Circuit Court for Howard County
Case No. C-13-CR-19-000367

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0925

September Term, 2022

MOIRA E. AKERS

v.

STATE OF MARYLAND

Shaw,
Ripken,
Tang,

JJ.

Opinion by Ripken, J.

Filed: January 30, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The State of Maryland charged Appellant, Moira E. Akers ("Appellant") with multiple offenses arising from the death of her newborn child ("Baby A") in November of 2018. Following a series of pretrial hearings, in April of 2022 a jury in the Circuit Court for Howard County found Appellant guilty of second-degree murder and first-degree child abuse. The court imposed an aggregate sentence of 30 years of incarceration, and Appellant noted a timely appeal. In addition, If/When/How: Lawyering for Reproductive Justice ("Amicus"), a non-profit advocacy organization, submitted an *amicus* brief arguing that Appellant's convictions should be overturned. For the reasons to follow, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Appellant presents the following issues for our review:[1]

I. Whether the circuit court abused its discretion in admitting expert testimony concerning the hydrostatic float test.

II. Whether the circuit court erred in admitting evidence that Appellant did not seek prenatal care, and evidence of Appellant's internet searches related to abortion.

III. Whether the circuit court erred in concluding that Appellant's statements to a law enforcement officer were voluntary.

IV. Whether the evidence was sufficient to sustain Appellant's convictions.

[1] Rephrased from:

1. Did the hearing court err in admitting expert testimony regarding the lung floatation test?
2. Did the court err in denying Ms. Akers' motion in limine to preclude testimony about computer searches concerning abortion and testimony about a lack of pre-natal care?
3. Did the court err in denying Ms. Akers' motion to suppress her statements?
4. Was the evidence sufficient to convict Ms. Akers?

FACTUAL AND PROCEDURAL BACKGROUND

In November of 2018, first responders were dispatched to a Howard County residence due to a report that a thirty-seven-year-old woman was experiencing severe vaginal bleeding. Upon arrival, an EMT, Thomas Sullivan ("EMT Sullivan") found Appellant sitting in her living room with her husband and two children. Appellant reported that she had been experiencing heavy vaginal bleeding for the past several hours. When EMT Sullivan asked Appellant if there was any chance that she was pregnant, she replied, "no." Appellant provided no explanation for the bleeding, although her husband noted that she recently had an ectopic pregnancy.[2] EMT Sullivan asked Appellant if she wanted to be transported to a hospital and she replied, "yes." Once at the hospital, Appellant was transitioned into the care of a nurse.

At the hospital, Appellant spoke to a nurse and a doctor, but did not initially disclose that she had been pregnant. However, after a doctor observed a severed umbilical cord protruding from her vagina, Appellant indicated that she had delivered an infant in her home prior to being transported to the hospital, but that the baby was "not alive" and was "in a closet at home in a Ziploc bag." In response to medical inquiries, Appellant also stated that she had confirmed that she was pregnant in May of 2018, but at no point had she received any prenatal care. At the time of the discussion, Appellant was "calm and answering questions" from hospital staff. Although Appellant was aware her husband was present in the hospital's waiting room, Appellant declined to allow him to enter her room.

[2] This was inaccurate; admitted evidence demonstrated that at 11 weeks gestational age, Appellant's pregnancy had been diagnosed as normal.

Hospital staff notified emergency medical services of Appellant's statements, and EMT Sullivan was directed to return to Appellant's home in an effort to recover the baby. Upon arriving at the home, EMT Sullivan and a law enforcement officer discovered blood throughout the upstairs bathroom, hallway, and bedroom. Inside a closed bedroom closet, EMT Sullivan discovered a large plastic bag filled with bloodied towels; under the towels in the bag was an infant who showed no signs of life. EMT Sullivan confirmed the baby was deceased by checking the pulse and using a cardiac monitor; no CPR or other artificial ventilation of the lungs was performed.

Following a medical procedure, Appellant was interviewed by Detective Weigman of the Howard County Police Department ("Det. Weigman"). During that interview, Appellant stated to Det. Weigman that she had delivered a stillborn child, which she placed in a bag in the closet. Additional facts will be incorporated as they become relevant to the issues.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN PERMITTING EXPERT TESTIMONY REGARDING THE HYDROSTATIC FLOAT TEST.

A. The Pretrial Motion to Exclude Expert Testimony

Prior to trial, the State noted its intent to introduce the testimony of Doctor Nikki Mourtzinos ("Dr. Mourtzinos"), the Attending Medical Examiner who conducted the autopsy of Baby A and concluded that the cause of death was homicide due to asphyxia. Appellant made a motion *in limine* seeking to preclude Dr. Mourtzinos from discussing the results of one of the tests conducted during the autopsy, the hydrostatic float test ("HFT").

The court conducted two hearings focusing on the reliability and scientific value of the HFT in the context of the autopsy results.[3] The circuit court examined the admissibility of evidence under Maryland Rule of Evidence ("Md. Rule") 5-702, which requires a court to determine, in relevant part, "whether a sufficient factual basis exists to support the expert testimony."

During the hearings, the State presented the testimony of Dr. Mourtzinos, who conducted the autopsy and determined that Baby A was born alive. The State also called Doctor David Fowler ("Dr. Fowler") who, at the time the autopsy was performed, was the Chief Medical Examiner for the State of Maryland. Both doctors were certified as experts in forensic pathology without objection, and both testified that the HFT was a test that should be used and considered under the circumstances of the case. Appellant asserted that the HFT was not reliable evidence and presented the testimony of her own expert in forensic pathology, Doctor Gregory Davis ("Dr. Davis").

Dr. Mourtzinos, the state's primary witness, testified that the HFT, also known as the "flotation test" or "lung float test," is a commonly employed test in forensic pathology used to determine if an infant's lungs had at any point been aerated. Dr. Moutzinos opined that when in utero, a fetus's lungs are filled with liquid, not air; as the child is born and

[3] During the pendency of the litigation, the Supreme Court of Maryland decided *Rochkind v. Stevenson*, 471 Md. 1 (2020), which necessitated an additional hearing. *See id*. at 5, 38 (adopting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) for the purposes of applying Md. Rule 5-702 and replacing the previous standard under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and *Reed v. State*, 283 Md. 374 (1978)). At the second hearing, the parties agreed to, and the court did, incorporate the testimony from the prior hearing. The court gave the parties the opportunity to present additional arguments and testimony due to the newly applicable *Rochkind-Daubert* standard.

breathes, the lungs become aerated and inflate. The aeration of the lungs is an "important data point" in determining if a child has been born alive, as under Maryland law, a child who takes even one unassisted breath after being completely expelled or extracted from the mother's body is considered to have been born alive. *See* § 4-201(n) of the Health - General Article ("HG") of the Maryland Code.

The HFT involves removing the lungs, ensuring that air has not been artificially introduced into them, and placing them in water. The analysis is—if the lungs float, they have been aerated; if the lungs sink, they have not been aerated. There are slight differences in how the test may be performed—it can be conducted with either complete lungs, or pieces of lung tissue. A practitioner will generally also submerge the liver or spleen, both of which are solid organs that do not float under normal circumstances, as a control.

