

Circuit Court for Montgomery County
Case No. 136852C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 351

September Term, 2021

MOUHAMED YATASSAYE

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: March 17, 2022

* 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.

After a bench trial in the Circuit Court for Montgomery County, Mouhamed Yatassaye was convicted of three counts of first-degree assault and one count of second-degree assault. On appeal, he argues that the court erred in allowing the State to ask him questions relating to the credibility of other testifying witnesses and in admitting an out-of-court statement, in its entirety, made by one of the complaining witnesses. We affirm.

I. BACKGROUND

A. The Complaining Witnesses' Version Of Events.

April 26, 2019 was an eventful night at Chapala's Tex-Mex Restaurant in Montgomery County. Ivania Solorzano, her boyfriend Carlos Davis, and her cousins Kevin and Walter Mejia decided to go to Chapala's to celebrate Kevin's new job offer.¹ Ms. Solorzano drove Mr. Davis in her Toyota and parked next to Walter's Nissan in the Chapala's parking lot. Mr. Yatassaye was also at the restaurant with his friend Manish Khandagle. At the time of the incident, Mr. Yatassaye went to Chapala's "like three times a week," often accompanied by Mr. Khandagle. On the night of April 26, 2019 Mr. Yatassaye arrived at Chapala's around 10:00 pm and parked his Lexus in the parking lot.

After arriving at the restaurant and finding a table, Ms. Solorzano and Walter went to the bar. Ms. Solorzano had a conversation with Mr. Yatassaye, testifying "he was being really nice" by creating space for them to order drinks at the crowded bar. When Ms. Solorzano and Walter received their drinks, they returned to the table with Mr. Davis,

¹ Because the Mejia brothers share the same last name, we will refer to them by their first names solely for clarity. We mean no disrespect.

Kevin, and two other friends. While waiting for their food, Walter determined that he had reached his limit and went to go sleep in his Nissan. Ms. Solorzano and the others decided to get their food to go. Kevin attempted to pay the tab, but his credit card was declined, so Ms. Solorzano asked Mr. Davis to get cash from the ATM across the street. While Ms. Solorzano waited for Mr. Davis to return with the cash, Kevin left Chapala's to check on Walter in the parking lot.

Mr. Davis returned with the cash and met Ms. Solorzano in the bathroom hallway.

While Ms. Solorzano gave the bartender money, Mr. Davis spoke with Mr. Yatassaye:

[THE STATE]: So what happened in that hallway with [Mr. Yatassaye]?

[MR. DAVIS]: He asked me a question. He asked me, do I— he said, do you know her?

[THE STATE]: And when he said, do you know her, who did you think he was talking about?

[MR. DAVIS]: The waitress; bartender.

[THE STATE]: Why did you think that?

[MR. DAVIS]: I—that's the first person I saw when, like when I turned around.

[THE STATE]: Okay. The bartender was behind you?

[MR. DAVIS]: Yes.

[THE STATE]: Okay. And where was [Ms. Solorzano] during this?

[MR. DAVIS]: Like, close to the bartender.

[THE STATE]: Okay. So he asked you, do you know her, what did you say?

[MR. DAVIS]: I said, no.

[THE STATE]: And then what happened next?

[MR. DAVIS]: He asked me again.

[THE STATE]: What did he ask you?

[MR. DAVIS]: Do I know her.

[THE STATE]: Okay. And what did you say?

[MR. DAVIS]: I said, no.

[THE STATE]: And what was his demeanor like when he was asking you these questions?

* * *

[MR. DAVIS]: Like, he was aggressive, coming—aggressive. Yeah.

Mr. Yatassaye asked Mr. Davis that same question three times. Mr. Davis was annoyed with Mr. Yatassaye and thought the conversation was “weird.” Mr. Davis ended the conversation by walking away with Ms. Solorzano and leaving Chapala’s.

Ms. Solorzano testified that after walking out of Chapala’s with Mr. Davis, she and Kevin began splitting up the leftover food at their cars. Walter remained asleep in the back seat of the Nissan. Ms. Solorzano noticed Mr. Davis speaking with Mr. Yatassaye again:

[MS. SOLORZANO]: I told Kevin, I said, that’s the guy that said something to [Mr. Davis], and I hear him saying—I hear [Mr. Davis] is upset, and he said, I already answered your question, I already answered your question, and—

[THE STATE]: Did you hear [Mr. Yatassaye] say anything?

[MS. SOLORZANO]: [Mr. Yatassaye] said, oh, you’re not alone, you’re not alone, and so I told Kevin, I said, let’s just get out of here, and Kevin goes and tries to—Kevin goes now on that side, like, hey, try and diffuse the situation, and so is [Mr. Yatassaye’s] friend. His friend is like, oh, I’m sorry, you know, he’s drunk. So both Kevin and the friend are saying the same thing, like, it’s no big deal, we’re going to go home, and both of them are saying the same thing, but [Mr. Davis] is annoyed.

