

Circuit Court for Baltimore City
Case Nos. 118005023 - 027

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1360, 1362, 1363 & 1364

September Term, 2019

MAUSEAN CARTER

v.

STATE OF MARYLAND

Graeff,
Shaw Geter,
Gould,

JJ.

Opinion by Shaw Geter, J.

Filed: June 9, 2021

*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.

APPENDIX A

In December of 2017, eight people were shot, two fatally, during multiple shooting incidents that occurred in Baltimore over a two-day period. Mausean Carter, appellant, was ultimately arrested and charged, in the Circuit Court for Baltimore City, as the shooter. Following a jury trial, Mr. Carter was convicted of two counts of attempted first-degree murder, one count of attempted second-degree murder, reckless endangerment, and related handgun offenses. The jury failed to return a verdict as to several additional charges, and the court granted a mistrial as to those counts. A second jury trial was subsequently held, and, following that trial, Mr. Carter was convicted of one count of first-degree murder, one count of second-degree murder, three counts of attempted second-degree murder, and related handgun offenses. The court sentenced Mr. Carter to a term of life imprisonment without the possibility of parole, a consecutive term of life imprisonment, and a consecutive term of sixty years' imprisonment. In this appeal, Mr. Carter presents two questions for our review:

1. Was the evidence adduced at the first trial sufficient to sustain the three convictions of attempted murder?
2. Did the trial court err when, during Mr. Carter's second trial, the court precluded Mr. Carter from questioning a police officer as to whether the officer had developed an opinion that Mr. Carter was not "in his right state of mind" during a custodial interrogation following the shootings?

For reasons to follow, we hold that the evidence was sufficient to sustain the convictions. We also hold that the trial court did not err in excluding the evidence at issue. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

First Trial

At Mr. Carter's first trial, Baltimore City Police Detective Durel Hairston testified that, on December 8, 2017, he went to University of Maryland Hospital to investigate a non-fatal shooting. Upon arriving at the hospital, Detective Hairston learned that someone had fired several shots at a van, striking one of its three occupants. Detective Hairston then reviewed security footage taken of the area of the shooting around the time the shooting occurred. In doing so, Detective Hairston was able to get a description of the vehicle the shooter had been driving and that description was later disseminated to other officers.

Baltimore City Police Officer Steven Schaub testified that, on December 14, 2017, he responded to the Burger King located in the 4400 block of Reisterstown Road and discovered that an individual, Daryl Shaw, had been shot. Mr. Shaw was eventually treated for his injuries. Hazel Johnson testified that on that date, she was walking down Reisterstown Road when she observed a "gray car" stop on the side of the street. According to Ms. Johnson, the vehicle's driver "stuck his hand out the window" and "started shooting" at a nearby pedestrian. The pedestrian, later identified as Martell Harris, was killed.

Baltimore City Police Detective Richard Moore testified that, on December 14, 2017, an "assault by a shooting" occurred at a convenience store located in the 900 block of Poplar Grove Street. Upon arriving at that location, Detective Moore discovered a homicide victim, Ali Ouedraogo, and two non-fatal victims, Zian Burman and Diamonte Jackson. Detective Moore testified that he reviewed the store's security footage, which captured the shooting. The footage showed a silver Lexus come to a stop in front of the

store and the vehicle's driver stuck an assault rifle out of the window and opened fire on the store.

Baltimore City Police Detective Philip Lippe testified that, at approximately 11:00 a.m. on December 15, 2017, he was driving his patrol vehicle on North Avenue when he spotted a vehicle that matched the description of the vehicle that had been linked to the shooting on December 8, 2017. Detective Lippe executed a traffic stop of the suspect vehicle and, upon approaching the vehicle on foot, identified Mr. Carter as the driver. After making contact with him, Detective Lippe returned to his vehicle and awaited backup. When the backup unit arrived, Detective Lippe approached Mr. Carter's vehicle and asked him to turn off the engine and step out of the vehicle. However, Mr. Carter "put the car in drive and just took off." Detective Lippe quickly returned to his vehicle and gave chase.