Dr. Mourtzinos testified that the HFT results only show if the lungs were aerated and will not conclusively prove if the child did take a breath or not. This is because lungs can be aerated via other means, such as via CPR or decomposition. She stated that in forensic pathology, the HFT, or indeed any test, should not be and is not used exclusively to determine if a child was born alive; instead, practitioners look for concordance across a variety of tests. In this case, Dr. Mourtzinos testified that the results of the HFT indicated that the lungs had been aerated, and that there was no evidence of air being introduced by means other than breathing, and that those results were consistent with a variety of different

tests which in her opinion were also indicative of live birth.[4]

Testifying for the State, Dr. Fowler discussed a 2013 peer-reviewed German study which evaluated the efficacy of the HFT. The study determined that out of a sample size of 208 babies, all of whom were delivered by medical professionals, the lungs of every stillborn baby sank—there we no cases where the lungs of a stillborn baby floated. The test had an accuracy rate of 98 percent, with two "false negatives," where the lungs of a non-stillborn baby sank.[5]

Nevertheless, the State's experts agreed that the HFT is "controversial" in the medical community. Both experts agreed the bulk of the scientific literature, even while advocating for the use of the HFT, noted that the HFT should be conducted alongside other tests. Both experts also agreed that the test is of very limited value for determining live birth if the lungs were aerated by other means, such as CPR or decomposition. The State's experts testified that the HFT was appropriate in this case, where there was no indication CPR or other artificial aeration had been attempted on the victim, and there was no sign of decomposition in the victim's body. Additionally, at no point did either Dr. Mourtzinos or Dr. Fowler assert that the HFT results alone were sufficient to result in a determination of

[4] In the process of completing her investigation and report, Dr. Mourtzinos also performed other tests and analyzed other data to determine if the baby died in utero, or after being born alive. These included but were not limited to examining the baby's body via x-ray, conducting a visual and tactile examination of the lungs, checking for maceration, and searching for abnormalities, infection, and bacterial invasion in the baby's body and in the placenta. All of Dr. Mourtzinos' other findings during the autopsy were consistent with the results of the HFT, and collectively, in her view, indicated live birth.

[5] This is not the situation which occurred in this case, where the lungs of the victim floated.

live birth.

The defense expert, Dr. Davis, opined that several experts in the field of forensic pathology do not advocate for the use of the HFT, and believed it and other test results were inconclusive in this case. Dr. Davis also testified that in addition to breathing, CPR, or decomposition, air can enter a baby's lungs through the birthing process itself, or via the mishandling of the body after death.[6] Dr. Davis also testified that although he personally does not place any value in the HFT, he both conducts it in his autopsies and teaches it to his forensic pathology students. Dr. Davis further stated that had he performed the autopsy of the victim in this case, he would have performed the HFT, and agreed that it was "generally accepted to do the test[.]"

In ruling on the motion *in limine*, the circuit court noted the breadth of the testing that Dr. Mourtzinos conducted, and that all other test results were consistent with the results of the HFT. The court also noted the testimony of both the State's experts indicated that the HFT was a mandatory test in an autopsy of this nature, although both said that no test should be exclusively used to determine a cause of death. The court referenced the testimony of both experts indicating that the bulk of the scientific literature stated that the test is reliable in circumstances absent the introduction of air into the lungs via CPR or decomposition, and that evidence of neither factor was present in this case. In making the ruling, the court also discussed the 2013 German study, which found the test to be extremely reliable in cases where a baby's lungs floated. The court also noted that Dr.

[6] Dr. Fowler disputed this claim and stated that there were only two publications that theorized such a possibility, and that the theory was "not commonly accepted."

Davis disagreed with the conclusions of the State's experts regarding the reliability of the test, but that the court was unpersuaded by his testimony.

The court examined the evidence presented, discussed each of the ten enumerated *Rochkind-Daubert* factors, and determined that "by a preponderance of the evidence [] the test is reliable[.]" *See Rochkind v. Stevenson*, 471 Md. 1, 35–36 (2020). The court noted that it found "on balance the testimony of Mourtzinos and Fowler more convincing than [that of] Dr. Davis." The court correctly stated that it "need not be satisfied that an opinion is correct, only that it is reliable[,]" and further found that "there are sufficient indicia of reliability and legitimacy that it may be profitably applied by the jury." *See id.* at 33 ("[U]nder this approach to expert testimony, juries will continue to weigh competing, but still reliable, testimony."). At trial, Dr. Mourtzinos presented testimony to the jury that the results of her investigation, which included the use of the HFT, indicated live birth.

B. The Standard of Review

In *Rochkind*, the Supreme Court of Maryland outlined the standard of review for the admission of expert testimony under *Daubert* and Md. Rule 5-702:

> "[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute ground for reversal." *Roy v. Dackman*, 445 Md. 23, 38–39 (2015). When the basis of an expert's opinion is challenged pursuant to Maryland Rule 5-702, the review is abuse of discretion. *Blackwell v. Wyeth*, 408 Md. 575, 618 (2009).

471 Md. at 11–12, 26 (adopting the standard outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) as the test for determining admissibility under Md. Rule 5-702). An abuse of discretion occurs when "the trial court's decision [is] well

removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Devincentz v. State*, 460 Md. 518, 550 (2018) (internal quotation marks and citation omitted). The Court has also noted that in the context of a *Rochkind-Daubert* analysis specifically, a court also abuses its discretion when it admits expert evidence "where there is an analytical gap between the type of evidence the methodology can reliably support and the evidence offered." *Abruquah v. State*, 483 Md. 637, 652 (2023). Moreover, the Supreme Court of the United States has explained that "the law grants a [trial] court the same broad latitude when it decides *how* to determine reliability as it enjoys in respect to its ultimate reliability determination." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 142 (1999) (emphasis in original); *see also Rochkind*, 471 Md. at 38 (incorporating *Kumho Tire* into the Maryland standard).

C. The Parties' Contentions

Appellant asserts that the trial court committed reversible error by admitting Dr. Mourtzinos' expert testimony regarding the HFT. Appellant contends that the HFT is scientifically unreliable, and as Dr. Mourtzinos' expert opinion was "based to a great extent" upon the HFT results, the court should have precluded her from testifying. Appellant argues that each of the *Daubert* factors point to the unreliability of the HFT.[7]

The State disagrees and asserts that the circuit court properly exercised its discretion

[7] As Appellant's *Rochkind-Daubert* motion, objection at trial, and appellate brief challenged only the reliability of the HFT, and not the other scientific tests Dr. Mourtzinos employed during her autopsy, we confine our review to assessing the court's ruling as to the admissibility HFT. We discuss the other factors Dr. Mourtzinos considered only in the context of her use of the HFT.

in determining that the results of the HFT were reliable and admissible under the *Rochkind-Daubert* standard. In the alternate, the State argues that if the HFT was admitted erroneously, the error was harmless, as Dr. Mourtizinos' testimony and conclusion were based on the results of a multitude of tests other that the HFT which all produced consistent results.

D. The *Rochkind-Daubert* Analysis

Under the *Rochkind-Daubert* framework, expert testimony is evaluated by a "flexible inquiry into an expert's reliability, focusing on the expert's principles and methodology as opposed to their conclusions." *Covel v. State*, 258 Md. App. 308, 329 (2023). *Rochkind* identified ten factors which the Supreme Court found persuasive in evaluating the reliability of expert testimony. 471 Md. at 35–36. These factors are:

> (1) whether a theory or technique can be (and has been) tested;
>
> (2) whether a theory or technique has been subjected to peer review and publication;
>
> (3) whether a particular scientific technique has a known or potential rate of error;
>
> (4) the existence and maintenance of standard and controls; . . .
>
> (5) whether a theory or technique is generally accepted[;]
>
> (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of litigation, or whether they have developed their opinions expressly for the purposes of testifying;
>
> (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
>
> (8) whether the expert has adequately accounted for obvious alternative

explanations;

(9) whether the expert is being as careful as [they] would be in [their] regular professional work outside of [their] litigation consulting; and

(10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Id. at 35–36.

