UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0447

September Term, 2014

JOSEPH DWAYNE CAUDILL

v.

STATE OF MARYLAND

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Nazarian, J.

Filed: May 4, 2015

*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.

Joseph Caudill was convicted, after a jury trial in the Circuit Court for Howard County, of kidnapping and second-degree assault. He later entered an *Alford* plea to second-degree rape after the jury was unable to reach a verdict on that count. On appeal, he challenges many of the circuit court's evidentiary rulings. We find no error in any of those rulings and affirm.

I. BACKGROUND

In May 2010, Mr. Caudill, a physician's assistant, began a romantic relationship with Ms. B, a registered nurse. The relationship became "serious very quickly," but also turned "off and on almost from the very beginning." The relationship took a turn for the worse in May 2012 after Mr. Caudill revealed that he was involved with three other women, but he and Ms. B saw each other periodically as he attempted to win her back. In early August 2012, Ms. B decided that she was "done" with Mr. Caudill after she learned that he purchased a new car to replace the one he had wrecked, after they had agreed that he would save his money. During the ensuing two weeks, Mr. Caudill repeatedly called Ms. B on her cell phone and on her home phone, but she refused to answer.

On August 14, 2012, Mr. Caudill visited Ms. B at her residence on four separate occasions, all while "extremely intoxicated." Mr. Caudill's first two visits took place in the afternoon. Using a key, Mr. Caudill gained access to Ms. B's residence without her permission while she was inside. On both occasions, the situation began to "escalate" after

Ms. B discovered Mr. Caudill was in her home, but she was able to persuade Mr. Caudill to leave by pretending to call the police. Mr. Caudill's third visit took place at around 8:00 p.m., and he left after Ms. B asked him to leave. At around 5:00 the next morning, Mr. Caudill came to Ms. B's home for a fourth time. While Ms. B was asleep in her bed, Mr. Caudill came into her bedroom and "essentially passed out on the other side of" the bed. Ms. B awoke two hours later and asked Mr. Caudill to leave and to give back her key. Mr. Caudill complied and returned the key to Ms. B, but he told her that he still wanted her back and would return.

Later that day, Ms. B went out to lunch with her father and returned home at around 5:00 p.m. Mr. Caudill called her on her home phone, which did not have Caller ID, and told her that he had cut himself with hedge clippers and needed her to take him to the hospital. Ms. B refused, remarking that Mr. Caudill lived only a few minutes from a hospital and should have someone else take him. Angered by Ms. B's refusal, Mr. Caudill called her a number of vulgar names. Ms. B hung up and left the phone off the hook so that Mr. Caudill could not call her back.

From here, Mr. Caudill's behavior turned violent. Approximately fifteen minutes later, Ms. B, who was lying on her couch watching television, was surprised to see that Mr. Caudill had again gained entry to her residence. His left hand was bandaged and he asked her to take him to the hospital. Ms. B again refused and told him that she was not going anywhere with him. Mr. Caudill asked for some pain medicine and Ms. B decided to give him some of her dog's pain medication, although she told Mr. Caudill that it was Percocet. Mr. Caudill took the medication, then demanded again that Ms. B take him to the hospital.

When Ms. B refused again, Mr. Caudill picked her up and took her upstairs to her bedroom. He put her down and bent her over the bed. He placed one hand on her back to hold her down and used the other hand to search Ms. B's dresser, where she kept her robes and belts. Ms. B asked him to get off of her and was able to turn her body so that she was facing him. Mr. Caudill hit her "really hard" in the face, pushed her back down, and then obtained a belt from one of Ms. B's robes in her dresser. He used the belt to tie Ms. B's hands behind her back and then flipped her over to strangle her. Ms. B thought she was going to die, but Mr. Caudill let go before she lost consciousness. He told her that "you're not going to deny me anymore" and pulled her pants off. He pushed her towards the foyer area of the upstairs and she landed on the carpet. Ms. B pleaded for him to stop, but Mr. Caudill refused and he then "penetrated [her] very, very hard" as he placed his hands on Ms. B's neck to strangle her. Ms. B was unable to breathe and eventually lost consciousness.