Detective Lippe testified that, "probably about 15 seconds" after the chase began, Mr. Carter began "discharging an assault rifle and a handgun out of the vehicle at pedestrian's vehicles, myself, my backup officer." Detective Lippe testified that Mr. Carter continued to discharge his weapons "throughout a majority of the chase." Detective Lippe testified that the chase, which lasted approximately 50 to 55 minutes; was "pretty extensive" and covered a large part of the city. Detective Lippe testified that he passed by "hundreds of pedestrians and civilians" during the chase.

Detective Lippe testified that Mr. Carter eventually drove his vehicle to the intersection of Gwynns Falls Parkway and Reisterstown Road, where an individual, later identified as Mr. Carter's girlfriend, ran across the street and up to the driver's side door

of Mr. Carter's vehicle. Mr. Carter then exited his vehicle, and he and his girlfriend embraced. The two were separated by police, and Mr. Carter was arrested. A subsequent search of the vehicle revealed a rifle, a handgun, and ammunition.

Video footage of the chase was admitted into evidence and shown to the jury. In one of those videos, which was taken from a police helicopter, Baltimore City Police Officer Eugene Coker can be heard stating that Mr. Carter had "a rifle in the vehicle" and was "firing out of his vehicle at passing vehicles." In the other video, which was taken from Detective Lippe's body worn camera, Detective Lippe can be heard stating that Mr. Carter "keeps firing out of his vehicle at passing vehicles."

Gregory Batson testified that, on December 15, 2017, he and his friend, Torren Carroll, were in his vehicle at a stop light on Reisterstown Road when he heard police sirens coming from behind. As the police passed his vehicle, Mr. Batson heard "an explosion" and saw that Mr. Carroll had fallen over. After Mr. Carroll exclaimed that he had been shot, Mr. Batson saw blood "dripping" from between Mr. Carroll's fingers. Mr. Batson testified that he later realized that a bullet had gone through the passenger-side window and into the visor on the driver's side. Mr. Batson testified that bullets had also blown out his vehicle's rear window and back passenger window. Mr. Carroll was ultimately treated for injuries to his eye.

Joseph Allen testified that, on December 15, 2017, he was in his vehicle with his wife and another passenger, Terrell Corbet, driving to Home Depot. As he was stopped at the intersection of Wabash Avenue and Rogers Avenue, he heard sirens. Mr. Allen testified

that he then saw “the window rolled down in this car” and “this guy’s hand coming out the window.” Mr. Allen “told everybody in the car to duck,” at which point he heard a “loud explosion.” He then turned towards Mr. Corbet and saw that he “had a big gash in his head.” Mr. Corbet was later treated for a gunshot wound to the head.

Hamayoon Ayubi, the manager of New York Fried Chicken, a small restaurant located on West North Avenue, testified that, on December 15, 2017, he was getting ready to exit the restaurant when he was shot in the leg. Video taken from surveillance cameras located in and around the restaurant was admitted into evidence and shown to the jury. In that video, Mr. Ayubi can be seen standing at the side door of the restaurant as a bullet pierces the closed door and strikes him in the leg. The video showed there were several people standing or walking in the area just outside of the restaurant at the time of the shooting. The video also showed there were several people inside of the restaurant and those people were clearly visible through a large window located on the side of the restaurant where the shot entered and subsequently struck Mr. Ayubi. Forensic testing of the bullet that struck Mr. Ayubi revealed that the bullet had been fired from the handgun found in Mr. Carter’s vehicle.

Monia Bailey, a forensic scientist with the Baltimore City Police Department, testified that she responded to New York Fried Chicken following the shooting and, while at that location, she took photographs that showed “suspected bullet defects on the outside of the door and on the side” of the restaurant. In those pictures, which were admitted into evidence, multiple bullet holes can be seen on the outside façade of the restaurant near

where Mr. Ayubi was standing when he was shot. Some of those holes appeared to be at chest-level.