Mr. Davis also testified about his second exchange with Mr. Yatassaye:

[THE STATE]: Did there come a time when you were at that car that you saw [Mr. Yatassaye] again?

[MR. DAVIS]: Yes.

[THE STATE]: About how long after you left the bar did you see him?

[MR. DAVIS]: Not too long.

[THE STATE]: Where did you see him?

[MR. DAVIS]: Leaving, like, coming from, you know, where I came out; the side.

[THE STATE]: Okay. Were you at the car when you saw him?

[MR. DAVIS]: Yes.

[THE STATE]: And was he with anyone?

[MR. DAVIS]: Yes.

[THE STATE]: Who was he with, if you recall what the person looked like, a male, a female?

[MR. DAVIS]: A male. A short male.

* * *

[THE STATE]: Did [Mr. Yatassaye] say anything to you when he came around that corner?

[MR. DAVIS]: Yes.

[THE STATE]: What did he say?

[MR. DAVIS]: He was, like, you ain't by yourself.

* * *

[THE STATE]: Okay. And what, if anything, did you say to that?

[MR. DAVIS]: I was—I didn't say anything.

[THE STATE]: Did [Mr. Yatassaye] stay there for a bit and talk to you all or did he keep walking?

[MR. DAVIS]: He, he stayed there.

* * *

[THE STATE]: And you said [Mr. Yatassaye] was angry, I know you don't remember the exact words, but—

[MR. DAVIS]: He was like—

[THE STATE]: —what gave you that impression?

[MR. DAVIS]: Like, he was cursing and stuff.

* * *

[THE STATE]: Did you say anything back to him during that conversation?

[MR. DAVIS]: Yeah.

[THE STATE]: Do you remember what you said?

[MR. DAVIS]: I told him, I said, I already, you know, I already answered your question, like, you know, what's the problem?

Kevin became involved in the conversation, telling Mr. Yatassaye to “chillout.” This exchange continued for a few minutes, but Mr. Yatassaye eventually left. Mr. Davis testified that Mr. Yatassaye’s friend (later identified as Mr. Khandagle) apologized on Mr. Yatassaye’s behalf. At no point during this first altercation did Ms. Solorzano, Mr. Davis, Kevin, or Walter threaten Mr. Yatassaye or display any weapons.

A short time later, the group saw Mr. Yatassaye approaching again.² Ms. Solorzano noticed Mr. Yatassaye had a knife, “a black-on-black blade” in his right hand. When Mr. Yatassaye was ten feet away from the group, Mr. Davis saw Mr. Yatassaye holding a knife “to his side.” Kevin did not notice Mr. Yatassaye had a knife until Ms. Solorzano “started screaming. He has a knife, he has a knife.”

A fight ensued quickly, but because it “just happened so fast,” the details were a

² Kevin testified Mr. Khandagle did not return with Mr. Yatassaye the second time, while Ms. Solorzano testified Mr. Khandagle “was still talking and saying sorry, and, and he was still talking to [Mr. Davis]” when Mr. Yatassaye returned. Mr. Khandagle testified that after the verbal altercation in the parking lot, he went with Mr. Yatassaye to Mr. Yatassaye’s car and smoked part of a joint before returning to the area near Ms. Solorzano’s and Walter’s cars. This is just but one example of the inconsistencies between the witnesses’ testimony. These details, however, do not alter our overall analysis.

little hazy. Ms. Solorzano testified that Mr. Yatassaye started using his knife to try and “slice” Mr. Davis and Kevin. Walter, who had previously been asleep in the Nissan, woke up from the commotion. He jumped out of the car and “went for the, the guy that was, was stabbing.” Walter testified he was stabbed and fell to the ground:

I got out of the vehicle, as I’m walking towards my brother [Kevin], I was getting ready to pull him, and next thing you know, I was on the ground. I didn’t know what happened, but next thing you know, I could hear the scuffle, everything going on, I get back up, I realize, you know, they’re into this big thing.

Once he saw Walter fall to the ground, Mr. Davis tried to defend himself by swinging his fists at Mr. Yatassaye. Kevin watched Mr. Yatassaye stab Mr. Davis “in the stomach and in the back.” After seeing Mr. Yatassaye stab both Walter and Mr. Davis, Kevin grabbed a tire iron from the trunk of the Nissan. Kevin “rushed [Mr. Yatassaye] with the tire iron. And the next thing you know, me and him are exchanging blows.”

While Kevin was striking Mr. Yatassaye in the head with the tire iron, Mr. Yatassaye was stabbing Kevin. At some point, Walter jumped back into the fight and started swinging his fists at Mr. Yatassaye. Walter was stabbed for a second time and “hit the ground again.” While on the ground, Walter saw Mr. Yatassaye stab Mr. Davis and Kevin with the knife.