When Ms. B regained consciousness, she realized that Mr. Caudill was lying beside her, and he told her "now we're both going to have to die . . . I'm not going to jail." Mr. Caudill then went into her bedroom and began rummaging through her dresser drawer, where she kept a gun she received from her mother. He returned and untied Ms. B after she told him her hands were hurting. Ms. B then walked to the bathroom, where she grabbed a pair of scissors to cut the belt off of her neck. She went to her bedroom, put on some shorts, and started walking downstairs. Mr. Caudill, who was not wearing any clothes, followed her. Ms. B asked if she could call her father because she usually calls her father within a few hours after seeing him and she informed Mr. Caudill that her father

would come to the house if she did not call him. She was allowed to call her father and, during the call, she "tried to give conflicting answers . . . to let him know something was wrong." Her father was able to pick up on the fact that something was wrong and that Mr. Caudill was involved and he asked what he should do. She told him to "do what you did last time," which referred to a prior occasion when her father had called the police because he believed Mr. Caudill was going to harm his daughter.

Mr. Caudill apparently caught on to what Ms. B was doing and pulled the phone out of the wall, then went to the living room and sat on the couch. Ms. B decided to "try to make a run for it." She ran outside to her neighbor's house and began banging on their front door. But no one answered, and soon Ms. B noticed that Mr. Caudill was coming after her. Mr. Caudill grabbed her by the arm and attempted to drag her back to her house. As he dragged her, Ms. B began "screaming at the top of [her] lungs." Mr. Caudill instructed her to stop screaming and when she failed to comply, "he started bashing [Ms. B's head] on the cement," but Ms. B continued to scream and Mr. Caudill strangled her until she lost consciousness. He dragged her into the house, placed her in the living room, and used a phone cord to tie her to a chair while he rummaged in the pantry, where Ms. B used to keep a gun. He returned to the living room without a gun and told Ms. B that "[w]e have to go to my house to get a gun." He scooped her up, placed her in his truck, and drove away.

From the passenger seat, Ms. B attempted to alert her neighbors that something was wrong, but Mr. Caudill strangled her until she lost consciousness. When Ms. B awoke, she began to plead and beg for her life. Mr. Caudill "seemed to calm down a little bit." He

then asked if Ms. B would marry him, and Ms. B responded by saying "yes, I'll marry you," as a way to try to save her life.

Mr. Caudill then took her home. Once inside, Ms. B told Mr. Caudill, "why don't you go to the hospital? Let me rest, you know. My head hurts. And I – let me clean myself up and calm down and I'll meet you there." Mr. Caudill agreed, but on his way out told Ms. B that "[i]f I pass a cop car on my way out, I'm going home. I'm going to get my guns. I'm going to kill the cops. I'm going to kill you. And I'm going to kill myself . . . if I do go to jail, as soon as I get out I'm coming for you, and I'm going to kill you." After he left, Ms. B contacted the police, who pulled Mr. Caudill over and took him into custody.

The officers noticed that Mr. Caudill's left hand was injured and decided to transport him to the hospital. He initially told the police that he had injured his hand using a hedge trimmer. He later told police that he had intended to shoot himself in the head, but placed too much pressure on the trigger and shot himself in the hand instead. He also claimed that his interactions with Ms. B were completely consensual and said that "Ms. B was into bondage."

On August 16, 2012, Mr. Caudill was charged with attempted first-degree murder, attempted second-degree murder, first-degree rape, second-degree rape, kidnapping, first-degree assault, second-degree assault, first-degree burglary, and third-degree burglary. He was tried before a jury. At trial, Ms. B conceded that she participated in "[s]ome very, very . . . light bondage" with Mr. Caudill during their relationship. In particular, Ms. B stated that Mr. Caudill would use Velcro straps to tie her to her bed post during sexual intercourse. However, Ms. B noted that she "could easily get out of it if [she] wanted to" and that she

never received an injury while she engaged in such activities. She further testified that she did not discuss a "safe word" with Mr. Caudill because "there was really no need." Ms. B also admitted that she had an account with a website called sexsubmission.com, and she sometimes viewed videos on that site while alone and sometimes in the company of Mr. Caudill. On the website, there were videos of people engaged in sexual acts while bound by ropes and chains. Ms. B denied that she ever asked Mr. Caudill to mimic the acts portrayed in these videos, but testified that she had asked Mr. Caudill to be more aggressive sexually. Ms. B also conceded that she filed a civil lawsuit against Mr. Caudill to recover damages for the injuries she suffered in this incident.

At the conclusion of the trial, the circuit court granted Mr. Caudill's motion for judgment of acquittal as to attempted first-degree murder and attempted second-degree murder, finding insufficient evidence that he intended to kill Ms. B. The jury acquitted Mr. Caudill on the charges of first-degree rape, first-degree assault, first-degree burglary, and third-degree burglary, but convicted him of kidnapping and second-degree assault. The jury was unable to reach a decision as to second-degree rape, and the circuit court declared a mistrial on that count. On November 4, 2013, Mr. Caudill entered an *Alford* plea to the charge of second-degree rape in exchange for the State's recommendation for a sentence of no more than thirty years. On April 4, 2014, the circuit court imposed a sentence of thirty years for the kidnapping conviction and a concurrent sentence of twenty years for the second-degree rape conviction. Mr. Caudill noted a timely appeal.

