been romantically involved. On November 5th, Ms. Mendez's messages to appellant became confrontational. In them, she accused him of having consorted with other women. In her final Facebook message to appellant, sent at 4:03 p.m. that day, Ms. Mendez instructed him not to "write" her again. Based on these messages, the police "began to look into [appellant] as a possible suspect[.]"

On November 10th, police officers were dispatched to appellant's home. Upon their arrival, one of the officers asked appellant whether he communicated with Ms. Mendez via phone, text, or social media. Appellant denied having done so. The officers requested that appellant accompany them to the precinct for further questioning, and appellant agreed. As appellant entered the officers' vehicle, they received a report that "a possible body," later identified as Ms. Mendez, had been discovered behind a CVS, which was located on the same road and a block away from the KFC at which Ms. Mendez and appellant worked.

Appellant's police interview commenced three to four hours after he arrived at the precinct, and was approximately five hours in duration. Though he initially denied having had a social relationship with Ms. Mendez, appellant ultimately admitted that they were romantically involved. He then provided the police with the following account of his altercation with Ms. Mendez in the early morning hours of November 6th. He related that

Ms. Mendez requested that he wait for her after his shift. Appellant did so. Ms. Mendez's shift ended, she told appellant "we're going to break up." Appellant replied, "okay, fine, it's over," and began to walk away. Ms. Mendez followed him, yelled at him, and brandished a sharp metallic object. When they arrived at the CVS at which Ms. Mendez's body was ultimately found, Ms. Mendez lunged at and hit appellant. In an attempt to defend himself, appellant claimed, he struck Ms. Mendez, causing her to fall and hit her head. When Ms. Mendez did not get back up, he took her purse and phone and discarded them in a dumpster outside of his apartment. Finally, during the interview, appellant acknowledged having worn a brown jacket on November 5th. A search of appellant's bedroom closet revealed a jacket similar in appearance to that described by appellant. Blood found on that jacket tested positive for Ms. Mendez's DNA.

Additional facts will be included as necessary for the resolution of the issues.

DISCUSSION

I.

Appellant first contends that the trial court erred in denying his requests for a mistrial, or alternatively the exclusion of evidence based on a purported discovery violation. The State counters that it complied with its discovery obligation because prior to trial it had not intended to use the evidence at issue.

The Belated Discovery

On the morning of Thursday, September 27, 2018, the second day of trial, the State disclosed to appellant's counsel that it had acquired police body camera footage, an excerpt

of which captured the grief-stricken reaction of Mr. Machado to learning of his wife's death. The State sought to play that excerpt to rebut the defense theory that it was, in fact, Mr. Machado who had murdered Ms. Mendez. The following day, Friday, September 28th, appellant moved for a mistrial, and, alternatively, requested that the court exclude the footage, alleging that the State's belated disclosure constituted a discovery violation. While acknowledging that he had not yet viewed the footage in its entirety, defense counsel argued that if he had been aware of its existence prior to trial he may have adopted a different strategy. The State, in turn, argued that the content of the video had not been relevant until it had become clear that the defense theory of the case was that Mr. Machado had killed Ms. Mendez. The court denied appellant's motion for a mistrial, finding no manifest necessity. It further found that the State had not committed a discovery violation, ruling: "I don't see this as a discovery violation that you have never known that Machado had a visceral reaction to the news of the death of his wife, or the recovery of her body. That's in the event report." The court did not, however, permit the State to play the excerpted footage that day, thereby affording defense counsel an opportunity to review the video and to confer with his client.