Kevin testified that as he turned around to walk back to the Nissan after being stabbed, he “could feel somebody breathing and somebody else, somebody else jumped in and he got stabbed.” That person was Jose Ledesma-Chavez. Mr. Ledesma was outside Chapala’s smoking a cigarette when he noticed that “a fight had broken out:”

So I remember I was outside smoking a cigarette talking to another patron of the bar. And all of a sudden a fight had broken out and I see three guys had, were, you know, were basically jumping another guy and the other guy was—was [Mr. Yatassaye] and one of the guys from the three had had a crowbar and was hitting [Mr. Yatassaye] over the head with the crowbar and that's when I went to try to break it up.

Mr. Ledesma “got in the middle of” Mr. Yatassaye and Kevin fighting, “grabbed the guy [Kevin] with the crowbar, and moved him to the side and told him to, you know, no reason to be fighting.” Mr. Ledesma was stabbed in the altercation but did not know who stabbed him.

Once Mr. Ledesma got in between Mr. Yatassaye and Kevin, “the fight instantly stopped.” Ms. Solorzano called 911, stating “[w]e got to go to the hospital . . . [w]e got three people stabbed.” While on the phone with 911, Ms. Solorzano followed Mr. Yatassaye to his car and read his license plate number to the dispatch operator before Mr. Yatassaye left the scene.

It was not until this point, “[a]fter the situation,” that Mr. Davis realized that he himself had been stabbed. Walter told Mr. Davis that he was bleeding and Mr. Davis noticed he had been stabbed in his stomach and back. So too with Kevin. He didn't realize that he had been stabbed until after the fight, when he touched his side and “felt like a faucet, like a faucet of blood leaking out.” Walter “tried to grab whatever [he could] find to apply pressure on [Kevin's] wounds.” By the time medical personnel arrived, Kevin “could barely keep [his] eyes open.”

All four men who were stabbed were taken to the hospital. Mr. Davis received

staples in his back and stomach. Kevin was taken to Shock Trauma for emergency surgery on his abdominal area. He was also treated for a punctured lung. Walter was treated for a stab wound on his shoulder. Mr. Ledesma received treatment for a ruptured spleen and diaphragm.

B. Mr. Yatassaye’s Version Of Events.

Mr. Yatassaye disagrees with Ms. Solorzano’s, Mr. Davis’s, Kevin’s, and Walter’s version of events.³ He testified that he had been at Chapala’s for a while when Ms. Solorzano entered the bar area. He “made way for her” to order a drink at the bar and she thanked him. Ms. Solorzano then returned to her table, but came back to the bar and began speaking with Mr. Yatassaye again. Walter came up to Ms. Solorzano and Mr. Yatassaye and told Mr. Yatassaye to “take care of my sister,” referring to Ms. Solorzano. Ms. Solorzano walked away from Mr. Yatassaye and Mr. Yatassaye went with his friend to listen to the band.

At some point, Mr. Yatassaye and Mr. Khandagle agreed to go to Mr. Yatassaye’s car to smoke marijuana. As Mr. Yatassaye was waiting for Mr. Khandagle to use the bathroom, he noticed Ms. Solorzano with the bartender by the cash register. Mr. Davis then entered the bathroom hallway from the bar area and stood directly in front of Mr. Yatassaye. Mr. Davis proceeded to call Mr. Yatassaye a “bitch ass n[*****]” and looked “like he was mad about something [H]e was looking like angry.” Mr. Yatassaye

³ The later portion of the fight was captured by Chapala’s surveillance camera. As we discuss below, this video footage was an important part of why the court believed the complaining witnesses’ version of events over Mr. Yatassaye’s version.

responded, “what did you say to me?” Ms. Solorzano stepped in and “said no, no, no and got between [the two men] and she grab[bed] [Mr. Davis].” Ms. Solorzano and Mr. Davis then walked away, and Mr. Yatassaye left Chapala’s with Mr. Khandagle.

As Mr. Yatassaye and Mr. Khandagle rounded the corner of the parking lot, they came upon Mr. Davis, Ms. Solorzano, and another individual (later identified as Kevin) near their cars. Mr. Yatassaye “saw [Mr. Davis] looking at me and acting like that I don’t know why he was mad at me but he was still angry.” Mr. Khandagle testified that Mr. Davis “definitely approached” Mr. Yatassaye and the two got “into a verbal altercation.” Mr. Yatassaye asked Mr. Davis why he called Mr. Yatassaye a profanity in the bathroom hallway. Kevin then “got in [Mr. Yatassaye’s] face” and “said you better back the fuck up.” Mr. Khandagle said that he and Ms. Solorzano broke up the verbal altercation by “push[ing] them aside, away from each other, got them away from each other.”