The State also played for the jury a recorded statement made by Mr. Carter to the police following his arrest. In that statement, Mr. Carter told the police that he was upset about the "war on drugs" and, in particular, the police's failure to stem the flow of drugs in his community. Mr. Carter stated that he needed to protect himself, so he went "shopping" for some guns. He stated that people in his neighborhood kept trying to sell him drugs despite the fact that he continually told them that he was not interested. He stated that people "care when you have that gun" and that "they listen to that rain."

During the interview, the police asked Mr. Carter about the shooting on December 8, the shootings on December 14, and the traffic stop and subsequent shootings on December 15. When asked about the "innocent people" that had been involved in the shootings, Mr. Carter stated that "they say they nice innocent people" but "these people choose to do nothing, nothing." When the police referenced the "people that were in that car," Mr. Carter stated: "He might have been on his way to go get some drugs." When asked why he targeted "the guy walking down Reisterstown Road" on December 14, Mr. Carter stated that he was "a drug dealer." Regarding the people that were shot "on Poplar Grove" on December 14, Mr. Carter stated: "That's the war on drugs." When asked if the victims of the shooting on December 8 were drug dealers, Mr. Carter stated: "I don't know what the f**k they was but they pulled up" and "I don't play with people." When one of the interviewing officers referred to the homicide victim from the shooting at the store on

Poplar Grove as "collateral damage," Mr. Carter stated: "But you said [it's] collateral damage but guess what you let them go pray inside the same store that they selling they drugs." When asked whether he had a "goal" during the shootings, Mr. Carter stated that his goal was to "make these people you know step up."

Mr. Carter was convicted by the jury of the following charges related to the shootings on December 15th: attempted first-degree murder of Mr. Carroll; attempted first-degree murder of Mr. Corbett; attempted second-degree murder of Mr. Ayubi; reckless endangerment of Officer Lippe; use of a firearm in the commission of a crime of violence; and possession of a firearm by a disqualified person. The jury acquitted Mr. Carter of all charges related to the shooting on December 8th and some of the charges related to the shootings on December 14th. The jury failed to return a verdict as to the following charges related to the shootings on December 14th: attempted second-degree murder of Mr. Shaw; first-degree murder of Mr. Harris; second-degree murder of Mr. Harris; second-degree murder of Mr. Ouedraogo; attempted second-degree murder of Mr. Jackson; attempted second-degree murder of Mr. Berman; possession of a firearm by a disqualified person; and three counts of use of a firearm in the commission of a crime of violence.

Second Trial

Mr. Carter was thereafter retried on the charges for which the jury failed to return a verdict following his first trial. At that trial, the State presented substantially similar evidence to that which was presented at the first trial, including Mr. Carter's statement to

the police. The jury ultimately convicted Mr. Carter of all charges. Additional facts will be supplied below.

DISCUSSION

I.

Mr. Carter first contends that the evidence adduced at his first trial was insufficient to sustain his convictions for attempted murder and use of a firearm in the commission of a crime of violence. Specifically, he argues the State failed to show a specific intent to kill the three victims of the shootings on December 15th. He argues the evidence established that “the firing was just more or less random” and that, if there were any intended victims, they were the officers giving chase and not the people struck by gunfire. Mr. Carter argues the evidence was insufficient to sustain the three convictions for attempted murder. He further argues that, because the evidence was insufficient to sustain the attempted murder convictions, the evidence was also insufficient to sustain the conviction for use of a handgun in the commission of a crime of violence.

The State contends Mr. Carter’s claim is unpreserved. The State notes that, when defense counsel moved for judgment of acquittal at trial, he argued that the “intent level” required to support the murder charges was “questionably satisfied under these facts.” The State argues that defense counsel’s suggestion that the intent requirement had been “questionably satisfied” constituted an admission that the State had actually met its burden of proving that Mr. Carter acted with the requisite intent. The State also contends that defense counsel’s concession foreclosed Mr. Carter’s right to argue on appeal that the

evidence was insufficient to establish the requisite intent. The State further contends that, even if preserved, Mr. Carter’s challenge to the sufficiency of the evidence is without merit.