When court reconvened on Monday, October 1st, the defense renewed its motion for a mistrial. Though defense counsel acknowledged having been furnished with police statements describing Mr. Machado's distraught reaction to learning of his wife's death, he maintained that the footage contained information not included therein. In response, the State averred that it first learned of the existence of the footage on either September 26th

or September 27th. It explained that rather than "tagging" the footage to the murder, the police had "tagged it to the call for service for … the distressed individual," to wit, Mr. Machado. In attempting to rebut appellant's claim that it had committed a discovery violation, the State further argued that the footage "did not become relevant until the defense attorney made it relevant in trial," and explained that it had not anticipated that appellant would pursue an "agency defense." After denying appellant's renewed motion for a mistrial, the court again concluded that the State had not committed a discovery violation. The court reasoned:

> I don't find that to be a situation where the State intentionally withheld evidence from the defense, but instead has offered that evidence now after the defense has suggested through cross-examination of every witness that someone other than the defendant committed this crime[.]
>
> So, I'm going to deny the defense request. And let me also say the text messages certainly that the defense has pursued vigorously, and very well I might add, suggesting that there was anything but a happy, wonderful marriage going on and a lot of discord. So, the State is certainly entitled to endeavor to rehabilitate [its] witness. …. I don't find that to be a discovery violation.

Maryland Rule 4–263

Whether a discovery violation has occurred is a question of law which we review *de novo*. *Cole v. State*, 378 Md. 42, 56 (2003). If a discovery violation has occurred, on the other hand, we review for abuse of discretion the court's decision of whether to take remedial action, and, if it has done so, its determination of what remedy was appropriate. *Id*. (Citation omitted).

Maryland Rule 4–263 governs discovery in the circuit court, and provides, in pertinent part:

> **(d) Disclosure by the State's Attorney.** Without the necessity of a request, the State's Attorney shall provide to the defense:
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> * * *
>
> (9) *Evidence for Use at Trial.* The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2–504.3(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial[.]
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> * * *
>
> **(j) Continuing Duty to Disclose.** Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

"[W]e look first to the plain meaning of the rule, and to the case law interpreting the rule, in determining whether a discovery violation exists." *Collins v. State*, 373 Md. 130, 146 (2003) (citation omitted). "Although no rule provides generally for the discovery of all relevant information and documents in the State's possession or control in criminal cases, irrelevant matters clearly are not discoverable." *Cole*, 378 Md. at 62 (footnotes omitted). In the discovery context, evidence should ordinarily be deemed relevant "if it reasonably is calculated to lead to the discovery of admissible evidence and [its] probative value is not outweighed by any privacy interests, confidentiality, privilege, or other conflicting interest, including the burden of production." *Id*. at 63.

We agree with the State that the footage at issue was irrelevant prior to trial. Defense counsel first insinuated that Mr. Machado had a motive to kill Ms. Mendez in its September 26th opening statement, saying:

> You're going to hear evidence that she and her husband were having problems.
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> * * *
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> [S]he was having an ongoing feud with her husband. I'm not saying her husband did this. I don't know. I don't know who did this. I know she was having an ongoing feud with her husband. She was mad at him for things he had done to her.

At trial, the State proffered that it had first learned of the existence of the body camera footage on either September 26th or 27th and that it had not anticipated that appellant would pursue an alternative perpetrator defense. The court apparently accepted those representations as credible. There is no indication that the court's factual findings were clearly erroneous. Accordingly, we defer to the trial court, and accept those facts as found. *See Cole*, 378 Md. at 56. For purposes of our review, therefore, we shall presume that the State was unaware of the footage prior to September 26th and did not anticipate that the defense intended to advance the theory that Mr. Machado—and not appellant—had murdered Ms. Mendez.[1]

[1] The State's assumption that appellant would not pursue an alternative perpetrator defense was altogether reasonable, particularly given that appellant had claimed, during his police interview, that Ms. Mendez had been the initial aggressor and that he had struck her in self-defense.

We agree with the State's argument that, having been unaware of the existence of the body camera footage prior to September 26th, it could not have intended to use that footage at trial before that date.[2] The absence of such intent is further evinced by the State's not having expected that appellant would pursue an alternative perpetrator defense. Had the defense not pursued such a theory, the excerpted portion of the footage would have been irrelevant, and, therefore, inadmissible. Given that Maryland Rule 4–263(d)(9) only requires the State to provide the defense with the opportunity to "inspect, copy, and photograph" evidence that it *intends* to use at trial, and that no such intent existed prior to September 26th, the State had not previously been obligated to disclose the footage to the defense. *See Francis v. State*, 208 Md. App. 1, 27 n.17 (2012), (holding that because the State had been unaware of the need to resolve an inconsistency in witness statements prior to trial, it had no duty to disclose those statements during pretrial discovery), *cert. denied*, 430 Md. 645 (2013); *Armstrong v. State*, 69 Md. App. 23, 32–33 (1986), *cert. denied*, 309 Md. 47 (1987).