Mr. Yatassaye and Mr. Khandagle returned to Mr. Yatassaye’s car and started to smoke a joint. They decided to smoke the rest of the joint at their “regular smoking spot,” the guardrail near Ms. Solorzano’s and Walter’s cars. At this point in time, Mr. Yatassaye had only the joint in his hand, but did have a knife in his pocket. Mr. Yatassaye testified that as he was walking towards the smoking spot, “all of a sudden when I looked up I saw the same two guys that I just got into with it,” referring to Mr. Davis and Kevin. Mr. Khandagle observed Mr. Davis and “the other guy” in the front of the cars and a third male “by the back of the car,” whom Mr. Khandagle later identified as Walter. One of the men

had “the tire iron in his hand.”⁴

Kevin asked Mr. Yatassaye “what was that shit you were saying[?]” The three men formed a line and “congregated around [Mr. Yatassaye].” According to the defense, Mr. Davis was the initial aggressor. Mr. Khandagle stood near the guardrail, saw Mr. Yatassaye “getting attacked,” and observed Mr. Davis throwing the first punch at Mr. Yatassaye. Mr. Yatassaye “ducked” Mr. Davis’s punch.

Mr. Khandagle then “saw [Mr. Yatassaye] getting jumped by three people, or getting attacked by three people.” Mr. Yatassaye testified similarly, noting that “[a]ll three of them were coming at the same time but the dude with the tire iron [Kevin] took the lead.” At this time, Mr. Yatassaye still had the knife in his pocket. The three men “got [Mr. Yatassaye] like in a circle.” Mr. Yatassaye asked the three men whether they were going to jump him and then took the knife out of his pocket. Mr. Yatassaye testified that he was very scared:

At that time, I was so scared. I’m not like going to fight these people one on one. They’re about to jump me. So it’s like I’m thinking like it’s do or die. If you’re going to fight, I have to do it now because you guys are not going to let me go nowhere.

Mr. Davis, Kevin, and Walter “started like backing up a little bit because when [Mr. Yatassaye] took the knife out . . . they just stood there like but when [he] started moving towards them they started moving backward.” Mr. Yatassaye, however, could not retreat:

⁴ This is another point where the testimony diverges between the State’s witnesses and Mr. Yatassaye. Witnesses for the State testified that *Kevin* grabbed the tire iron *after* the fight began. Mr. Khandagle testified *Walter* grabbed the tire iron *before* the fight began. Mr. Yatassaye testified *Kevin* grabbed the tire iron *before* the fight began.

[COUNSEL FOR MR. YATASSAYE]: Why don't you go backwards?

[MR. YATASSAYE]: I can't go backwards.

[COUNSEL FOR MR. YATASSAYE]: Why?

[MR. YATASSAYE]: Because there's a car back there. You see the white truck back there.

[COUNSEL FOR MR. YATASSAYE]: Are you talking about the big white truck?

[MR. YATASSAYE]: Yes. Also any time I move, they move with me. So it's like I'm not going nowhere.

[COUNSEL FOR MR. YATASSAYE]: Why couldn't you run left?

[MR. YATASSAYE]: To the left to the guard rail?

[COUNSEL FOR MR. YATASSAYE]: No. Well, on the screen to the left?

[MR. YATASSAYE]: Oh. Well, because Walter is on that side.

[COUNSEL FOR MR. YATASSAYE]: What about to the right?

[MR. YATASSAYE]: That's the—

[COUNSEL FOR MR. YATASSAYE]: The direction that [Mr. Davis] is there?

[MR. YATASSAYE]: Right. I can't. I can't even run that way because I'm not trying to turn my back to these guys.

The three men came towards Mr. Yatassaye again and Kevin swung the tire iron at Mr. Yatassaye's head. The tire iron struck Mr. Yatassaye on the forehead and Mr. Yatassaye swung his knife towards Kevin, hitting him. Kevin continued to swing the tire iron at Mr. Yatassaye while Mr. Davis and Walter hit and punched him. Mr. Yatassaye's "forehead split open" and "a whole bunch of blood was coming down [his] face." Kevin hit Mr. Yatassaye with the tire iron two more times on his forehead and left eye.

The blood on his face and in his eyes prevented Mr. Yatassaye from seeing clearly, but he continued to swing his knife. Mr. Yatassaye could not see who was attacking him, but “just knew there were a bunch of people hitting me.” Eventually, Mr. Yatassaye “kind of seen somebody like run and grab the dude, one of them off of me.” This person was Mr. Ledesma, but Mr. Yatassaye didn’t know that at the time. After this, the fight “stopped immediately.” Mr. Yatassaye said that he didn’t know that he had stabbed Mr. Davis, Kevin, and Walter multiple times, believing that he only had stabbed Kevin the first time Kevin struck him with the tire iron. Mr. Yatassaye claimed that he was not aiming his knife at anyone specifically, but “was just swinging just trying to get them off of me[.]”