We disagree with the State’s preservation argument. To be sure, defense counsel, in moving for judgment of acquittal at trial, did state that the intent element of the murder charges had been “questionably satisfied.” It is clear from the context of the statement, however, that defense counsel was not conceding the point but rather was arguing that the State’s evidence in support of the intent element was dubious and did not meet the requisite standard of proof. The trial court understood the argument and, in denying the motion, found that the State had set forth sufficient evidence of intent. Thus, we are satisfied that Mr. Carter’s sufficiency argument has been preserved for our review. We now turn to the merits of that argument.

“The test of appellate review of evidentiary sufficiency is whether, ‘after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Donati v. State*, 215 Md. App. 686, 718 (2014) (citing *State v. Coleman*, 423 Md. 666, 672 (2011)). That standard applies to all criminal cases, “including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eye-witnesses accounts.” *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, “the limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational

fact finder.” *Darling v. State*, 232 Md. App. 430, 465 (2017) (citations and quotations omitted) (emphasis in original). In making that determination, “[w]e ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.’” *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). Further, “[w]e defer to the fact finder’s ‘opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]’” *Neal*, 191 Md. App. at 314 (citations omitted).

“To be guilty of the crime of attempt, one must possess a specific intent to commit a particular offense and carry out some overt act in furtherance of the intent that goes beyond mere preparation.” *Harrison v. State*, 382 Md. 477, 488 (2004) (citations and quotations omitted). For attempted murder, the State must prove a specific intent to kill. *Id.* at 488–89. “Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence.” *Spencer v. State*, 450 Md. 530, 568 (2016) (citations and quotations omitted). Such an inference may be drawn “from surrounding circumstances such as the accused’s acts, conduct and words.” *Jones v. State*, 213 Md. App. 208, 218 (2013) (citations and quotations omitted). “And, when a defendant’s actions so clearly involve actions that are likely to bring about death, they speak for themselves with regard to [intent].” *Anderson v. State*, 227 Md. App. 329, 348 (2016).

Here, Detective Lippe testified that, throughout the majority of the near hour-long chase, Mr. Carter discharged an assault rifle and a handgun “at pedestrian’s vehicles.” In the recording of the chase from his body worn camera, Detective Lippe could be heard stating that that Mr. Carter was “firing out of his vehicle at passing vehicles.” In the recording of the chase taken from the police helicopter, Officer Coker can be heard stating that Mr. Carter was “firing out of his vehicle at passing vehicles.”

In addition to that evidence, the State presented to the jury Mr. Carter’s statement to the police following the shooting. In that statement, Mr. Carter told the police that he had gone “shopping” for some guns because he needed to protect himself and because he was upset about drug dealing in his community. He added that people “care when you have that gun” and that “they listen to that rain.” Mr. Carter stated that his goal during the shootings was to “make these people you know step up.” Regarding the shooting on Reisterstown Road on December 14, Mr. Carter stated that victim was “a drug dealer.” Regarding the shooting at the store on Poplar Grove on December 14, Mr. Carter referenced “the war on drugs” and stated that the victims were “inside the same store that they selling the drugs.” Finally, regarding the victim that was “in that car,” Mr. Carter stated that he “might have been on his way to go get some drugs.”

Against that backdrop, we hold that sufficient evidence was presented to show that Mr. Carter intended to kill the three victims of the shootings that occurred during the car chase on December 15. Given Mr. Carter’s statements to the police and the evidence regarding the other shootings, a reasonable inference could be made that, at the time of the

shootings on December 15, Mr. Carter was engaged in an ongoing campaign of violence against the people of Baltimore based on his belief that the police and/or the general public were not doing enough to combat the scourge of drug dealers in the city. From that, a reasonable inference could be drawn that Mr. Carter's actions during the car chase on December 15 were a continuation of that campaign of violence. That is, a reasonable inference could be drawn that he was not firing randomly but rather that he intended to fire at specific targets, namely, people and places he believed were part of the drug problem. That inference was further supported by the real-time description of the shootings by Detective Lippe and Officer Coker, both of whom reported that Mr. Carter was firing directly at occupied vehicles.