Harmless Error

Even if the trial court had erred in finding no discovery violation, we would hold that such error was harmless. Where the State commits a discovery violation, but has acted

[2] This is not to say that, as a matter of law, the State lacked constructive notice of the existence of the body camera footage. Md. Rule 4–263(c)(2). *See also Thomas v. State*, 168 Md. App. 682, 694 (2006) ("The State's Attorney is clearly 'accountable' for information known to police officers who meet the requirements of [Rule 4–263]."), *aff'd*, 397 Md. 557 (2007). Given, however, the State's lack of *actual* knowledge of the footage, it could not have intended to use it at trial.

in good faith, "the proper focus and inquiry is whether [appellant] was prejudiced, and if so, whether he was entitled to have the evidence excluded." *Thomas v. State*, 397 Md. 557, 572 (2007) (citation omitted).

Where the State violates its Rule 4–263 discovery obligations, "a defendant is prejudiced only when he is unduly surprised and lacks adequate opportunity to prepare a defense, or when the violation substantially influences the jury." *Id*. at 574. In this case, the prejudice alleged by appellant is that he "might not have gone after the husband' as extensively as he did during cross-examination and pursued a different defense at trial." Defense counsel was, however, well aware of Mr. Machado's anguished reaction to learning of his wife's passing. He knew that Mr. Machado's response was so visceral that he punched a hole in the wall, prompting his family to lock him in a bedroom. He was aware that officers responded to the disturbance. During discovery, moreover, the State furnished appellant with those officers' reports, which described the incident. Defense counsel would have reasonably anticipated that any attempt to "blame the husband" would be met with evidence of Mr. Machado's grief-stricken reaction.

Even if appellant had been prejudiced by the State's belated disclosure, the remedies he requested were excessive, and, therefore, unwarranted. Where the State has committed a discovery violation, "'the preferred remedy … is to order immediate compliance with discovery requirements, and offer the defense a continuance.'" *Thomas*, 397 Md. at 574 (citation omitted). The exclusion of evidence, on the other hand, is "one of the most drastic measures than can be imposed," *id*. at 572, and "should be ordered only in extreme cases."

Id. at 573 (citations omitted). A mistrial is, in turn, "'considered an extraordinary remedy and should be granted only if necessary to serve the ends of justice.'" *State v. Hart*, 449 Md. 246, 276 (2016) (quoting *Klauenberg v. State*, 355 Md. 528, 555 (1999)).

Rather than requesting a continuance during which to review the body camera footage, appellant sought the draconian sanction of a mistrial, and, in the alternative, the windfall of exclusion. As the Court of Appeals cautioned in *Thomas*, when a defendant foregoes a limited remedy in pursuit of an excessive sanction, he or she does so at his or her peril, as "the 'double or nothing' gamble almost always yields 'nothing.'" 397 Md. at 575 (citation omitted). Though the court did not rule that the State had committed a discovery violation, it nevertheless granted appellant a *de facto* continuance by prohibiting the State from playing the footage on September 28th and affording defense counsel two days during which to review the footage and consult with his client. Had there been a discovery violation, the court's actions would have been sufficient to cure any prejudice resulting therefrom.

Even if the State had committed a discovery violation and suppression of the footage had been the appropriate remedy, we would hold that any error was harmless, as the footage was cumulative of other properly admitted evidence. At trial, Detective Ashley Urps, whose body camera footage is here at issue, described Mr. Machado's visceral reaction to having learned of his wife's death, testifying: "He was visibly upset. He was screaming. He would sit down, then he would stand up, kind of ben[t] over like he couldn't breathe. And then, at one point, he was sitting down clenching his fists. He was visibly upset." She

further described Mr. Machado as having been on the floor, "rubbing … his hands, like almost in a punching motion to the carpet, and clenching his fists."