II. DISCUSSION

Mr. Caudill argues that the circuit court erred with regard to several evidentiary rulings.[1] We disagree.

A. The Circuit Court Did Not Err When It Permitted Ms. B To Explain Why She Filed A Civil Lawsuit Against Mr. Caudill In The Aftermath Of The Incident.

Mr. Caudill argues *first* that the circuit court allowed Ms. B to provide inadmissible hearsay and/or expert opinion testimony. During Mr. Caudill's cross-examination of Ms. B, she admitted that she filed a civil lawsuit against Mr. Caudill that sought a million dollars

[1] Mr. Caudill presents the following questions for our review:

> 1. Did the trial court err and/or abuse its discretion when it permitted the complaining witness to testify to hearsay, to offer an expert opinion and to make speculative and unduly prejudicial predictions?
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> 2. Did the trial court err when it permitted a responding officer to relay what the complaining victim told him, when such testimony improperly bolstered the complaining witness's credibility?
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> 3. Did the trial court err and abuse its discretion when it permitted the State to put on irrelevant and unduly prejudicial evidence regarding Mr. Caudill's injury?
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> 4. Did the trial court err when it precluded defense counsel from eliciting from the investigating detective statements the complaining witness made to him when the statements were not offered for their truth and thus were not hearsay?
>
> 5. Did the court abuse its discretion when it granted the state's motion to quash the subpoena that was served on the complaining witness?

in damages for injuries she sustained during the incident. Mr. Caudill elicited this testimony from Ms. B in order "to impeach her as far as her motive" for testifying against Mr. Caudill. On re-direct examination, the following colloquy occurred:

> [PROSECUTOR]: [Ms. B], you were just asked about a civil suit seeking damages from August 15th of 2012.
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> [MS. B]: Yes.
>
> [PROSECUTOR]: Why did you file that suit?
>
> [MS. B]: Because of my injuries. I can no longer work. I've been diagnosed with brain damage on the right side of my brain.
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> [COURT]: Overruled.

According to Mr. Caudill, the circuit court erred in permitting Ms. B to testify that she had been "diagnosed with brain damage on the right side of [her] brain" because it constituted inadmissible hearsay and/or amounted to an expert opinion.

We disagree that this statement was hearsay at all. "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "Except as otherwise provided by [the Maryland] rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. Despite the general rule against hearsay, certain out-of-court statements are admissible. Indeed, we have explained that "[a]n out-of-court statement is admissible *if it is not being offered for the truth of the matter asserted* or if it falls within one of the recognized exceptions to the

hearsay rule." *Handy v. State*, 201 Md. App. 521, 539 (2011) (quoting *Conyers v. State*, 354 Md. 132, 158 (1999) (emphasis added)).

Ms. B's testimony that she was diagnosed with brain damage relayed to the jury that someone had informed her that she had sustained brain damage during the incident with Mr. Caudill. Her testimony discussed an out-of-court statement made to her, *i.e.*, the diagnosis she received. But Ms. B did not offer this statement for its truth, *i.e*., to prove that Ms. B actually had brain damage, but to explain her reason for filing a civil lawsuit against Mr. Caudill, and thus to rebut the suggestion on cross-examination that her testimony in this criminal case was motivated by her interest in the civil suit.

We also fail to see how Ms. B's testimony amounted to an expert opinion. "We review that decision for an abuse of discretion: the decision as to whether to require a witness to testify as an expert 'is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute a ground for reversal.'" *Prince v. State*, 216 Md. App. 178, 198, *cert. denied*, 438 Md. 741 (2014) (quoting *Oken v. State*, 327 Md. 628, 659 (1992)). Maryland Rule 5-701 governs admissibility of lay witness testimony:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences 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.

Md. Rule 5-701. Expert testimony, on the other hand, is governed by Rule 5-702, which lists specific factors that the trial court must examine in order to determine its admissibility:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Md. Rule 5-702.

Mr. Caudill's argument fails at the outset because Ms. B's testimony did not amount to an *opinion*, let alone an *expert opinion*. Ms. B testified that she was diagnosed with brain damage in the aftermath of the incident. She did not opine on whether she had, in fact, suffered brain damage as a result of the incident, but relayed her understanding that she had sustained brain damage to explain why she decided to file a lawsuit against Mr. Caudill.