Additional evidence of Mr. Carter's specific intent to kill Mr. Carroll and Mr. Corbett can be found in the testimony of Mr. Batson and Mr. Allen, respectively. Mr. Batson testified that, after hearing a loud explosion, he noticed that his passenger, Mr. Carroll, had "fallen over," at which point Mr. Carroll indicated that he had been shot. Mr. Batson then noticed a bullet hole in the passenger-side window. From that, a reasonable inference can be drawn that Mr. Carter shot at Mr. Carroll through the passenger-side window while Mr. Carroll was sitting upright in the passenger seat. Thus, a reasonable inference can be made that Mr. Carter intended to shoot Mr. Carroll in the head. *See Wood v. State*, 209 Md. App. 246, 318 (2012) (noting that an intent to kill may be inferred when a deadly weapon is fired at a vital part of the human body).

As to the shooting of Mr. Corbitt, Mr. Allen testified that, just prior to the shooting, he was in his vehicle when he saw an individual, later identified as Mr. Carter, drive up and reach out toward Mr. Allen's vehicle through the open driver's side window. Mr. Allen testified that he then heard a loud explosion and saw that his passenger, Mr. Corbitt, had been shot in the head. From that, a reasonable inference could be drawn that Mr. Carter intended to kill Mr. Corbitt. *Id.*

As for the third victim, Mr. Ayubi, although there was no evidence establishing that Mr. Carter specifically targeted Mr. Ayubi, there nevertheless was sufficient evidence of Mr. Carter's intent to kill. The evidence showed that Mr. Carter fired multiple shots, some at chest-level, at the side of a restaurant where multiple individuals were clearly standing, both inside and outside the restaurant. A reasonable inference can therefore be made that Mr. Carter intended to kill *someone*. That "someone" ended up being Mr. Ayubi. Whether Mr. Carter targeted Mr. Ayubi specifically is irrelevant. A specific intent to kill requires just that—a specific intent to kill. It does not require an intent to kill a specific person.

Mr. Carter's intent to kill was also established pursuant to the doctrine of "concurrent intent." Under that doctrine, an intent to kill may be inferred where a defendant, in intending to kill a specific person, creates a "kill zone" or "zone of danger" around the intended target and misses that target but strikes an unintended target within that zone of danger. *Harvey v. State*, 111 Md. App. 401, 434–35 (1996). Here, the surveillance footage from outside the restaurant showed that several people were standing or walking directly in the path of the shots that Mr. Carter fired at the side of the restaurant.

When considered in light of all the other evidence, in particular the number and location of the bullets fired, a reasonable inference could be drawn that Mr. Carter intended, but failed, to kill one of those individuals. A reasonable inference could also be drawn that, in attempting to kill that individual, Mr. Carter created a “zone of danger” by firing multiple bullets in close proximity to one another. Given that Mr. Ayubi was clearly within that “zone of danger,” the evidence was sufficient to show that Mr. Carter intended to kill Mr. Ayubi.

Mr. Carter relies primarily on three cases—*Abernathy v. State*, 109 Md. App. 364 (1996); *Harrison v. State*, 382 Md. 477 (2004); and *State v. Brady*, 393 Md. 502 (2006)—each of which is inapposite. In *Abernathy*, this Court held that the trial court had erroneously instructed the jury that it could find the defendant guilty of “depraved heart” attempted second-degree murder where the State conceded that the defendant, in firing five or six shots at a group of boys, did not intend to kill anyone. 109 Md. App. at 368–77. That case is distinguishable, as the issue in the present case is the sufficiency of the evidence, not an erroneous jury instruction.¹ Moreover, at no point did the State in the instant case concede that Mr. Carter did not act with the requisite intent when he attempted to kill the victims.