The Court noted that the list was not exhaustive, that no single factor was determinative, and that trial courts were not required to apply all, or indeed any, of the factors in reaching an ultimate reliability determination. *Id.* at 37. Additionally, the *Rochkind-Daubert* reliability analysis does not "upend [the] trial court's gatekeeping function. Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *State v. Matthews*, 479 Md. 278, 312 (2022) (internal quotation marks and citations omitted).

Here, the circuit court did not abuse its discretion. In determining that Dr. Mourtzinos' testimony related to the HFT was admissible, the court considered each of the *Rochkind-Daubert* factors in turn, before ultimately determining that "on balance . . . the test is reliable." In making its determination, the court cited evidence which included the testimony of Drs. Mourtzinos and Fowler, multiple peer-reviewed studies and books on the topic of forensic pathology which accept the use of the HFT, the 2013 German study that did not identify any error that would apply to the results in this case, that the body was handled and the autopsy was performed by trained individuals, and noted that Dr. Fowler did not observe evidence of decomposition or CPR. The court also found that the test was

generally accepted as valid in these circumstances but emphasized that it would be for the jury to determine *how* the air got into Baby A's lungs. The court determined that the test was conducted in accordance with Dr. Mourtzinos' training, in the regular scope of her employment, and in making her findings, she considered alternate explanations for the test results. In so deciding, the court permissibly exercised its discretion in determining that the preponderance of the evidence showed that the HFT was sufficiently reliable for admission under Md. Rule 5-702. *See Crane v. Dunn*, 382 Md. 83, 92 (2004).

We also emphasize that neither the State's experts, nor the court, stated that the results of the HFT were, or could be, dispositive as to the question of whether a child was born alive. To the contrary, the circuit court noted Dr. Mourtzinos' testimony that "no single test was adequate to determine the cause of death," and stated that "each of the tests including the [HFT], provide assistance cumulatively informing her determination" of live birth. It is clear from the record that the State presented the HFT, and the court admitted it, not as a test which itself conclusively answers the question of whether a child was born alive, but as one which determines if the lungs of an infant were aerated. Aeration of the lungs is *consistent* with life, but aeration can nevertheless occur for reasons other than breathing. As the circuit court noted, the *cause* of the aeration of the lungs is a matter for the factfinder to decide.

Here, due to the circuit court's diligent application of the evidence to the *Rochkind-Daubert* factors, and that the HFT was used to show aeration of the lungs, and not definitive proof of life, the court's discretion was not exercised "in an arbitrary and capricious manner, or . . . beyond the letter or reason of the law." *Jenkins v. State*, 375 Md. 284, 295–

96 (2003). Nor was there an "analytical gap between the data and the opinion proffered." *Matthews*, 479 Md. at 308 (internal quotation marks omitted).[8] Thus, the court did not abuse its discretion in permitting Dr. Mourtzinos' testimony under Rule 5-702.

II. THE COURT DID NOT ERR IN ADMITTING EVIDENCE OF APPELLANT'S LACK OF PRENATAL CARE AND PRIOR INTERNET SEARCH HISTORY RELATED TO ABORTION.

A. The Evidence at Issue

Appellant contends that the circuit court erred in denying her Motion to Suppress Evidence and subsequent objections which sought to exclude two categories of evidence: Appellant's statements that she did not receive prenatal care during her pregnancy, and her prior internet search history related to terminating a pregnancy at home. Regarding the first category, Appellant informed a nurse at the hospital that she had not received any prenatal care, despite knowing that she was pregnant. Appellant repeated this claim when she was interviewed by a police detective. In the same interview, she stated that she had received prenatal care during her two previous pregnancies, and both of those children were delivered by medical professionals.

As for the evidence of Appellant's search history, at the suppression hearing, the State indicated the intent to introduce records of Appellant's internet history related to pregnancy termination. Specifically, the State sought to introduce internet searches including but not limited to: "rue tea for abortion[,]" "does Rue extract cause you to

[8] To be sure, nothing in our decision today precludes a trial court from excluding an expert's report which relies *exclusively* on the HFT, and an expert's conclusion that a child was born alive predicated entirely on the HFT could represent an impermissible analytic gap between the data and the opinion proffered. *See Matthews*, 479 Md. at 308.

miscarry[,]" "over-the-counter pills that cause miscarriage[,]" "miscarriage at seven weeks[,]" "how to treat ectopic pregnancy naturally[,]" "how to end an ectopic pregnancy[,]" "misoprostol in mid-trimester termination of pregnancy, both oral and vaginal[,]" and navigation to a website titled "woman resort to over-the-counter remedies to end pregnancy[.]"

At trial, the State introduced evidence, over objection, that between March of 2018 and May of 2018, Appellant performed the searches listed above using her phone. Notably, during the time frame in which the searches were made, and for several weeks after, Appellant would have been able to legally secure abortion services in Maryland. *See* Md. Code HG § 20-209(b)(1) ("[T]he State may not interfere with the decision of a woman to terminate a pregnancy . . . before the fetus is viable[.]").

At the time the court admitted the search history evidence, other evidence which demonstrated Appellant's consideration of abortion services had already been admitted into the record without objection from Appellant. Prior to presenting evidence of Appellant's search history, the State called Doctor Danielle Waldrop ("Dr. Waldrop"), Appellant's obstetrician and gynecologist ("OBGYN"), as a witness. Dr. Waldrop testified that Appellant had visited the office in May of 2018 when Appellant was at least 11 weeks pregnant. Medical records of this visit, introduced without objection at trial, indicated that Appellant "came to discuss termination" of the pregnancy. Additionally, Dr. Waldrop testified, and the medical records confirmed, that Appellant was "given info for local clinics to complete . . . second trimester termination." Dr. Waldrop confirmed on cross examination that Appellant received referrals for pregnancy termination. At no point

during Dr. Waldrop's testimony did Appellant make any objection or motion to strike.[9]

The medical records introduced through the testimony of Dr. Waldrop conflicted with Appellant's statements to Det. Weigman. During the interview in the hospital, Appellant stated that at the OBGYN appointment she had been informed that she was 15 weeks pregnant, which was too late in the pregnancy to seek an abortion. That Appellant was 15 weeks pregnant is contradicted by the medical records that indicate that when Appellant visited the OBGYN in May of 2018, the gestational age of her fetus was approximately 11 weeks from the last menstrual period.

The medical evidence further contradicts Appellant's statement that it was too late to seek an abortion as both Dr. Waldrop's testimony and the medical records indicate that Appellant was provided referrals for abortion services at the appointment.

As noted, in Appellant's statement to Det. Weigman, Appellant indicated that she had "planned to terminate if was a normal [pregnancy]," but did not do so because the doctor informed her it was "too late." The referrals for termination of pregnancy given to Appellant at the time of the medical appointment suggest that when Appellant received confirmation of her pregnancy, it was not too late to receive an abortion contrary to her statement to the detective in the hospital interview.

In the same interview, Appellant went on to state:

[9] Appellant waived any contention that the court erred in introducing this evidence by failing to object when it was introduced at trial and does not contend on appeal that the court erred by admitted Dr. Waldrop's testimony or the medical records. *See Beghtol v. Michael*, 80 Md. App. 387, 393–94 (1989) (noting that "[i]n the absence of a continuing objection, specific objections to each question are necessary to preserve an issue on appeal[,]" and that "a motion *in limine* is not the equivalent of a continuing objection.").