The strength of the State's case likewise weighs in favor of our holding that had the court erred in finding no discovery violation, any such error was harmless. The evidence indicated that shortly before her disappearance, Ms. Mendez ended her romantic relationship with appellant, establishing a potential murderous motive. Appellant left work approximately thirty minutes before Ms. Mendez. During his police interview, appellant admitted to having engaged in an altercation with Ms. Mendez behind the CVS where her body was found. In the course of that altercation, he told the police, he struck Ms. Mendez, causing her to fall down and not get back up. *See Thanos v. State*, 330 Md. 77, 96–97 (1993) ("That any error in the State's discovery violations was harmless is beyond question, given the fact that [the defendant] confessed to murdering [the victim]."). He further admitted to having taken her purse and phone, which he discarded in a dumpster. A jacket, matching the description of that worn by appellant on November 5th, was recovered from appellant's closet and bore a blood spot which tested positive for Ms. Mendez's DNA. Finally, while Mr. Machado continued to call Ms. Mendez after her disappearance, appellant's calls to her ended abruptly on the evening of November 5th. In light of this, and other incriminating evidence admitted at trial, we are convinced beyond a reasonable doubt that the jury's verdict was unaffected by the State's use of the body camera footage.

II.

Appellant next contends that the court erred in excluding transcripts of text messages seemingly sent by Ms. Mendez to Mr. Machado.

On direct examination, Mr. Machado repeatedly described his wife as having been very happy. On cross-examination, he affirmed that he and Ms. Mendez had a "fantastic" relationship, and denied ever having "had any problems with her." In order to impeach Mr. Machado's credibility, defense counsel offered into evidence three series of text messages that had purportedly been sent from Ms. Mendez's cell phone to the cell phone of Mr. Machado. In those text messages, Ms. Mendez referred to her husband as "trash," called him "profoundly stupid," accused him of not loving her anymore, and twice referenced Mr. Machado's having hit her.

In excluding the transcripts of Ms. Mendez's text messages, the court reasoned that they had not been adequately authenticated and that they constituted inadmissible hearsay. Assuming, without deciding, that the text messages at issue were both adequately authenticated and admissible under the state-of-mind exception to the rule against hearsay, as appellant claims, any error on the part of the trial court was harmless beyond a reasonable doubt. Though the court did not permit defense counsel to admit the transcripts into evidence, it afforded him wide berth in cross-examining Mr. Machado as to their content. Mr. Machado testified that he recalled having received a text from Ms. Mendez which read: "You like skinny girls. Because of that, you don't love me anymore." While Mr. Machado repeatedly denied having struck his wife, he likewise confirmed that Ms.

Mendez had sent him text messages accusing him of having done so. Finally, Mr. Machado acknowledged that the transcripts of the text messages Ms. Mendez had purportedly sent to him read, among other things: "Find some other one to love you," "I can't stand it anymore," "[W]hy don't you just tell me you no longer love me," and "I'll leave or you can get out." Although the transcripts themselves were not admitted into evidence, the court nevertheless permitted the defense to use that would-be evidence for its proffered purpose, to wit, to impeach Mr. Machado's credibility. Any error on the part of the circuit court was, therefore, harmless beyond a reasonable doubt.

III.

Appellant next contends that the trial court erroneously permitted Detective Eric Glass, the lead detective in the investigation into Ms. Mendez's murder, to explain why he elected to interview appellant, claiming that such testimony was irrelevant and, in the alternative, that it constituted inadmissible hearsay.

Detective Glass's Testimony

On November 10th, Detective Glass was notified that a body had been discovered behind the CVS. Detective Glass testified that he spent approximately three hours at the crime scene before departing. When asked what had prompted him to leave the CVS, Detective Glass answered:

> There was sort of a get together of the detectives and supervisory staff and we were informed by the 4th District investigative team of detectives that they were handling the missing persons case that a person that they wanted to speak with in connection with a missing person case was already at the 4th District station house.