Mr. Khandagle did not jump into the fight to assist Mr. Yatassaye because he “saw a weapon,” the tire iron held by one of the three men, and did not “want to get involved.” He did, however, approach Mr. Yatassaye to see if he was okay after seeing “his forehead gashed open.” Mr. Yatassaye was “bleeding profusely everywhere.” Mr. Khandagle told Mr. Yatassaye he should go to the hospital. Mr. Yatassaye, after touching his head and feeling all of the blood running down his face, agreed. Mr. Yatassaye walked to his car, without Mr. Khandagle, and drove away. Mr. Yatassaye eventually found a hospital. Before entering, he tossed the knife into the wooded area outside the hospital.

C. The Jailhouse Calls.

While Mr. Yatassaye was detained before trial, he made several phone calls to Mr. Khandagle. During these jail calls, Mr. Yatassaye expressed concern about the video footage from Chapala’s that captured some of the incident. Mr. Yatassaye wanted “to

remember like exactly what happened.” He often asked Mr. Khandagle to give him a play-by-play of what occurred on the night of April 26, 2019:

- “I don’t think I was the only one with the knife? Did you talk to dude? Don’t say his name. What is he saying?”
- “I want to know exactly what happened. You want to tell me, tell me from us walking away.”
- “When we went to the car, what did we do? . . . Okay, then what?”
- “I know I asked this a million times, but does the video show who swung first or not?”
- “I don’t remember, but I hope I did not swing first or something like that. Did I?”

On one occasion, Mr. Yatassaye told Mr. Khandagle that “Maryland’s self-defense law is weird. That’s why I want you to watch the video.” Mr. Yatassaye also asked Mr. Khandagle, on multiple calls, whether Mr. Khandagle had spoken to Mr. Ledesma about the incident:

- “Did you talk to dude? Don’t say his name. What is he saying?”
- “He knows what to say?”
- “Do you have dude’s number? He wasn’t mad? You said he had to go for an interview, but I don’t know what he said. Does he think I did it or does he not know?”
- “I just need you to talk to him. Last time you talked to him, what did he say?”

These calls were admitted into evidence during Mr. Yatassaye’s trial.

D. The Trial And Conviction.

Mr. Yatassaye was charged by indictment with four counts of attempted second-degree murder and four counts of first-degree assault against Mr. Davis, Kevin, Walter,

and Mr. Ledesma. Mr. Yatassaye elected to proceed by way of a bench trial, which took place on January 25–29, 2021 and February 2, 2021.

As described in detail above, Ms. Solorzano, Mr. Davis, Kevin, Walter, and Mr. Ledesma all testified for the State at trial. Mr. Khandagle testified on behalf of Mr. Yatassaye, and Mr. Yatassaye also testified in his own defense. During cross-examination of Mr. Yatassaye, the State asked Mr. Yatassaye several questions about whether, throughout the State’s case-in-chief, Mr. Yatassaye had heard different State witnesses testify about some specific part of April 26, 2019. Defense counsel objected to many of these questions, arguing that these questions would require Mr. Yatassaye to testify impermissibly about the credibility of the State’s witnesses. The court sustained some of defense counsel’s objections while overruling others. More on this below.

On February 24, 2021, the court found Mr. Yatassaye guilty of three counts of first-degree assault against Mr. Davis, Kevin, and Walter, and one count of second-degree assault against Mr. Ledesma. The court made specific findings of fact and conclusions of law on the record and explained why it rejected Mr. Yatassaye’s self-defense claim and found him guilty. In the court’s opinion, the case turned on the credibility of the testifying witnesses:

So the Court must look to the credibility of the witnesses to determine what actually happened. Both the State and the defense argued that the case turns on issues of credibility and the Court absolutely agrees.

I am the trier of the fact and the sole judge of whether a witness should be believed. . . . In deciding whether a witness should be believed, I should carefully consider all of the testimony and evidence, as well as whether the witness’ testimony was

affected by other factors. I considered all of the following factors for credibility for all of the witnesses.

The witness' behavior on the stand and manner of testifying. Whether the witness appeared to be telling the truth. The witness' opportunity to see or hear the things for which testimony was given. The accuracy of the witness' memory. Whether the witness has a motive not to tell the truth. Whether the witness has an interest in the outcome of the case. Whether the witness' testimony was consistent. Whether other evidence that I believe supported or contradicted the witness' testimony. Whether, and the extent to which, the witness' testimony in court differed from the statements made by the witness on any previous occasion. And whether the witness has a bias or prejudice.

* * *

Were there inconsistencies among the testimony of all of the witnesses? Absolutely. . . . Did some of the details vary from statements made in 2019 to the court testimony? Yes. Did [Ms. Solorzano], [Mr. Davis], Kevin, and Walter's testimony differ as to who was stabbed first, second third? Yes. Who was standing where when? Yes. Who saw Kevin get the tire iron? Yes. Did those inconsistencies impact their credibility as to who was the aggressor?

Did [Mr. Yatassaye] and [Mr. Khandagle's] testimony differ from each other in some details? Yes. Did Mr. Yatassaye's testimony differ from other statements in which he had made? Yes. Can six people see the same fight and recall details differently? Yes.