Mr. Caudill also takes issue with Ms. B's subsequent testimony that she "had my broken neck. My neck pain. And I can't work as a registered nurse anymore. I lost the vision in my right eye, so I can't safely work as a registered nurse anymore, so I have – I'm going to lose everything I have." Mr. Caudill claims that this testimony should have been excluded by the circuit court under Md. Rule 5-403 "[b]ecause whatever scant probative value this statement may have had was most certainly outweighed by its potential for unfair prejudice."

Our review of this decision includes two steps. "'First, we consider whether the evidence is legally relevant, a conclusion of law which we review *de novo*.'" *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 52 (2013) (quoting *Wash. Metro. Area Transit*

Auth. v. Washington, 210 Md. App. 439, 451 (2013)). To qualify as relevant, evidence must tend "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Evidence that is relevant can be admissible, but the trial court does not have discretion to admit evidence that is not relevant. Md. Rule 5-402. After determining whether the evidence is relevant, we look at whether the court "abused its discretion by admitting relevant evidence which should have been excluded" as unfairly prejudicial. *Brethren Mut. Ins. Co.*, 212 Md. App. at 52 (citation omitted). Under Rule 5-403, the trial court should exclude relevant evidence if the probative value of the evidence "is substantially outweighed by the danger of unfair prejudice." Md. Rule 5-403. "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014).

This testimony undoubtedly was relevant, since it rebutted the suggestion that Ms. B was testifying untruthfully in order to prosper from a civil lawsuit, and thus had substantial probative value. With regard to prejudice, Mr. Caudill claims that the contested testimony "was intended to, and most likely did, inflame the jury against" him, but he offers no further explanation nor cites to any authority to support this proposition, and we see little to no risk that the jury was unduly "inflamed" against Mr. Caudill by this testimony. Ms. B testified earlier that, among other things, Mr. Caudill (1) entered her residence without her permission; (2) bound her with a robe belt against her will; (3) violently raped her; (4) struck her in the face; (5) strangled her until she lost consciousness; (6) threatened

to kill her; and (7) kidnapped her. Ms. B also testified that she received a "broken neck from being strangled," had "busted blood vessels" in her eyes, and sustained "swelling and bruising to [the] left side of [her] face" from the incident. In light of this testimony, which Mr. Caudill does not challenge on appeal, Ms. B's testimony about the injuries she sustained from the incident and that she "can't safely work as a registered nurse anymore" and is "going to lose everything" was, at worst, cumulative. There was minimal danger that this testimony could have inflamed the jury against Mr. Caudill any more than the jury was already inflamed. *See Quansah v. State*, 207 Md. App. 636, 664 (2012) ("[S]uch evidence was merely cumulative and, therefore, not unduly prejudicial."). The circuit court did not abuse its discretion in allowing Ms. B to offer these pieces of testimony.

B. The Circuit Court Did Not Err In Permitting A Responding Officer To Relay What He Told The Dispatcher.

Detective Christian Freeman of the Howard County Police Department was one of the officers who responded to Ms. B's house after she called the police. At trial, Detective Freeman was questioned about what happened once he arrived at Ms. B's house:

> [PROSECUTOR]: And without telling us what she said, once—did you have a conversation with her?
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> [DETECTIVE FREEMAN]: Actually, yes. In the kitchen area, and then also, I radioed dispatch and told them to have the medics come in, it was safe, that the—you know, it was clear, there's nobody else in the residence, and then I had another conversation with her on the stairs when the medics were tending to her.
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> [PROSECUTOR]: And what, if anything, did you do after having your conversations with [Ms. B.]?

> [DETECTIVE FREEMAN]: At one point, I radioed dispatch, and had them put a broadcast out for the suspect, [Mr. Caudill], for—he intended to come back to the residence and do harm to shoot—
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> [DEFENSE COUNSEL]: Objection, Your Honor.
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> [PROSECUTOR]: Well—
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> [COURT]: The testimony is what he told dispatch to broadcast. Is that right? Is that—
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> [DEFENSE COUNSEL]: Yes. Yes, Your Honor.
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> [COURT]: Overruled. This is simply what this Witness told dispatch. This isn't him saying this is a fact. This is just what he told dispatch to broadcast.
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> [PROSECUTOR]: You can continue.
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> [DETECTIVE FREEMAN]: That the suspect, [Mr.] Caudill was coming back to the residence to shoot the sus—the victim, [Ms. B.], as well as any police officer that was there on the scene.