> [APPELLANT]: But it was also just, when I decided to . . . give him up[.] . . . I don't know . . . because I kept hope-
>
> * * *
>
> [APPELLANT]: And I know it sounds bad, I almost kept hoping that something would happen but my plan was to-
>
> DET. WEIGMAN: Like what would happen? For your family? Or to the baby? Or . . .
>
> [APPELLANT]: Like I was in denial so I kind of was hoping that something would happen so that it would-
>
> DET. WEIGMAN: Go away.
>
> [APPELLANT]: Yeah.

Appellant also reported that after her OBGYN visit, she resolved to hide the pregnancy from her husband, and inform him, inaccurately, that the pregnancy had been ectopic. On appeal, Appellant does not challenge as irrelevant or unfairly prejudicial the portions of her conversation with Det. Weigman related to the fact that she sought an abortion, the testimony of Dr. Waldrop, nor the related medical records. Appellant's challenges on appeal relate solely to the internet searches related to abortion, and evidence that she did not receive prenatal care during her pregnancy with Baby A.

B. The Standard of Review

When reviewing a court's admission of evidence over objection, we examine both the relevance and unfair prejudice of the challenged evidence. The standards of review for such claims are interconnected, yet distinct. As the relevance of evidence is a legal conclusion, we review a court's determination that evidence is relevant under Md. Rule 5-401 de novo. *Ford v. State*, 462 Md. 3, 46 (2018), *reconsideration denied* (December 11,

2018).

To be admissible, evidence must be relevant. Md. Rule 5-402. Evidence is relevant if it has *any* tendency to make the existence of a fact of consequence to the determination of the case more probable or less probable than it would be without that evidence. Md. Rule 5-401. (emphasis added). The relevance of evidence "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). If we determine that the evidence is relevant, we then analyze whether the trial court abused its discretion in determining that the probative value of the admitted evidence was not outweighed by the risk of unfair prejudice. *Portillo Funes v. State*, 469 Md. 438, 478 (2020).

Relevant evidence may be excluded when a court determines "its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. Evidence is unfairly prejudicial when it "might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Odum v. State*, 412 Md. 593, 615 (2010). Absent an abuse of discretion, we may not disturb a "trial court's decision to admit relevant evidence over objection that the evidence [was] unfairly prejudicial." *Donaldson v. State*, 200 Md. App. 581, 595 (2011). "An abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Williams*, 457 Md. at 563. "[A] ruling reviewed under the abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)).

C. The Parties' Contentions

Appellant argues that both evidence of her internet search history related to the termination of a pregnancy as well as the absence of prenatal care during the pregnancy were irrelevant and unfairly prejudicial and should have been excluded under Md. Rules 5-401 through 5-403. Specifically, Appellant argues that none of the evidence at issue made any fact of consequence to the determination of the trial more or less likely to have occurred. *See* Md. Rule 5-401. In the alternate, Appellant asserts that the evidence should have been excluded under Rule 5-403, as the danger of unfair prejudice substantially outweighed any probative value. Appellant claims that any probative value was substantially outweighed by the potential for evidence of use or consideration of abortion services to inflame strong prejudice in jurors due to the "divisive and emotional" nature of debates around reproductive healthcare services, which include abortion. Similarly, Amicus argues that evidence of a defendant's prior abortion or consideration of abortion, or lack of prenatal care, is both irrelevant to the determination of that person later harming their child and would be so prejudicial that it must categorically be considered to substantially outweigh any theoretical relevance. In support of these contentions, Appellant and Amicus cite to multiple out-of-state cases where appellate courts determined admittance of a party's prior abortion history was or would have been erroneous, either due to irrelevance, or the potentially prejudicial nature of such evidence.

In the State's view, the circuit court did not err. The State argues that while it does not disagree with aspects of Appellant's contentions, here both the evidence of Appellant's lack of prenatal care and internet searches related to pregnancy termination were relevant

to Appellant's intent to kill Baby A with deliberation once he was born. The State notes that both pieces of evidence "provided insight into [Appellant's] state of mind at a crucial time: the period where she could have legally terminated the pregnancy but chose not to do so." The State also contends that the evidence was relevant because Appellant's credibility had been called into question. Additionally, the State maintains that the evidence was not unfairly prejudicial and asserts that the cases cited by Appellant and Amicus do not apply to the facts herein. In the State's view, those cases are inapposite because they either dealt with instances when a party had terminated a *prior* pregnancy unrelated to the facts of the case, or when the death of the child in question occurred months after birth, rather than on the day of the birth, as occurred in the case at bar.

D. Evidence of Lack of Prenatal Care

We first examine the circuit court's decision to permit the State to introduce evidence of Appellant's lack of prenatal care during her pregnancy with Baby A. The court found that the evidence that Appellant did not seek prenatal care, despite knowing she was pregnant, was relevant to her intent to kill Baby A once born, an element the State was required to prove. Although we review relevance determinations de novo, we agree with the circuit court that the evidence was relevant. Appellant's intent to kill the child once born is undoubtedly a "fact that is of consequence to the determination of the action." Md. Rule 5-401. Similarly, that Appellant did not seek prenatal care, despite knowing she was pregnant, could lead to an inference that Appellant did not do so because of her intent to cause the death of the child once born. *See Thomas v. State*, 372 Md. 342, 351 (2002) (noting that relevance can be established by inference). This argument is bolstered by

evidence that Appellant had previously sought and received prenatal care for prior pregnancies and had attended an appointment with an OBGYN to confirm her pregnancy with Baby A. *See Snyder v. State*, 361 Md. 580, 592 (2000) ("[T]he relevancy determination is not made in isolation. Instead, the test of relevance is whether, in conjunction with all other relevant evidence, the evidence tends to make the proposition asserted more or less probable."). The fact that Appellant points to possible alternate explanations for this behavior, such as a theorized "lack of insurance or money to pay for visits to the doctor" does not materially impact our determination of the relevancy of the evidence.[10] Here, the State presented a nexus between the evidence and a fact of consequence sufficient to clear the "very low bar" of relevance. *Williams*, 457 Md. at 564.

We next turn to the court's determination that the probative value of Appellant's statements regarding the lack of prenatal care was not substantially outweighed by the risk of unfair prejudice, which we review under the abuse of discretion standard. *See* Rule 5-403; *Williams v. State*, 251 Md. App. 523, 566 (2021). We agree with Appellant and Amicus that by introducing evidence that a pregnant woman did not seek prenatal care, there is undoubtably a risk of introducing unfair prejudice. We acknowledge pregnant women do not always receive prenatal care for a variety of reasons, including the

[10] Such alternate explanations may be potentially valuable fodder for cross-examination or assertions of unfair prejudice, but that a wholly innocent explanation for an action may exist does not render evidence of that action irrelevant under Rule 5-401. Similarly, that failure to seek prenatal care is not a crime in Maryland is of no import to our relevancy determination. *See* Section 2-103(f) of the Criminal Law Article ("CR") of the Maryland Code.

accessibility of such care,[11] and agree with Amicus that prejudice could arise due to gender-based stereotypes and biases regarding the ways in which pregnant women are expected to behave. We further recognize that electing not to seek prenatal care is both a legally protected activity in Maryland, and observe that as a general principle, a lack of prenatal care is typically either irrelevant or minimally probative of a mother's intent to subsequently harm her child after birth. *See* Md. Code CR § 2-103. However, the facts of this case are far from typical.