¹ In fact, we expressly recognized this distinction in *Abernathy*. See *Abernathy*, 109 Md. App. at 370–71 (“We are not dealing in this case with the possible legal sufficiency of the evidence to give rise to a permitted inference of an intent to kill, but only with the failure of a jury instruction to advise the jury that it must draw such an inference in order to convict of attempted murder.”).

In *Harrison* and *Brady*, the Court of Appeals held that a defendant could not be found guilty of attempted murder of an unintended target under a theory of “transferred intent” where the evidence showed that the defendant tried to kill a specific target and, in so doing, inflicted a non-fatal injury on the unintended target. See *Brady*, 393 Md. at 523; *Harrison*, 382 Md. at 508. Here, by contrast, there was no direct evidence that Mr. Carter intended to kill someone other than the intended victims, including Mr. Ayubi. Even so, although a finding of guilt as to the attempted murder of Mr. Ayubi under a theory of transferred intent would not have been permissible, such a finding was permissible under the aforementioned theory of concurrent intent. In fact, the Court expressly recognized the theory of concurrent intent in *Harrison*, noting that the theory may have supported the defendant’s conviction in that case had the State presented any evidence that the unintended victim was within the “kill zone” of the intended target. 382 Md. at 497. Such evidence was presented here.

In sum, the evidence presented at trial permitted a reasonable inference that Mr. Carter intended to kill Mr. Carroll, Mr. Corbett, and Mr. Ayubi. The evidence was therefore sufficient to sustain Mr. Carter’s convictions for attempted murder, as well as his conviction for use of a firearm in the commission of a crime of violence.

II.

Mr. Carter’s second claim of error concerns the trial court’s exclusion of certain testimony during his second trial. At that trial, the State played for the jury Mr. Carter’s recorded statement to the police following the shooting. In conjunction with the playing

of that statement, the State called Baltimore City Police Detective Jonathan Jones, one of the interviewing officers, to testify about the statement.

During cross-examination of Detective Jones, defense counsel asked the officer several questions about Mr. Carter's state of mind during the interview. Defense counsel also asked about Mr. Carter's girlfriend, India Temple, who was at the police station during the interview. After Detective Jones testified that he spoke with Ms. Temple "about what happened that day," defense counsel asked: "From talking to India, I'm not asking you to say anything about what she said specifically, but did you develop any sense that Mr. Carter might not be in his right state of mind?" At that point, the State objected, and the trial court held a bench conference. The following colloquy ensued:

THE COURT: Do you have some basis for this or are we just fishing around?

[DEFENSE]: Well, I—no, I think—

THE COURT: Or are we going to put Ms. Temple's statement into evidence?

[DEFENSE]: I'm not going to put Ms. Temple's statement into evidence. I was just offering this for effect on the hearer, whether it might have caused him to have any red alert about whether Mr. Carter might have been somewhat off-center psychologically.

THE COURT: Well—

[DEFENSE]: He's not going to say it.

THE COURT: Well, I mean the issue of course you're going to [sic] about—this is relevant because it goes to the issue of voluntariness.

[DEFENSE]: Yes.

THE COURT: But his opinion as to what Ms. Temple said to him doesn't really, I think, in any way support or doesn't really bolster your voluntariness argument one way or the other.

[DEFENSE]: Well, could I be permitted to maybe lay a little bit more foundation here? What I—I mean specifically as—I understand that Mr. Carter and Ms. Temple were transported together from the Gwynns Falls scene to headquarters.

[STATE]: Well, they were transported in the same vehicle but not next to each other. She was on one side and he was on the other.

[DEFENSE]: They weren't allowed to communicate in the vehicle?

[STATE]: No.

THE COURT: If you want to bring Ms. Temple in to talk about his mental state at the time, you're welcome to do that. But you're not getting it through this witness.

[DEFENSE]: Okay.