Mr. Caudill argues that the circuit court erred in overruling his objection because Detective Freeman's testimony bolstered the credibility of another witness, Ms. B. In a criminal case, it is "error for the court to permit to go to the jury a statement, belief, or opinion of another person to the effect that a witness is telling the truth or lying." *Bohnert v. State*, 312 Md. 266, 277 (1988) (citations omitted). "It is the law of this State 'that a witness, expert or otherwise, may not give an opinion on whether he believes a witness is telling the truth. Testimony from a witness relating to the credibility of another witness is to be rejected as a matter of law.'" *Ware v. State*, 360 Md. 650, 678 (2000) (quoting *id.* at 278). Mr. Caudill claims that "Detective Freeman's testimony was tantamount to an

assertion that he believed Ms. B because if the detective had not believed Ms. B's statement that Mr. Caudill threatened to return to the home and do harm to anyone there, it is highly unlikely that the officer would have relayed that information to the dispatcher." We disagree.

Detective Freeman recalled that after speaking with Ms. B, he told his dispatcher to issue a broadcast to his fellow officers to let them know that Mr. Caudill was believed to be on his way to Ms. B's residence to shoot Ms. B as well as any police officer that he encountered. He did not comment on whether he believed Ms. B was telling the truth or whether he believed Mr. Caudill was guilty. He merely testified about what he told his dispatcher after reporting to Ms. B's house and speaking with her at the scene.

Mr. Caudill asserts that Detective Freeman's testimony necessarily implied that he believed Ms. B's account. But this makes a leap the Detective didn't. Ms. B informed Detective Freeman that Mr. Caudill told her that he was going to shoot her and any police officer he encountered if she reported him to the police. Detective Freeman's decision to forward that information to his fellow officers implies that *as the situation unfolded*, Detective Freeman believed that the potential threat needed to be conveyed to other responding officers. The jury could have inferred from that context that the Detective found Ms. B credible enough for that purpose, but his testimony only recounted what he did at the time of the incident, and did not bolster Ms. B's testimony.

C. The Circuit Court Did Not Err In Admitting Evidence Indicating That Mr. Caudill Shot His Hand In A Failed Suicide Attempt.

Mr. Caudill next complains that the State should not have been permitted, over his objection, to introduce evidence indicating that the injury to his left hand was self-inflicted during a failed attempt to commit suicide. At trial, the State was allowed to admit Mr. Caudill's statement to the police that he had intended to shoot himself in the head but placed too much pressure on the trigger and shot himself in the hand instead. The State was also permitted to introduce photographs of a bullet hole in Mr. Caudill's wall and a shell casing found in Mr. Caudill's home, both of which tended to corroborate his statement. Mr. Caudill asserts that this evidence was irrelevant because "the fact that [he] shot himself in the hand was not relevant to the issue in this case, which was whether the encounter . . . on August 15 was consensual."

Mr. Caudill paints with too fine a brush. We agree that whether he shot himself in the hand in a failed attempt to commit suicide bore little on whether his interactions with Ms. B were consensual. However, whether Ms. B consented to Mr. Caudill's behavior was only one of many different questions the jury was asked to resolve at trial. In addition to multiple rape, assault, and burglary charges, Mr. Caudill was charged with attempted first-degree and second-degree murder. In support of these charges, the State sought to prove at trial that Mr. Caudill intended to kill Ms. B and took steps to carry out that intention before he was apprehended. At trial, the State elicited testimony from Ms. B that, during the incident, Mr. Caudill told her, "now we're both going to have to die . . . I'm not going to jail" and "[i]f I pass a cop car on my way out, I'm going home. I'm going to get my

guns. I'm going to kill the cops. I'm going to kill you. And I'm going to kill myself . . . if I do go to jail, as soon as I get out I'm coming for you, and I'm going to kill you." The State also presented evidence that Mr. Caudill had rummaged through Ms. B's dresser drawer and pantry in search of a gun and, when he came up empty, told her that "[w]e have to go to my house to get a gun." Evidence that Mr. Caudill injured his hand during a failed suicide attempt shortly before the incident was relevant to establish that Mr. Caudill intended to kill Ms. B as part of his suicidal plan and to corroborate Ms. B's testimony that Mr. Caudill threatened to kill her and then himself.