The court watched and analyzed the Chapala's surveillance video "literally second by second[.]" Because Mr. Yatassaye was the aggressor in the portion of the fight captured on video, the court reasoned that Mr. Yatassaye was the initial aggressor as well:

It is clear to the Court that when the fight actually shows up on the video . . . the fight had already begun and Walter and [Mr. Davis] had already been stabbed. Kevin grabbed the tire iron from the trunk. Everyone testified that the beginning of the fight was not on the video.

At 13:21:11, when the fight appears on the video, Mr. Yatassaye's hand [is] out and appears to have a knife in his hand. At that point, there is no one behind him and he has an avenue of retreat. There is no one immediately to his left blocking his retreat back down the walkway where Jose L[e]desma was standing. At 13:21:14, everyone is backing away from Mr. Yatassaye as he continues forward. Mr. Yatassaye was the aggressor. Seen on the video, Mr. Yatassaye then chased [Mr.] Davis. Mr. Yatassaye is the aggressor.

You can see on the video when Kevin is swinging the tire iron and striking Mr. Yatassaye. And Mr. Yatassaye's swinging his knife. You can see [Mr. Solorzano] waving for help. [Mr. Ledesma] runs and jumps into the fight, grabs Kevin, and then he is stabbed. Mr. Yatassaye then continued forward. [Mr. Khandagle] had to push him back. Mr. Yatassaye was the aggressor. **T7.21**

The court also listened to the jail calls between Mr. Yatassaye and Mr. Khandagle and found it problematic that during these calls, Mr. Yatassaye said that he could not remember anything about the night of the fight while, during trial, “Mr. Yatassaye was able to testify that he remembered everything in great detail. He remembered who swung first. He remembered what happened step by step. In fact, he testified, ‘[i]t was not hard to remember what occurred that night.’” The court also found that “Mr. Yatassaye’s jail call conversations conflicted with his court testimony as to what he did and did not remember, and what he did and did not do, and what he saw when. All of this impacted the Court’s determination as to his credibility.”

After considering all of this evidence, the court found “that, on the credibility scale, that Mr. Yatassaye comes up light or short in many areas. . . . The Court finds the testimony of [Ms. Solorzano], Kevin, Walter, and [Mr. Davis] to be far more persuasive and more credible as to the happening of events that night that led to the stabbing.” The court

concluded that Mr. Yatassaye’s self-defense claim was “not supported by the weight of the evidence in this case.” On April 30, 2021, the court sentenced Mr. Yatassaye to three consecutive five-year terms followed by five years of supervised probation. We supply additional facts as necessary below.

II. DISCUSSION

On appeal, Mr. Yatassaye raises two questions which we have rephrased.⁵ *First*, he argues that the trial court committed reversible error by allowing the State to ask him whether he heard other witnesses testify about specific parts of the April 26, 2019 incident. *Second*, he contends the trial court committed reversible error by admitting Mr. Davis’s entire recorded statement made to a detective on June 20, 2019, as opposed to admitting portions of that statement.

⁵ Mr. Yatassaye phrased his Questions Presented as follows:

1. Did the trial court err in permitting the State to ask Appellant questions that related to the credibility of the other witnesses?
2. Did the trial court err in admitting the entire statement of Carlos Davis?

The State phrased its Questions Presented as follows:

1. Did the trial court properly exercise its discretion with respect to the cross-examination of Yatassaye, and was any error harmless beyond a reasonable doubt in this bench trial where the trial court did not rely upon the contested testimony in its verdict?
2. Did the trial court properly admit Carlos Davis’s prior statement, and was any error harmless beyond a reasonable doubt in this bench trial where the trial court did not rely upon the contested prior statement in its verdict?

“A trial court is given wide latitude in controlling the admissibility of evidence.” *Taneja v. State*, 231 Md. App. 1, 11 (2016) (citations omitted). “We review the trial court’s decision” to admit evidence “under an abuse of discretion standard.” *Id.* (citations omitted). In appeals from a bench trial, we review factual findings “on both the law and the evidence” and “will not set aside the judgment of the trial court on the evidence unless clearly erroneous.” Md. Rule 8-131(c). Further, we “give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* “In considering questions of law, we apply the non-deferential *de novo* standard of review.” *Howell v. State*, 465 Md. 548, 561 (2019) (citations omitted).

For both issues raised on appeal, Mr. Yatassaye must satisfy a two-pronged test. *First*, we must find that the trial court erred in admitting particular pieces of evidence. *Second*, if we find error, we assess whether the error was harmless, and specifically whether we find, beyond a reasonable doubt, that the error didn’t affect the verdict. *Hunter v. State*, 397 Md. 580, 588 (2007).

A. The Trial Court Did Not Err In Permitting The State To Ask Mr. Yatassaye Whether He Heard Other Witnesses Testify About Specific Parts Of The April 26, 2019 Incident.