Defense counsel objected, and the court overruled the objection. Detective Glass continued, "And so the decision was made that we would go up to the 4th District station and conduct that interview." After Detective Glass identified appellant as that interviewee, the defense asked to approach the bench. During an ensuing bench conference, defense counsel explained the basis for his objection, stating: "I was objecting to the statement about this person of interest, the possible -- that's what I was objecting about, not what they were told." The State, in turn, confirmed that it sought to elicit the reasons for Detective Glass's having considered appellant a suspect, and proffered that the detective would "give his explanation about the Facebook thing." The defense argued that the detective's belief as to whether appellant was a suspect was irrelevant to the determination of his guilt. In overruling the defense objection, the court reasoned that the State was "entitled to ask why there was a focus on this person as opposed to anybody else in the world or that worked -- that was around her." Thereafter, the State asked Detective Glass why he had wanted to speak with appellant. The detective answered:

> Right. So prior to leaving the area of the CVS, we had several detectives and supervisors and so forth had gotten together, my colleagues from the homicide section were brought up to speed on the nature of sort of the backstory, if you will, and the nature of a missing person and their investigation. So you know, some of the information that was relayed to us in that meeting piqued our curiosity about [appellant] and we wanted to interview him or speak to him in light of what we had seen at the crime scene and the information that was passed on to us from the station house detectives who were initially conducting the missing persons investigation.

The defense did not renew its objection.

Preservation

We note at the outset that this contention is not preserved for our review. "'Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection.'" *Benton v. State*, 224 Md. App. 612, 627 (2015) (quoting *DeLeon v. State*, 407 Md. 16, 31 (2008)). Therefore, "to preserve an objection, a party must either object each time a question concerning the [matter is] posed or ... request a continuing objection to the entire line of questioning." *Wimbish v. State*, 201 Md. App. 239, 261 (2011) (internal quotation marks and citation omitted), *cert. denied*, 424 Md. 293 (2012). Though defense counsel objected to and moved to strike Detective Glass's initial reference to appellant's having been a possible suspect in Ms. Mendez's missing persons case, he neither made a continuing objection nor objected to the detective's subsequent testimony to the same effect. By failing to do so, appellant waived appellate review of this issue.

In addition to having failed to preserve this issue for our review, appellant waived his claim that the testimony at issue constituted inadmissible hearsay. "An objection loses its status as a 'general' one … 'where the objector, although not requested by the court, voluntarily offers specific reasons for objecting to certain evidence[.]'" *DeLeon v. State*, 407 Md. 16, 25 (2008) (quoting *Boyd v. State*, 399 Md. 457, 476 (2007)). *See also Rosenberg v. State*, 129 Md. App. 221, 251 (1999) ("It is well settled that a party who … specifies one particular ground for objection, waives all grounds not articulated."), *cert. denied*, 358 Md. 382 (2000). "[A] principal purpose of the preservation requirement is to

prevent 'sandbagging' and to give the trial court the opportunity to correct possible mistakes in its rulings." *Bazzle v. State*, 426 Md. 541, 562 (2012) (quotation marks and citation omitted).

Though defense counsel initially made a general objection, he almost immediately specified the legal basis therefor. In so doing, he explained that he had objected to Detective Glass's reference to appellant's having been a suspect or a person of interest because such testimony was irrelevant. He also expressly disclaimed having objected to what the detective had been told. When defense counsel specified that it objected on the basis of relevance, his objection lost its status as a "general objection," and he therefore waived all other grounds—including hearsay—for having objected.

Relevance

Even if appellant's relevancy argument were preserved for our review, we would hold that the court did not commit reversible error by admitting Detective Glass's testimony into evidence.

"'Relevant evidence' means evidence having *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." Md. Rule 5–401 (emphasis added). "Evidence that is not relevant is not admissible." Md. Rule 5–402. Though it is a legal requirement, "relevance is generally a low bar[.]" *State v. Simms*, 420 Md. 705, 727 (2011).