Due to the specific facts of this case, we cannot say that no reasonable person could take the view espoused by the circuit court, and thus, cannot conclude the court abused its discretion on the issue of Appellant's lack of prenatal care. *See Sibley v. Doe*, 277 Md. App. 645, 658 (2016) (noting that an "abuse of discretion occurs where no reasonable person would take the view adopted by the trial court . . . or when the ruling is violative of fact and logic." (internal quotation marks and citation omitted)). Here, the court had evidence that Appellant hid her pregnancy from her family, emergency responders and hospital workers, only disclosing that she had delivered a child when medical personnel visually observed a severed umbilical cord. The court heard evidence that Baby A was killed very shortly after being born, that Appellant did not attempt to seek help for the baby, and that after Baby A's death, she wrapped the body in towels, which she disposed of in a bag and placed in a closed closet. Additionally, evidence was submitted that Appellant

[11] As recently as 2021, 6.3% of American children were born to mothers who either received no prenatal care, or care which began during the third trimester of pregnancy. Michelle J. Osterman, et al. *Births: Final Data for 2021*, 72.1 NAT'L VITAL STAT. REP. at 6 (Jan. 31, 2023), https://perma.cc/68ZL-APP8.

received prenatal care during her other pregnancies and had access to an OBGYN. Given this evidence, the court could reasonably conclude that Appellant's lack of prenatal care was probative of her intent during her pregnancy to harm or cause the death of Baby A once delivered.

While, as we have acknowledged, introducing evidence of lack of prenatal care carries with it a risk of unfair prejudice, the court here did not act unreasonably in concluding that the risk did not substantially outweigh the probative value of the evidence. "Evidence is never excluded merely because it is 'prejudicial.'" *White v. State*, 250 Md. App. 604, 645 (2021) (quoting *Moore v. State*, 84 Md. App 165, 172 (1990)). Nor is evidence excluded because the danger of prejudice simply outweighs the probative value; it must, "as expressly directed by Rule 5-403, do so '*substantially*.'" *Montague v. State*, 471 Md. 657, 696 (2020) (emphasis in original) (quoting *Molina v. State*, 244 Md. App. 67, 135 (2019)). Additionally, while the potential for unfair prejudice exists, we note that the topic of prenatal care is not so inherently inflammatory and contentious to engender substantial unfair prejudice. For the reasons articulated above, we cannot say that the court abused its discretion in allowing the State to present evidence of Appellant's decision not to seek prenatal care during her pregnancy with Baby A.

E. Evidence of Internet Searches Related to Abortion

We note at the outset of this discussion that our decision today should be read narrowly, and in strict accordance with the specific facts of this case.

We begin again by reviewing the circuit court's ruling on the relevancy of the evidence de novo. *See Ford*, 462 Md. at 46. We conclude that the evidence of Appellant's

search history is relevant. As previously stated, Appellant's intent during her pregnancy is unambiguously a "fact of consequence" in this case. *See* Md. Rule 5-401. Similarly, in the context of other admitted evidence, Appellant's actions, which demonstrate that at least at one point, she considered inducing an abortion without the assistance of a medical professional, make it more probable that she intended to prevent others from discovering her pregnancy or child at any point. This in turn permits an inference that she would be inclined to harm or cause the death of the child to keep the pregnancy and birth secret. *See Thomas*, 372 Md. at 351. Additionally, Appellant's intent during her pregnancy was particularly relevant due to the nature of the charge, and her statement that she had "hope[d] something would happen" so the pregnancy would not be carried to term. Her credibility had also been called into question because of the discrepancy between evidence which showed she had sought and received abortion referrals, and her statements that the same doctor who provided the referrals informed her that it was too late to secure an abortion in Maryland. As relevance is established by examining the evidence "in conjunction with all other relevant evidence," we determine that in the specific facts of this case, Appellant's search history clears the low bar of relevance. *Snyder*, 361 Md. at 592.

Appellant and Amicus put forward several categories of cases from other jurisdictions which, in their view, support a finding of error in this case. While we agree that evidence of a defendant's use of abortion services or consideration thereof will frequently be both irrelevant and unfairly prejudicial, under the unique and specific facts of this case, we are not persuaded that the circuit court erred, and find the cited cases are distinguishable. Unlike in this case, where Appellant considered aborting the fetus which

would eventually become the victim in this case, Appellant and Amicus cite to several cases that examine the admissibility of evidence of *prior* abortions unrelated to the facts which precipitated the litigation. These include *Andrews v. Reynolds Mem'l Hosp., Inc.*, 201 W.Va. 624 (1997), *People v. Morris*, 92 Mich. App. 747 (1979), *Hudson v. State*, 745 So. 2d 1014 (Fla. 5th DCA 1999), *Bynum v. State*, 2018 Ark. App. 201, and *Billett v. State*, 317 Ark. 346 (1994).

In *Andrews*, the Supreme Court of Appeals of West Virginia held that evidence of an abortion which occurred "a few years before the birth at issue" was correctly excluded. 201 W.Va. at 633. In *Morris*, the Court of Appeals of Michigan found reversible error where evidence of a defendant's prior abortions was admitted on the theory that they were probative of the defendant's sanity at the time of a factually unelated crime, despite no testimony to that effect from mental health professionals. 92 Mich. App. at 750–51. In *Hudson*, a Florida appellate court found an abuse of discretion when the defendant's prior medically supervised abortions were admitted in a case in which the defendant's newborn baby was found deceased in a box in a closed closet. 745 So. 2d at 1014. In *Bynum*, an Arkansas appellate court found that a trial court had abused its discretion by admitting evidence of a defendant's prior abortions in a trial alleging that the defendant had concealed the birth of a stillborn child. 2018 Ark App. at 2. In *Billett*, the Supreme Court of Arkansas affirmed a lower court's exclusion of a witness's history of abortions as a topic of cross-examination. 317 Ark. at 348.

We agree with the central principle adopted by the cases listed above: a person's prior history with abortion untethered to the material facts of a case will generally not be

admissible. However, Appellant's case does not concern abortion history attenuated from the facts which gave rise to the criminal charge nor does the contested evidence relate to a prior pregnancy. Here, the pregnancy Appellant considered terminating resulted in the birth of Baby A, the same child she was alleged to have murdered *immediately* after the child's birth in her home.

It is notable to our admissibility determination that the relevant intent here was the intent to harm or cause the death of the child specifically *at the time of birth*. Accordingly, we are unpersuaded by the cases cited by Appellant and Amicus involving the deaths of children well after their births, in which admission of evidence of a defendant's contemplation of abortion was determined to be reversible error. These cases are *Stephenson v. State*, 31 So. 3d 847 (Fla. 3d DCA 2010) and *Wilkins v. State*, 607 So. 2d 500 (Fla. 3d DCA 1992). *Stephenson* involved the death due to neglect of a thirteen-month-old child who "suffered from serious health problems." 31 So. 3d at 848. In *Stephenson*, a Florida appellate court found that fundamental error occurred when the prosecuting attorney commented on the defendant's consideration of terminating the pregnancy which resulted in the birth of the child victim. *Id.* The reviewing court stated that the evidence was both irrelevant, and that "any conceivable relevance was substantially outweighed by the danger of unfair prejudice." *Id.* at 850. The *Stephenson* court stated that:

> [N]ot only is there no *permissible* relevance to the mother's consideration of abortion to the legal issues at hand, but its only *arguable* relevance makes its admission all the more inappropriate: it is apparently the thought that a person who considers abortion is more likely to have killed the child not aborted. This makes the familiar issue of the admission of prior convictions, which is precluded because the jury may (probably correctly) conclude that

> one who has been convicted before is guilty now, pale into insignificance. Simply put, the evidence that Stephenson, considered aborting her pregnancy did not tend to "prove or disprove a material fact," [citation omitted]; it tended to prove only a very harmful immaterial one.