Even if we agreed that the evidence wasn't relevant, it is unclear how Mr. Caudill was prejudiced by it. The circuit court granted Mr. Caudill's motion for judgment of acquittal as to both first-degree attempted murder and second-degree attempted murder, the two charges on which the contested evidence potentially bore. Mr. Caudill argues in his brief that the evidence that he shot himself "undoubtedly disturbed [the jury] and caused them to view Mr. Caudill negatively." But again, he cites to no authority in support of this assertion. And even if we were to assume that evidence that Mr. Caudill shot himself shortly before the incident caused the jury to view him negatively, the State had already presented ample evidence that Mr. Caudill had entered Ms. B's home without her permission, raped her, assaulted her, and kidnapped her. *See Quansah*, 207 Md. App. at 664 ("[S]uch evidence was merely cumulative and, therefore, not unduly prejudicial.").

D. The Circuit Court Did Not Err In Excluding Extrinsic Evidence Of An Allegedly False Accusation.

At trial, Mr. Caudill sought to impeach Ms. B by introducing evidence that she had accused him falsely of poisoning her. During his lengthy cross-examination of Ms. B, Mr. Caudill did not question her about the alleged false accusation. Instead, he attempted to prove that Ms. B made the alleged false accusation through extrinsic evidence. In particular, he sought to question Detective Michael Brady of the Howard County Police Department, the investigating detective, about whether Ms. B ever accused Mr. Caudill of poisoning her. The State objected, and the circuit court sustained the objection:

> [DEFENSE COUNSEL]: Okay. During one of your interviews with her, isn't it true that [Ms. B] told you she believed Mr. Caudill was poisoning her?
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> [PROSECUTOR]: Objection.
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> [COURT]: Sustained.
>
> [DEFENSE COUNSEL]: If we could approach, Your Honor?
>
> [COURT]: Yeah.
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> * * *
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> [COURT]: The difficulty is that it was never testified to by [Ms. B]. She was on the stand. She was never confronted with that allegation. If she had been asked and if she said yeah, I think he poisoned me, well then this would certainly be an improper question of this witness because there wouldn't be any impeachment value to it. If she had said, oh, no, no I never did that and then we would ask her, well, didn't you tell Detective Brady that you did? And she said, oh, no, no, no, I never did that. Well, then that would be fine but none of that ever happened.
>
> * * *

> [COURT]: You know, it seems to me that it is a hearsay problem and inadmissible at this point. Sustained.

Mr. Caudill claims that the circuit court erred when it precluded him from questioning Detective Brady about whether Ms. B ever accused Mr. Caudill of poisoning her. According to Mr. Caudill, the question was relevant to impeach Ms. B's credibility because "[t]he fact that Ms. B alleged that Mr. Caudill poisoned her, in combination with the fact that Mr. Caudill did not face any charge relating to that allegation, would have permitted the jury to infer that Ms. B made up the poisoning allegation and thus may have made up the allegations giving rise to the instant case." The State responds that "[Mr.] Caudill's attempt to impeach one witness by cross examining another about a prior putatively dishonest accusation is an improper mode of impeachment." We agree with the State.

Rule 5-616(b) lists the forms of extrinsic evidence that are admissible to impeach the credibility of a witness:

> (b)(1) Extrinsic evidence of prior inconsistent statements may be admitted as provided in Rule 5-613(b).
>
> (2) Other extrinsic evidence contradicting a witness's testimony ordinarily may be admitted only on non-collateral matters. In the court's discretion, however, extrinsic evidence may be admitted on collateral matters.
> (3) Extrinsic evidence of bias, prejudice, interest, or other motive to testify falsely may be admitted whether or not the witness has been examined about the impeaching fact and has failed to admit it.
>
> (4) Extrinsic evidence of a witness's lack of personal knowledge or weaknesses in the capacity of the witness

> to perceive, remember, or communicate may be admitted if the witness has been examined about the impeaching fact and has failed to admit it, or as otherwise required by the interests of justice.
>
> (5) Extrinsic evidence of the character of a witness for untruthfulness may be admitted as provided in Rule 5-608.
>
> (6) Extrinsic evidence of prior convictions may be admitted as provided by Rule 5-609.
>
> (7) Extrinsic evidence may be admitted to show that prior consistent statements offered under subsection (c)(2) of this Rule were not made.