In support of his contention that the testimony at issue was irrelevant, and therefore inadmissible, appellant cites *Zemo v. State*, 101 Md. App. 303 (1994). The defendant in

that case was convicted of breaking and entering. At trial, the circuit court permitted the State to elicit detailed testimony from the chief investigator pertaining to the measures he had taken during the course of his criminal investigation. That testimony was not only irrelevant; it was inadmissible *and* highly prejudicial. First, the detective was permitted to comment on the defendant's post-*Miranda* silence. Second, he was permitted to testify that he had received information regarding the crime from a confidential informant, which "put him on the trail of the [defendant] …, that other parts of the informant's information were corroborated and turned out to be correct, and that, acting on the informant's information, he arrested the [defendant]." *Id*. at 306. In reversing the judgment of the circuit court, we explained:

> It doesn't matter *why* [the detective] went where he went. It doesn't even matter *where* he went, regardless of why. Not only is it a matter of complete immateriality *why* [the detective] interviewed certain persons, it is equally immaterial that he, indeed, even interviewed those persons at all. The persons referred to, other than the appellant, all testified as witnesses. Their testimony was capable of standing or falling in its own right. It would only be in the eventuality that one of the parties sought to rehabilitate or to impeach testimonial credibility by offering the substance of the interviews as prior consistent or inconsistent statements that the very event of the interviews would take on any pertinence. That never happened. Where the event itself is immaterial, the reason for the event is doubly immaterial.
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> * * *
>
> The jury, of course, has no need to know the course of an investigation unless it has some direct bearing on guilt or innocence. That an event occurs in the course of a criminal investigation does not, *ipso facto,* establish its relevance.

Id. at 309–310 (emphasis retained).

Appellant's reliance on *Zemo* is misplaced. As this Court explained in *Geiger v. State*, 235 Md. App. 102 (2017), "the dispositive flaw [in *Zemo*] lay not simply in the State's introduction of inadmissible and prejudicial material but in having done so deliberately and repeatedly." *Id*. at 128–29. The State made no such attempt in this case. The question at issue was isolated and, the State proffered, was intended to elicit testimony regarding appellant's "Facebook situation." Though Detective Glass provided no such testimony, the testimony that he gave was as vague as it was brief, and was not remotely prejudicial. While perhaps only peripherally relevant to the proceedings, this testimony does not warrant reversal.

IV.

Appellant further contends that the court erroneously restricted his cross-examination of Detective Sergeant Paul Reese, the detective who had initially supervised the investigation into Ms. Mendez's disappearance.

Detective Reese's Cross-Examination

On cross-examination, defense counsel asked Detective Reese whether he recalled Mr. Machado's having identified prospective suspects in his wife's murder. The State objected to the defense question, and the court sustained that objection. Defense counsel then asked Detective Reese whether he recalled Mr. Machado's having discussed "his culpability in this crime." Again, the State objected, claiming that the testimony the defense attempted to elicit constituted inadmissible hearsay. That objection was likewise

sustained. A bench conference ensued during which defense counsel sought to rebut the State's objection, claiming that the testimony that it sought to elicit was not being offered for its truth, but to ascertain the extent of Detective Reese's investigation. During that bench conference, the court asked defense counsel why it was necessary for him to ask Detective Reese what Mr. Machado had said in order to ascertain the extent of the police investigation. Counsel answered, "Because Mr. Machado gave him leads. Mr. Machado told him who he thought committed the crime and who he thought was involved in the crime." Again, the court affirmed the State's objection, ruling: "It's complete hearsay." Thereafter, defense counsel posed two additional questions, to which the State objected, and which objections the court sustained. Those questions were (i) "Did you look into any of the directions [Mr. Machado] tried to point you in?" and (ii) "Did you look into anybody by the name of Mr. Segora?" During yet another bench conference, the court provided the following explanation for its rulings: "It's based on hearsay, the forming of the question, and the hearsay comes from the statement I sustained the objection to already via Mr. Machado to this Detective[.] Sustained."