Mr. Carter now claims that the trial court erred in sustaining the State's objection to defense counsel's question to Detective Jones regarding whether the officer had developed "any sense that Mr. Carter might not be in his right state of mind" based on the officer's conversation with Mr. Carter's girlfriend, India Temple. Mr. Carter argues that Detective Jones' opinion about his state of mind during his interview with the police was relevant to the jury's assessment of whether Mr. Carter's statements were voluntary. Mr. Carter also

argues that, to the extent that the court excluded the testimony on hearsay grounds, the court erred because Ms. Temple's statements to Detective Jones were not offered for their truth but instead to show their effect on Detective Jones.

The State counters that Mr. Carter's arguments are misguided because the trial court did not sustain the objection on relevancy or hearsay grounds. The State maintains, rather, that the court sustained the objection on the grounds that Detective Jones' testimony as to whether he had formed an opinion based on what Ms. Temple had told him would have been improper lay opinion testimony. The State argues that the court did not err in sustaining the objection on those grounds.

We agree with the State. There is nothing in the record to support the contention that the trial court sustained the State's objection on relevancy or hearsay grounds. In fact, when defense counsel first proffered that he was not offering Ms. Temple's statements for their truth, the court recognized the validity of the proffer and expressly conceded that the line of questioning was relevant "to the issue of voluntariness." Thus, Mr. Carter's claim that the court erred in sustaining the State's objection on those grounds is not supported by the record.

As the State points out, it appears that the trial court precluded the testimony as improper lay opinion testimony. In that context, we hold that the court's decision was not erroneous. Maryland Rule 5-701 provides that, when a non-expert witness provides testimony in the form of opinions or inferences, such testimony "is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and

(2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." "[T]he decision to admit lay opinion testimony lies within the sound discretion of the trial court." *Thomas v. State*, 183 Md. App. 152, 174 (2008).

Here, the disputed question, which asked Detective Jones whether he had formed an opinion regarding Mr. Carter's state of mind based on the officer's conversation with Ms. Temple, was phrased in such a way that defense counsel appeared to be asking Detective Jones to give his opinion about Mr. Carter's state of mind based on Ms. Temple's perceptions of Mr. Carter. That is, the question called for Detective Jones to give a lay opinion that was not rationally based on his perception but rather was based on the perception of someone else. For that reason, the court precluded Detective Jones from giving such an opinion. Importantly, the court did not preclude defense counsel from pursuing the issue entirely; instead, the court simply required that defense counsel have Ms. Temple give her opinion on the matter first-hand. Under the circumstances, we cannot say that the court abused its discretion in sustaining the State's objection.

Mr. Carter argues that Detective Jones' opinion about Mr. Carter's state of mind following the officer's conversation with Ms. Temple "was relevant to assessing the interrogation tactics utilized by police and, ergo, relevant to the jury's assessment of the voluntariness of the resulting custodial statement." To the extent that Mr. Carter is claiming that the trial court's sustaining of the State's objection somehow precluded him from pursuing the issue of Detective Jones' interrogation tactics, we disagree. There is nothing in the record to show that the court's ruling was meant to foreclose any inquiry as

to Detective Jones' opinion about Mr. Carter's state of mind or whether that opinion impacted the officer's interrogation tactics. The record makes plain that the court's ruling was specific to preventing Detective Jones from giving an opinion that was not rationally based on his own perceptions. In that regard, the court did not abuse its discretion.

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

MAUSEAN CARTER

v.

STATE OF MARYLAND

* **IN THE**
* **COURT OF APPEALS**
* **OF MARYLAND**
* **Petition Docket No. 158**
* **September Term, 2021**
*
* **(Nos. 1360, 1362, 1363 &**
* **1364, Sept. Term, 2019**
* **Court of Special Appeals)**
*
* **(Nos. 118005024, 118005025,**
* **118005026 & 118005027, Circuit**
* **Court for Baltimore City)**

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the supplement filed thereto, in the above-captioned case, it is this 26th day of August, 2021

ORDERED, by the Court of Appeals of Maryland, that the petition and the supplement be, and they are hereby, **DENIED** as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera
Chief Judge

APPENDIX B