Md. Rule 5-616(b). In this case, Mr. Caudill sought to impeach Ms. B's credibility by admitting extrinsic evidence of a false accusation she purportedly made about him to Detective Brady. Although he does not cite Rule 5-616 in his brief, Mr. Caudill appears to contend that this evidence was admissible as evidence of Ms. B's untruthful character under subsection (5), the only subsection of Rule 5-616(b) that arguably fits here.[2]

Under Rule 5-616(b)(5), extrinsic evidence of a witness's character for untruthfulness may be admitted to impeach the witness's credibility so long as the

[2] Had Mr. Caudill confronted Ms. B about the false accusation while she was on the stand *and* she denied making it, he would (as the circuit court correctly pointed out during the bench conference) have been permitted to question Detective Brady about the accusation as a prior inconsistent statement under Rule 5-613(b). *See* Md. Rule 5-613(b). That Rule permits impeachment of a witness's credibility through extrinsic evidence of a prior statement inconsistent with his or her in-court testimony *if* a sufficient foundation first has been established. But because Mr. Caudill refrained from questioning Ms. B about the alleged false accusation while she was on the stand, he could not question Detective Brady about it for the purpose of establishing an inconsistent statement she never made.

requirements of Rule 5-608 are satisfied. Rule 5-608 governs the use of character witness testimony to impeach a witness's credibility and provides, in relevant part:

> (a) (1). In order to attack the credibility of a witness, a character witness may testify (A) that the witness has a reputation for untruthfulness, or (B) that, in the character witness's opinion, the witness is an untruthful person.
>
> (2) After the character for truthfulness of a witness has been attacked, a character witness may testify (A) that the witness has a good reputation for truthfulness or (B) that, in the character witness's opinion, the witness is a truthful person.
>
> (3)(A) A character witness may not testify to an opinion as to whether a witness testified truthfully in the action.
>
> (B) On direct examination, a character witness may give a reasonable basis for testimony as to reputation or an opinion as to the character of the witness for truthfulness or untruthfulness, but may not testify to specific instances of truthfulness or untruthfulness by the witness.

Md. Rule 5-608.

Mr. Caudill attempted to attack Ms. B's character for truthfulness by admitting extrinsic evidence (*i.e.*, Detective Brady's testimony) of a false accusation Ms. B allegedly made about him to Detective Brady. But even assuming that the false accusation happened, a character witness "may not testify to specific instances of truthfulness or untruthfulness by [another] witness" to impeach the credibility of that witness. Md. Rule 5-608(a)(3)(B). To the extent Mr. Caudill wished to attack Ms. B's character for truthfulness through the testimony of Detective Brady, he was limited to questioning Detective Brady about whether Ms. B had a reputation for untruthfulness or whether Detective Brady believed she

was an untruthful person. Md. Rule 5-608(a)(1). Mr. Caudill was not free to question Detective Brady about a specific instance in which Ms. B was allegedly untruthful, and the circuit court did not err in sustaining the State's objection to Mr. Caudill's question.

E. The Circuit Court Did Not Abuse Its Discretion In Quashing Portions Of Mr. Caudill's Subpoena.

Before trial, on November 29, 2012, Mr. Caudill served a subpoena on Ms. B in which he demanded a broad array of information:

> (a) The name, address, telephone number and account number of Ms. B's cell phone carrier at the time of the alleged incident;
>
> (b) All cell phone records from July 15, 2012 to the present;
>
> (c) All e-mail correspondence between Ms. B and any past or present boyfriend from July 15, 2012 to the present;
>
> (d) All correspondence between Ms. B and any or present boyfriends on any social media from July 15, 2012 to the present;
>
> (e) A list of any and all hospital reports, notes, documents, written papers, and electronic information regarding all doctor's visits, hospital visits, physician, nurse, and physicians' assistant's visits regarding any and all treatment, inquiries, tests, medical procedures, and medical information performed on Ms. B between the years of 2002 to the present.

On December 5, 2012, the State responded by filing a motion to quash the subpoena.

The circuit court conducted a hearing on the State's motion on January 11, 2013. The court found that Mr. Caudill's request for Ms. B's medical records dating back to 2002 "call[ed] for more information tha[n] could be reasonably held to be relevant" and was "far too broad and vague," in part, because there was "no demonstration as to why 2002 [was] the operative date." As to Mr. Caudill's request for Ms. B's correspondence with her past

boyfriends, the circuit court found that the information sought would be "inadmissible under the Rape Shield Statute." And the circuit court found Mr. Caudill's request for all of Ms. B's cell phone records dating back to July 15, 2012 "overly broad" and "overly intrusive":

> [L]et's say the allegation is that whatever happened on August 15th was really a consensual act involving the S & M fantasy genre. And let's say that the assertion is that [Ms. B] has photographs on her phone dated between July the 15th and August the 15th in which she and [Mr. Caudill], not she and some other guy, but she and [Mr. Caudill] were engaged in consensual S&M genre activity that has not been charged.
>
> Well, you know, that may be a subject of a specific motion to produce that because that, you know, may well be within the control of the [S]tate and there may be a right to it pursuant to the Discovery Rule, but given the way that this particular subpoena for tangible evidence before [me] is drafted . . . I would grant the motion to quash for those reasons with the belief that there's other avenues through 4-263 for the specific evidence to be gotten.