Mr. Yatassaye argues *first* the trial court committed reversible error by allowing the State to ask him “to comment on the testimony of other witnesses.” The outcome of this issue turns on whether the State asked Mr. Yatassaye to *comment* on the credibility of other witnesses or whether the State merely asked him if he *heard* the testimony of other witnesses. Because this form of questioning occurred at various points throughout the

State’s cross-examination of Mr. Yatassaye, and because the trial court sustained some of defense counsel’s objections while overruling others, we break the testimony down into eight different exchanges.

First, the State questioned Mr. Yatassaye about whether he *heard* Mr. Khandagle testify about seeing Kevin during the verbal altercation at Ms. Solorzano’s and Walter’s cars. Counsel for Mr. Yatassaye objected and the trial court overruled the objection, allowing Mr. Yatassaye to answer that he “heard [Mr. Khandagle] said somebody with a white shirt.”

Second, the State asked Mr. Yatassaye whether Mr. Khandagle was *incorrect* in testifying Kevin had on a white shirt that night. This time, the trial court sustained defense counsel’s objection:

[THE STATE]: And you know Kevin didn’t have on a white shirt. Right?

[MR. YATASSAYE]: He has a black shirt. None of them have a white shirt.

[THE STATE]: Okay. So [Mr. Khandagle] is not remembering anything correctly. Right?

[COUNSEL FOR MR. YATASSAYE]: Your Honor, I’m going to object.

[THE COURT]: Yes. Sustained as to what [Mr. Khandagle] is remembering correctly. Sustained.

Third, the State asked Mr. Yatassaye whether he *heard* Mr. Khandagle testify about seeing a man in a white shirt. Counsel for Mr. Yatassaye objected to “comparing one witness’s testimony to another.” The court disagreed, noting the State “was just asking what [Mr. Khandagle] had said.” The court overruled the objection, and the State repeated

the question as “[Mr. Khandagle] never said that Kevin was involved in that encounter at all. Right?” Mr. Yatassaye responded “[Mr. Khandagle] said he don’t know those people.”

Fourth, the State asked Mr. Yatassaye if he *heard* Mr. Khandagle testify that “he knows very clearly who Kevin is,” that “he clearly identified Kevin as being involved in that encounter.” Counsel for Mr. Yatassaye objected on the ground that answering the State’s question would permit Mr. Yatassaye to “testify[] as to another witness’s testimony from the stand.” The State responded that its question was within the scope of cross-examination, but the trial court disagreed:

I get it’s cross-examination. . . . [B]ut you can’t ask this witness to comment on another witness’s testimony. You can ask if he heard it but you can’t ask if it it’s incorrect, is it incorrect, do you agree.

The State argued that its question was simply a mechanism to impeach Mr. Khandagle through Mr. Yatassaye’s testimony. But the defense objected again, noting that the State effectively was asking Mr. Yatassaye whether Mr. Khandagle was lying and whether he should be deemed credible. The court agreed with defense counsel and sustained the objection:

Right. Okay. So [Mr. Yatassaye] can’t comment on whether [Mr. Khandagle’s] testimony is correct or not correct or anything like that, but you can ask[] questions based on his recollection, but not based on [Mr. Khandagle’s] testimony.

Fifth, the State asked Mr. Yatassaye whether he *heard* Ms. Solorzano “testify that the knife that she observed was all black with the button.” Defense counsel objected, arguing the answer to this question was “something for the fact finder to compare and judge the credibility of the witnesses.” Defense counsel asked rhetorically if the State’s next

question would be whether Mr. Yatassaye thought Ms. Solorzano was lying, an impermissible question for the State to ask. The court replied that it didn't "know what the next question is. I haven't heard the next question. So the question is did you hear [Ms. Solorzano] say it was all black." Mr. Yatassaye responded that he did not remember.

Sixth, the State asked Mr. Yatassaye whether he *heard* Ms. Solorzano "testify that the knife had a button?" Counsel for Mr. Yatassaye objected on the ground that the State was "quizzing him as to other witnesses testifying." The court agreed with defense counsel, telling the State "however [Ms. Solorzano] described the knife is how she described the knife." The State again argued that its line of questioning was "completely permissible cross-examination to question his recollection of the event and compare and contrast that to what another witness has said that he has observed in this trial" The court disagreed:

No. I don't think you can ask him to comment on another witness's testimony. You can ask if he heard what the witness said, but you definitely can't ask him to comment on another witness's testimony.

The State asked Mr. Yatassaye again whether he "hear[d] . . . [Ms. Solorzano] say that the knife had a button." Mr. Yatassaye responded he did not.