Id. at 851 (emphasis in original).

Several important factors distinguish Appellant's case from *Stephenson*. Unlike in *Stephenson*, where the child victim was over a year old, the death in Appellant's case occurred immediately after birth. *Id.* at 848. Additionally, in *Stephenson*, the State's theory of the case was that the defendant's motive for the crime was related to the medical issues of the child, but the defendant "considered having an abortion long before she knew . . . the baby would likely be born with serious medical problems." *See id.* at 852 (Shepherd, J., concurring). Thus, the *Stephenson* court found that the defendant's consideration of terminating a presumptively healthy fetus was irrelevant to the eventual crime, the killing of a one-year-old disabled child. *Id.* at 852. By contrast, in the case at bar, Appellant was charged with causing the death of a child on the same day as birth, and her motive was alleged to be related to the very existence of the child, as opposed to any previously unknown unique issues. Therefore, we are not persuaded that the holding of *Stephenson* applies in the context of this case.

Similarly, *Wilkins v. State* is distinguishable from the case at bar. 607 So. 2d 500 (Fla. 3d DCA 1992). *Wilkins* was an appeal from a conviction of attempted first-degree murder and aggravated child abuse, in which the victim was a two-month-old infant. *Id.* at 501. In that case, a Florida appellate court ordered a new trial for reasons having nothing to do with abortion. *See id.* However, the appellate court noted that it was "greatly

concerned" by several categories of "inadmissible evidence adduced at trial[,]" which included that "the defendant and his wife considered having an abortion of the baby-victim." *Id.* Because of the limited discussion of the issue and the age of the victim, who was not a newborn, we are not persuaded that *Wilkins* is applicable or consistent with the facts in Appellant's case.

We again emphasize the exceedingly narrow scope of this determination. Under the facts of this case, Appellant considered surreptitiously inducing a miscarriage while she was pregnant with the victim, the challenged evidence involved a self-induced abortion not under the direction of a medical professional, the evidence demonstrated that the child died the same day of his birth, both the pregnancy and the child's body were hidden, and Appellant indicated she did not prepare for the child's birth in any way. Additionally, Appellant's intent during her pregnancy was of central importance to the determination of the action, and her credibility was at issue due to the discrepancy between her statement to Det. Weigman that she was informed by her doctor at the time she was 15 weeks pregnant that it was too late to secure an abortion,[12] although the records from the same visit noted that she was instead 11 weeks pregnant, and was provided with multiple referrals for abortion services. As to the specific facts of this case, we conclude that the evidence, again, clears the low bar of relevancy. *Williams*, 457 Md. at 564.

Thus, we next evaluate whether the court abused its discretion in concluding that the probative value of the evidence was not "substantially outweighed" by the danger of

[12] Appellant also repeated the same contention to a social worker and a nurse at the hospital.

unfair prejudice. Md. Rule 5-403; *Williams*, 251 Md. App. at 581. As noted above, the circuit court concluded, and we agree, that the evidence was relevant to Appellant's intent during the time she was pregnant. In so holding, the court could permissibly conclude that Appellant's search history was sufficiently probative because the specific searches involved inducing an abortion at home without the assistance or supervision of medical professionals, therefore permitting the inference that Appellant intended to keep the pregnancy and birth a secret. Moreover, the court could conclude that the evidence was appropriately probative to overcome the risk of prejudice because it shed light on her intent during her pregnancy and at the time of birth, certainly a fact of consequence to the case.

The court had other available evidence that this was particularly salient, as Appellant's credibility was at issue. For instance, Appellant reported to Det. Weigman that she falsely represented to her husband the pregnancy was ectopic and stated that she intended to hide the birth from him and take the baby to a firehouse. Appellant also stated that she had been informed in May of 2018 that she was 15 weeks pregnant, and it was too late to seek an abortion, which was in direct contrast to the information included in her medical records. Contrary to Appellant's statements, medical records created at the time of her OBGYN visit indicated that she was 11 weeks pregnant and was not told it was too late to terminate the pregnancy, but rather was provided referrals for abortion services.

Importantly, the court could also consider the fact that the record already contained evidence, admitted without objection, that Appellant had sought abortion services. Because evidence regarding Appellant's consideration of abortion was already in the record, it is reasonable to conclude that the evidence of Appellant's search history was less prejudicial

than it might otherwise have been absent other admitted evidence showing that Appellant had previously considered abortion. *See Snyder v. State*, 210 Md. App. 370, 395 (2013) ("The evidence was cumulative and hence not unduly prejudicial."). Additionally, the court employed *voir dire* questioning meant to guard against improper bias in the jury. Specifically, the court asked, "many people have strong opinions about the morality of having considered getting or having an abortion. Would your beliefs about abortion prevent you from giving a fair and impartial verdict in this case?" In so doing, the court used Appellant's requested *voir dire* question verbatim.

Under Md. Rule 5-403, "[i]t is ordinarily within the discretion of the trial court to weigh the degree of relevance against any unfair prejudice which might arise[.]" *Mason v. Lynch*, 388 Md 37, 48 (2005). In the context of this case, we cannot say that no reasonable person could agree with the circuit court that any risk of unfair prejudice did not substantially outweigh the probative value of the evidence. Because a trial court's decision to admit evidence notwithstanding a challenge under Md. Rule 5-403 is "is entrusted to the wide discretion of the trial judge," and we must apply a "highly deferential" standard, we conclude that the court did not err in admitting the evidence of Appellant's search history. *Oesby v. State*, 142 Md. App. 144, 167–68 (2002) (noting that reversal under the abuse of discretion standard "should be reserved for those rare and bizarre exercises of discretion that are, in the judgement of the appellate court, not only wrong but fragrantly and outrageously so."). Although we recognize that abortion and other forms of reproductive healthcare carry with them the potential risk of unfair prejudice, we are unable to determine that the court below was "fragrantly and outrageously" wrong, and therefore, cannot find

error under the abuse of discretion standard. *Id*. at 168.

III. APPELLANT'S STATEMENTS TO A LAW ENFORCEMENT OFFICER WERE VOLUNTARY.

Appellant challenges the circuit court's denial of the motion to suppress statements made to a police detective while Appellant was in the hospital. Specifically, Appellant argues that the court erred in concluding that her statements were voluntary.

A. Appellant's Interview at the Hospital

Following Appellant's admission that she gave birth in her home and left the baby in a bag in the closet, Appellant was transported into an operating room for delivery of the placenta and repair of vaginal tears. Around the same time, Det. Weigman arrived at the hospital. At approximately 7:00 p.m., Det. Weigman was informed by hospital staff that Appellant "was going to go in for a minor procedure," but "in about two hours she should be alert and able to speak with [police]."