A Valid Exercise of Judicial Discretion

The State aptly analogizes the situation at issue to that presented in *Holmes v. State*, 236 Md. App. 636, *cert. denied*, 460 Md. 15 (2018). In that case, defense counsel attempted to elicit testimony from a detective regarding her reaction to learning the results of a DNA report which seemed to exculpate the defendant. Though that testimony would have been inadmissible as substantive evidence, the defense proffered that it was not offered for its

truth, but, instead, to demonstrate the inadequacy of the police investigation. The trial court prohibited the defense from doing so, concluding that counsel had been "trying to get the inadmissible DNA test results into evidence through the 'backdoor.'" *Id*. at 667. We affirmed the decision of the circuit court, holding that "the trial court did not err or abuse its discretion in foreclosing defense counsel's persistent attempts to 'cast a bare suspicion upon another.'" *Id*. at 669 (quoting *Taneja v. State*, 231 Md. 1, 10 (2016)). We reasoned that the defense "line of questioning sought marginally relevant evidence that would have confused the jury, by suggesting that the mystery DNA contributor committed the crime for which [the defendant] was on trial." *Id*. at 670–71 (citations omitted). As in *Holmes*, the extent to which Detective Reese's interview of Mr. Machado affected the investigation was only marginally relevant and would likely have been confusing to the jury. Assuming without deciding that the proffered testimony at issue was not inadmissible hearsay, the trial court acted within its discretion in limiting the cross-examination of Detective Reese. *See Davis v. Stat*e, 207 Md. App. 298, 306 n.2, *cert. denied*, 429 Md. 529 (2012) ("[I]t is within our province to affirm the trial court if it reached the right result for the wrong reasons[.]" (Quotation marks and citation omitted)).

V.

Finally, appellant contends that the court erroneously denied his motion to suppress his police statement, contending that the statement should have been deemed involuntary under Maryland common law.

The Motion to Suppress

At the hearing on appellant's motion to suppress, defense counsel introduced into evidence the transcript of appellant's November 10th police interview. In an excerpted portion of that transcript, Detective Beverly Then informed appellant that it had been rumored that he had raped and strangled Ms. Mendez. Detective Then continued: "But I can say, I spoke to [appellant], and [appellant] told me the truth. And when people talk, when people start saying bad rumors about you, I can say, he told me the truth. And only you know the truth." Appellant then expressed a concern that Mr. Machado would harm members of his family in El Salvador. Detective Then responded:

> Her husband already thinks … you raped and killed [Ms. Mendez]. If you were defending yourself, I can have her tested to prove to him that you didn't rape her. I can have … her tested. He thinks that you raped and killed her. I need you to tell me, I didn't rape her. But I need to hear from you, I need to hear it, if from the very beginning [sic]. Because if you don't tell me your side, he's going to tell everyone that you raped and killed her. And that's not the truth, is it?

After playing the excerpted portion of appellant's interview, defense counsel argued that, in light of appellant's fear for the safety of his family, Detective Then's offer to have Ms. Mendez's body examined constituted an improper promise or inducement. In denying appellant's motion, the court ruled:

> As to a promise, there is no promise other than I can do a test, which is not a promise of anything because the detective can do that test, and I would imagine more than likely was going to do that test in any event. And I don't see that as an inducement either because the defendant is the one raising his particular concerns, and the detective is acknowledging what he has said, and reiterating tell me the truth, I'll believe what

> you say, and these are the issues that are already swirling around, which none of that is an inducement to do anything other than to tell the truth.
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> * * *
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> So, I don't find that the first prong is satisfied as … I don't find there to be a promise, threat, or inducement[.]
>
> * * *
>
> And I also, looking at *Winder*, don't find that this is the police crossing over the line and coercing a confession by any improper threat, inducement, or promise … because, again, the issues raised of concern are raised as concerns by the defendant, and the detective is responding to them[.]

Common Law Involuntariness

"Appellate review of a Circuit Court's denial of a motion to suppress is limited to the record of the suppression hearing." *Knight v. State*, 381 Md. 517, 535 (2004) (citation omitted). Given that the State was the prevailing party in this case, we consider the court's factual findings and reasonable inferences drawn therefrom in the light most favorable to it. *Id*. (Citation omitted). However, we review *de novo* the court's ultimate determination on the issue of voluntariness. *Id.* (Citation omitted). Where, as here, a defendant files a pre-trial motion to suppress, "the State bears the burden to prove, by a preponderance of the evidence, that 'the inculpatory statement was freely and voluntarily made and thus was the product of neither a promise nor a threat.'" *Id*. (Citation omitted).