The court also heard argument on the State's standing to oppose Mr. Caudill's subpoena, then granted portions of the State's motion to quash.[3]

Mr. Caudill claims that during the January 11, 2013 hearing, his counsel narrowed the scope of his discovery requests. In particular, he asserts that his request for Ms. B's cell phone records was narrowed such that he was only seeking "photographs on Ms. B's phone depicting 'S&M' activity between Ms. B and [himself]" and that his request for Ms.

[3] The State consented to Mr. Caudill's request for the name, address, telephone number and account number of Ms. B's cell phone carrier at the time of the alleged incident.

B's medical history was narrowed such that he was only seeking information about "any treatment [Ms. B] sought as a result of [her] hair falling out." However, we have reviewed the transcript of the hearing and we find no support for Mr. Caudill's suggestion that he narrowed the scope of his discovery requests. Mr. Caudill never expressly limited the scope of his demands during the hearing and, in any event, the record makes plain that the trial court did not treat Mr. Caudill's subpoena as "narrowed" as he now contends.

On the substance of the motion, Mr. Caudill argues that the circuit court abused its discretion in quashing the portions of his subpoena seeking Ms. B's cell phone and medical history records. He claims that he satisfied his burden of demonstrating that disclosure of the information would lead to the discovery of useable evidence. The State counters that Mr. Caudill's subpoena was overly broad and "placed an extraordinary burden upon" Ms. B. Again, we agree with the State.

Rule 4-264 governs pre-trial subpoenas for tangible evidence in criminal cases:

> On motion of a party, the circuit court may order the issuance of a subpoena commanding a person to produce for inspection and copying at a specified time and place before trial designated documents, recordings, photographs, or other tangible things, not privileged, which may constitute or contain evidence relevant to the action. Any response to the motion shall be filed within five days.

Md. Rule 4-264. The scope of a defendant's right to obtain information by subpoena, though, is committed to the trial court's discretion:

> Pre-trial production of "documents" or "other tangible things" under Md. Rule 4-264 is discretionary, requiring a motion and a court order. As such, it does not guarantee a criminal defendant the absolute right to subpoena and examine the private records of every private individual or entity that may

> conceivably possess exculpatory records . . . A judge is given discretion whether to order a subpoena under the rule.

Goldsmith v. State, 337 Md. 112, 122 (1995). Under this rule, "a defendant in a criminal case who, for purposes of confronting an adverse witness, seeks discovery of otherwise confidential information about that witness has the initial burden to demonstrate a 'need to inspect,' that is, 'a reasonable possibility that review of the records would result in discovery of usable evidence.'" *Fields v. State*, 432 Md. 650, 667 (2013) (quoting *Zaal v. State*, 326 Md. 54, 81 (1992)). "The court's ultimate determination of whether to allow discovery of the sought-after information does not rest on whether the records themselves are admissible at trial, but rather on whether disclosing that material to the seeking party would reveal or lead to admissible evidence." *Id.* at 668.

Mr. Caudill's subpoena sought a list of *all* of Ms. B's medical records dating back to *2002*, as well as *all* of her cell phone records dating back to July 15, 2012. Despite the breadth of these requests, Mr. Caudill conceded before the circuit court, as he does on appeal, that the only information he wished to obtain from these requests were photographs on Ms. B's cell phone of her engaged in "S&M" activity with him and any information about treatments she received due to her hair falling out. But instead of tailoring his discovery requests to achieve these more narrow goals, Mr. Caudill requested more than ten years of Ms. B's medical records and over four months of Ms. B's cell phone records, without regard to whether these documents were related to the ends he sought to achieve. The circuit court did not err in finding these requests overly broad. To the contrary, he was required to tailor his subpoena to request relevant information, and the circuit court did not

abuse its discretion in quashing the overbroad portions of Mr. Caudill's requests. *See Fields*, 432 Md. at 669 ("Yet, even when discovery is appropriate, the material disclosed should be limited to that which is necessary to satisfy the demonstrated need to inspect." (citing *Baltimore City Dep't of Social Servs. v. Stein*, 328 Md. 1, 31 (1992))).

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