During the procedure, Appellant was placed under general anesthesia for approximately 30 minutes, which involved the administration of three medications: Midazolam, Fentanyl, and Propofol. At 8:36 p.m., Doctor Lori Suffredini ("Dr. Suffredini"), the attending anesthesiologist, entered a post-operative note related to Appellant's procedure. Dr. Suffredini testified that she "never" puts in a note unless the patient is "able to appropriately respond to a question[,]" because the answer shows "they're meeting the criteria that they're recovering from anesthesia." Dr. Suffredini also testified that "typically" a person who received general anesthesia for an "outpatient procedure" such as Appellant's operation, "would be able to leave the recovery room

within about an hour," and would be "stable to go home." Dr. Suffredini agreed that a person stable to go home could "get up and walk out on their own."

At 9:25 p.m., Det. Weigman, who was accompanied by a social worker, interviewed Appellant in her hospital room. At the outset of the interview, Det. Weigman observed that Appellant was "very alert [and] was willing to speak with us." Det. Weigman confirmed that Appellant was "alert and understanding," and after noting to Appellant she was a police officer, informed Appellant of her rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Having been verbally informed of her rights, and that she was not under arrest, Appellant completed a written waiver form and agreed to speak to Det. Weigman.

Det. Weigman was not in a police uniform, and medical personnel were present and moving about the area. At several points during the interview, a nurse interjected to ask Appellant medical questions. Although Appellant's husband was not given access to the room, at no point did Appellant request his presence, and Det. Weigman testified it was standard police procedure to separate adult interviewees to prevent another person from improperly influencing an interviewee's answers. The interview lasted approximately one hour. During the questioning, Appellant was sitting in a hospital bed and was not restrained by police.

The circuit court described Appellant's procedure as "relatively minor," and found that based on the recording of the interview, "it seems clear . . . that [Appellant] is alert and appropriately responsive and not slurring her speech or confused by virtue of any medication." The court also noted that during the interview, Appellant "seemed to understand the questions and to respond in a coherent, rational, thoughtful way[,]" and that

Appellant "was capable of writing and signing documents." The court determined that Appellant was capable of undertaking "a really thoughtful analysis" of who would be available to care for her living children. The court also found that there were no threats, promises, or abuse by the police, and that Appellant had the ability to terminate the interview at any time. The court described Det. Weigman as "very kind, very patient, quite frankly trying to understand the mindset and what potential plausible explanation there might be," and characterized Appellant as "[having] some college education, no criminal record, intelligent, responsive." The court found that Appellant's responses to Det. Weigman's questions were "coherent, lucid, detailed, rational, [and] accurate in their detail." Ultimately, the court found that Appellant's statements were voluntary and made after a valid waiver of her rights against self-incrimination.

B. The Standard of Review

"Only voluntary confessions are admissible as evidence under Maryland law." *Knight v. State*, 381 Md. 517, 531 (2004). The circuit court's ruling on the voluntariness of a statement is a mixed question of law and fact that this Court reviews de novo.

> In undertaking our review of the suppression court's ruling, we confine ourselves to what occurred at the suppression hearing. [W]e view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, here, the State. We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous. We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case.

Brown v. State, 252 Md. App. 197, 234 (2021) (internal citations and quotations omitted).

C. The Parties' Contentions

Appellant asserts that her statements to Det. Weigman were involuntary, and therefore must be suppressed under Maryland common law, as well as under Maryland and United States constitutional principles.[13] Specifically, Appellant contends that her statement could not have been voluntary, as she was questioned while still recovering from a surgical procedure and still under the effects of drugs used to induce general anesthesia. Appellant also argues that she was kept separate from her family in a coercive environment, and that she was "intimidated and pressured" by Det. Weigman during the interview.

The State disagrees and asserts that Appellant's statements in the interview were voluntary. The State notes that although Appellant was recovering from a medical procedure, it was a routine one, and Det. Weigman did not begin the interview until well after the anesthesiologist, Dr. Suffredini, signed off on Appellant's post-operative note. The State argues that the hospital environment was in no way coercive and asserts that the recording of Appellant's interview demonstrates that she was lucid and responding appropriately to all questioning.

D. Voluntariness Analysis

"Maryland law requires that no confession or other significantly incriminating remark allegedly made by an accused be used as evidence against him, unless it first be

[13] Appellant challenges only the circuit court's determination that her statements were voluntary; she does not argue that Det. Weigman's explanation of her rights pursuant to *Miranda* was facially insufficient, or that her waiver of those rights was not made knowingly or intelligently. *See Gonzalez v. State*, 429 Md. 632, 650 (2012) (citation omitted).

shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary." *Winder v. State*, 362 Md. 275, 307 (2001) (internal quotation marks and citation omitted). In assessing voluntariness, we evaluate the totality of the circumstances surrounding the interrogation and confession. *Smith v. State*, 220 Md. App. 256, 273 (2014). More specifically, in determining the voluntariness of a statement, we examine "whether it was extracted by any sort of threats, or violence, or obtained by any direct or implied promises . . . or by the exertion of any improper influence . . . . Otherwise stated, the test of the admissibility of [a] confession is whether [the accused's] will was overborne at the time he confessed," rather than freely given by the accused. *Lodowski v. State*, 307 Md. 233, 254 (1986) (citation omitted).

Appellant is correct that "[a] defendant's will can be overborne, and hence, his or her confession rendered inadmissible, as a result of the use of drugs." *Hof v. State*, 337 Md. 581, 597 (1995). However, "being under the influence of narcotics does not automatically render a confession involuntary," it is merely one factor courts must consider. *Id.* Appellant contends that her statements were involuntary in large part because at the time she was interviewed by Det. Weigman, Appellant was "still in the throes of the drugs" used to place her under general anesthesia. Appellant notes that just hours prior to the interrogation, she had been placed under general anesthesia, and to that end, given Midazolam, Fentanyl, and Propofol, all of which served to numb her and induce amnesia during the procedure. In asserting the continuing effect of the drugs was significant enough to render her statements involuntary, Appellant points to Dr. Suffredini's testimony that "the half-life of Fentanyl

is about three or four hours," with the half-lives of the other drugs being less.[14]

However, Dr. Suffredini testified further that "each patient is different. The exact amount of time that it takes for a patient to recover from anesthesia is dependent on a lot of factors[.]" Dr. Suffredini noted that a person who came in for a "similar outpatient procedure" would be able to leave the recovery room "within about an hour" and would be "stable to go home." Dr. Suffredini agreed that a person who is "stable to go home" would be able to "get up and walk out on their own." Dr. Suffredini also testified that at 8:36 p.m., after Appellant's procedure, she entered a post-evaluation note regarding Appellant. Dr. Suffredini stated that for her to leave a patient's bedside and enter a post-evaluation note, "the patient has to be able to appropriately respond to a question."

At the time of the interview, Appellant confirmed that she was feeling alert, understanding, and able to make decisions. She was able to write and had previously completed paperwork. The interview began at 9:25 p.m., approximately 50 minutes after Dr. Suffredini entered the post-evaluation note. After reviewing the audio recording of Det. Weigman's interview with Appellant, the circuit court concluded, and we agree, that Appellant's responses to Det. Weigman's questions were "coherent, lucid, detailed, rational, [and] accurate in their detail." We likewise agree with the court that Appellant undertook a forward-looking "thoughtful analysis" of who would be available and best suited to care for her two living children while she was in the hospital. We conclude that, notwithstanding Appellant's apparent nervousness during the interview, she did not seem

[14] We note there was no evidence in the record concerning the dose of any drug that was administered to Appellant as part of her procedure.

confused or under the influence of drugs, and Appellant's demeanor and answers during the interview support a finding that her statements were voluntary, as opposed to reflecting the behavior of someone whose "will [has been] overborne . . . as a result of the use of drugs." *Hof*, 337 Md. at 597.