"Under Maryland common law, a confession is involuntary if it is the product of *certain improper* threats, promises, or inducements by the police." *Lee v. State*, 418 Md. 136, 161 (2011) (emphasis added; citation omitted). The Court of Appeals set out a two-

pronged test for common law involuntariness in *Hillard v. State*, 286 Md. 145, 153 (1979). In *Hill v. State*, 418 Md. 62, 76 (2011), the Court of Appeals explained that test as follows:

> [A]n inculpatory statement is involuntary and must be suppressed if: (1) any officer or agent of the police force promises or implies to a suspect that he will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and (2) the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement.

"'Both prongs of the *Hillard* test must be satisfied before a confession is deemed to be involuntary.'" *Id*. (Citation omitted). If, therefore, we find no improper inducement, we need not address the second prong. *Knight*, 381 Md. at 536. Whether there has been an improper promise or inducement is an objective determination. *Hill*, 418 Md. at 78. It is irrelevant whether a defendant subjectively believed that he or she would incur a benefit in exchange for his or her confession. *Id*. at 76. The relevant inquiry, rather, is "whether a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer's declaration[.]" *Id*. at 76. Generally, "[t]he sort of promise or inducement to which the *Hillard* test applies … has been limited to leniency before, during, or after trial." *Lee v. State*, 418 Md. 136, 161 (2011) (citation omitted).

In support of appellant's contention that his confession had been improperly induced by the police, he analogizes this case to *Winder v. State*, 362 Md. 275 (2001). In that case, we held that the defendant's confession had been elicited by two groups of improper inducements on the part of the police. First, the police repeatedly assured the defendant that if he were to confess, they would intervene on his behalf. In exchange for his

explaining "how and why he murdered the victims," they offered to provide him "psychological assistance and leniency from the prosecuting authorities" *Id*. at 314. Second, in exchange for his confession, the police offered to protect the defendant from the friends and family members of the victims, who, they represented, were "'ready to come out here and do some bad things to you.'" *Id*. at 317. If he refused to admit having committed the murders, however, the police insinuated that they could not or would not guarantee his safety. *Id*. at 316. In holding that the police had employed improper inducements, the Court of Appeals explained:

> In the present case, the interrogating officers' statements and conduct go far beyond that in any of our prior cases where improper inducements were recognized. During the twelve hour interrogation, the officers repeated many times that they would help Appellant. They offered him an apparent means to garner leniency from the state prosecutors and the trial court and protection from an angry mob. The only thing Appellant had to do in return for these meaningful inducements was confess to a triple murder. The first prong of the *Hillard* test has been satisfied.

Id. at 317–318.

This case is distinguishable from *Winder*. In that case, the police intimated that "by confessing and showing remorse [the defendant] would inspire the officers to protect him and possibly gain a change at avoiding prison. *Id*. at 316. In this case, by contrast, Detective Then never remotely suggested that a confession would result in leniency. She did not, moreover, insinuate that the police would take any extraordinary measures to protect appellant or his family in exchange for his confession. She merely offered to conduct further investigation to confirm appellant's narrative of what had and had not transpired

between Ms. Mendez and him. This court has consistently held that offers to investigate information provided by a defendant do not constitute an improper inducement. *See Finke v. State*, 56 Md. App. 450, 483–84 (1983), *cert. denied*, 299 Md. 425 (1984); *Clark v. State*, 48 Md. App. 637, 643–44, *cert. denied*, 291 Md. 773 (1981). As we explained in *Finke*, if anything, such an offer invites an exculpatory statement, and not an inculpatory one. 56 Md. App. at 483–84. Inasmuch as the offer at issue did not constitute an improper promise or inducement on the part of the police, the court did not err in denying appellant's motion to suppress his confession.

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