Nor do Appellant's other contentions that her statement was involuntary fare much better. We disagree that the hospital environment was an inherently coercive location for an interview. Although Appellant's husband was not present during the questioning, there is no evidence that she requested his presence, and Appellant had previously told hospital employees he should not be allowed in her room. The questioning itself took place in a hospital room, where civilian hospital employees freely entered, exited, and even interrupted the questioning to speak with Appellant, as opposed to a more secluded and thus potentially more coercive police interrogation room. *See Brown v. State*, 452 Md. 196, 215 (2017) (noting that in *Miranda*, the Supreme Court of the United States was "specifically concerned about providing procedural safeguards for those who are held incommunicado and cut off from the outside world."). The interview was conducted by a single officer, who was not in uniform, and was accompanied by a social worker. The interview lasted approximately one hour, and at no point was Appellant handcuffed or restrained by police. To the contrary, she was explicitly told she was not under arrest.

Nor do we agree with Appellant's characterization of Det. Weigman's demeanor as "antagonistic" or "intimidat[ing]." Although the nature of questioning was inherently uncomfortable for Appellant, a review of the recorded interview reveals that Det. Weigman's demeanor during the questioning was insufficient to render Appellant, who

was an adult woman with some college education, unable to make a voluntary statement. Moreover, we agree with the circuit court that "there were no threats, no promises, no abuse by the police," and that the tone of the interview was "quite friendly and almost sympathetic."

For these reasons, we conclude, based on a totality of the circumstances, the State met its burden of demonstrating that by a preponderance of the evidence, Appellant's statements were voluntary under both Maryland and federal law. *See Buck v. State*, 181 Md. App 585, 631–32 (2008).

IV. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN APPELLANT'S CONVICTIONS.

A. The Evidence Required for Conviction

Appellant also contends that the evidence introduced at trial was insufficient for a rational jury to find her guilty of second-degree murder and first-degree child abuse. Specifically, Appellant argues that there was insufficient evidence for the jury to find, beyond a reasonable doubt, that Baby A was born alive, and that Appellant caused the infant's death. To sustain the convictions against Appellant, the State was required to introduce evidence sufficient to convince a reasonable factfinder that the infant victim was born alive. *See State v. Fabien*, 259 Md. App. 1, 40 (2023) (stating that a fetus is not a "person" under the law and noting that "one becomes a human being only when one is born alive." (internal quotation marks omitted)). In Maryland, a live birth has occurred when a baby has been completely expelled or extracted from the mother's body, and subsequently "breathes or shows any other evidence of life[.]" *See* Md. Code HG § 4-201(n).

B. The Standard of Review

"When reviewing the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State and assess whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Krikstan*, 483 Md. 43, 63 (2023) (quoting *Walker v. State*, 432 Md. 587, 614 (2013)). As this Court recently reiterated:

> Our role is not to review the record in a manner that would constitute a figurative retrial of the case. This results from the unique position of the fact[-]finder to view firsthand the evidence, hear the witnesses, and assess credibility. As such, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. Our deference to reasonable inferences drawn by the fact-finder means we resolve conflicting possible inferences in the State's favor, because we do not second-guess the jury's determination where there are competing rational inferences available.

Turenne v. State, 258 Md. App. 224, 236 (2023) (quoting *Krikstan*, 483 Md. at 63–64). Furthermore, "circumstantial evidence is entirely sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Id.* at 255–56 (quoting *Neal v. State*, 191 Md. App. 297, 314–15 (2010)). Differing reasonable inferences may arise from the evidence, and the factfinder is permitted to select from among those inferences. *See Smith v. State*, 415 Md. 174, 183 (2010). A reviewing court may not "second-guess the jury's determination where there are competing rational inferences available." *Id.*

C. The Parties' Contentions

Appellant argues that the evidence is insufficient to prove that her child was born

alive due to the testimony of the witnesses in this case. Specifically, Appellant notes that the medical examiner, Dr. Mourtzinos, testified that various test results from the autopsy were "consistent with" live birth, but then agreed at trial that there are "situations where [she] might make a finding that is consistent with live birth, but also consistent with stillbirth." Appellant also points to the fact that Dr. Mourtzinos agreed that CPR could cause aeration of the lungs and did not personally observe the baby's body in the period between its birth and arrival at the medical examiner's office, instead relying on others to inform her that there had been no CPR attempted. Additionally, Appellant characterizes Dr. Mourzinos as "discount[ing] the presence of an infection in the baby's pancreas and decomposition around the umbilical cord."[15] Appellant contrasts Dr. Mourzinos' testimony with that of the defense experts, who opined that the results of the autopsy were consistent with both live birth and stillbirth.

The State disagrees and asserts that the jury had sufficient evidence to return a finding of guilty for both counts. Specifically, the State highlights Dr. Mourtzinos' determination that to a reasonable degree of medical certainty, the baby was born alive, that the child's lungs were aerated, and that the cause of death was asphyxia and exposure,

[15] In so arguing, Appellant conflates several different medical terms. At trial, Dr. Mourtzinos testified that "[t]here was no evidence of an overwhelming infection" in the infant's body. She did note that pancreatic *inflammation* was discovered during the autopsy, and that such inflammation "has been linked to asphyxial deaths in infants." Additionally, Dr. Mourtzinos never testified to observing decomposition in the umbilical cord, although she did observe inflammation. Dr. Mourtzios also agreed that she did not observe "any signs of decomposition in the baby." Appellant is, however, correct that Dr. Mourtzinos did not believe that these findings prevented her from making her final determination of live birth and homicide.

and that the death was a homicide. Additionally, the State argues that Appellant's behavior in concealing the pregnancy, birth, and body of the baby allowed the jury to determine that the baby was born alive, and Appellant caused his death.

D. The Sufficiency of the Evidence

Here, viewed in the light most favorable to the State, the evidence was sufficient for a rational jury to find all essential elements of the crimes for conviction. *See State v. Suddith*, 379 Md. 425, 429 (2004). In determining that Baby A was delivered alive, and that Appellant caused Baby A's death, the jury could consider the testimony of Dr. Mourtzinos that to a reasonable degree of medical certainty the child was born alive, and that the cause of death was homicide caused by asphyxiation and exposure. Additionally, the jury could consider that a wide variety of tests were conducted by Dr. Mourtzinos before arriving at her conclusion, and that she did not consider any single test to be dispositive. The jury was likewise able to evaluate Appellant's statements to Det. Weigman. During that interview, Appellant stated that she had hidden the pregnancy from her husband, did not seek medical assistance with the pregnancy or birth, and after giving birth, had wrapped the baby in a towel, placed him in a bag, placed the bag in the closet, and shut the door. In the same interview, Appellant stated that after the baby was born, she did not inform anyone, did not try to call emergency services, did not try to provide care to the baby, and "didn't really look at the baby that closely." These and other facts permit inferences sufficient for a reasonable factfinder to determine that Appellant caused her baby's death. *See Smith*, 415 Md. at 183.

Appellant's presentation of an alternate narrative and the testimony of experts

reaching different medical conclusions does not alter that, in the light most favorable to the State, the record evidence was sufficient for a rational jury to find that Appellant's child was born alive, and that her actions caused his death. *See Suddith*, 379 Md. at 429. Therefore, we conclude the evidence was sufficient for the jury to return guilty verdicts on both counts.

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

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0925s22cn.pdf