Seventh, the State asked Mr. Yatassaye whether he *heard* Mr. Khandagle "testify that he said the knife was out when [Mr. Davis] swung?" Counsel for Mr. Yatassaye objected, and the court sustained the objection without explanation. *And finally*, the State asked whether Mr. Yatassaye *heard* Mr. Khandagle "say the third guy came up after the punch was thrown?" Again counsel for Mr. Yatassaye objected and again the court sustained the objection without explanation.

Mr. Yatassaye argues that when the State asked him whether he heard another witness testify about something that occurred on April 26, 2019, “it was the same as asking [Mr. Yatassaye] to comment upon the credibility of the other testimony.” Citing *Hunter*, he asserts that the State’s line of questioning “had the same effect as asking whether the witness who gave the statement testified falsely”

We disagree. In *Hunter*, the Court of Appeals held the trial court erred in “permitting the State to ask the defendant if other witnesses were lying.” 397 Md. at 583. At trial in that case, the State had asked Mr. Hunter whether certain portions of State witnesses’ testimony were lies. *Id.* at 585–86. The trial court overruled defense counsel’s objections to these questions. On appeal, the Court found Mr. Hunter was asked “five ‘were-they-lying’ questions” “that put him in a position of characterizing the testimony of two other witnesses.” *Id.* at 595.

The Court reasoned “it is the well established law of this State that issues of credibility and the appropriate weight to give to a witness’s testimony are for the jury. . . .” *Id.* at 589. “[I]t is impermissible, as a matter of law, for a witness to give an opinion on the credibility of another witness.” *Id.* Therefore, the trial court erred in allowing the State to ask Mr. Hunter “were-they-lying” questions. *Id.* at 595. The Court also held that the error wasn’t harmless because it was unable to conclude “beyond a reasonable doubt, that the error did not affect the verdict.” *Id.* at 597.

In this case, the State asked one “were-they-lying” question. During the second exchange, the State asked Mr. Yatassaye “[s]o [Mr. Khandagle] is not remembering

anything correctly. Right?” Defense counsel objected, and the court sustained “as to what [Mr. Khandagle] is remembering correctly.” We agree with Mr. Yatassaye that this specific question constitutes a “were-they-lying” question and was impermissible for the State to ask. But unlike *Hunter*, the court in this case sustained defense counsel’s objection to that question, ruling it was impermissible for the State to ask Mr. Yatassaye whether Mr. Khandagle testified incorrectly. And the court repeatedly, albeit in other exchanges, informed the State that it “definitely can’t ask [Mr. Yatassaye] to comment on another witness’s testimony.”

The remaining seven exchanges between the State and Mr. Yatassaye merely concerned the State asking Mr. Yatassaye whether he *heard* certain testimony, not whether he *thought* the witnesses were lying. So we disagree that “asking [Mr. Yatassaye] repeated questions about whether he heard the testimony of other witnesses . . . was the same as asking [Mr. Yatassaye] to comment upon the credibility of the other testimony.” The trial court did not err in permitting the State to ask Mr. Yatassaye these questions on cross-examination.

And even if we were to hold that the trial court erred in overruling some of defense counsel’s objections during the State’s cross-examination of Mr. Yatassaye, any errors would be harmless beyond a reasonable doubt. During its reading of the verdict, the court discussed, in depth, its reasons for finding Mr. Yatassaye guilty. The court took care to detail how it reached its verdict, focusing in large part on how “Mr. Yatassaye’s credibility was severely damaged by his own words in his jail calls and the contradictions to his trial

testimony.” The court found specifically that Mr. Yatassaye “constructed a narrative that fit his defense.” The record reveals no consideration by the court of any of the eight exchanges between the State and Mr. Yatassaye in determining Mr. Yatassaye’s guilt. And because these eight exchanges didn’t contribute to the court’s findings, any error on the trial court’s part in allowing these questions was harmless.

B. The Trial Court Erred In Admitting Mr. Davis’s June 20, 2019 Recorded Statement, But The Error Was Harmless Beyond A Reasonable Doubt.

Second, Mr. Yatassaye contends the trial court committed reversible error when it admitted Mr. Davis’s entire June 20, 2019 recorded statement rather than admitting portions of it. During cross-examination of Mr. Davis, defense counsel for Mr. Yatassaye played portions of Mr. Davis’s June 20, 2019 videotaped statement and questioned him about the discrepancies between that statement and his direct testimony. For example, during the June 20, 2019 interview, Mr. Davis told the detective he “about 100 percent” saw Mr. Yatassaye pull the knife out of his pocket before the fight began. Mr. Davis even demonstrated how Mr. Yatassaye “whipped” the knife out with his right hand. Then, at trial, Mr. Davis testified the knife was “already out” by Mr. Yatassaye’s side when he approached the group.

Defense counsel also played a portion of the June 20, 2019 interview where Mr. Davis denied seeing Kevin with a tire iron. Yet at trial, Mr. Davis testified that he saw Kevin with a tire iron. Throughout cross-examination, defense counsel asked Mr. Davis questions such as “[i]s this the first time that you’ve ever given a statement or said it like

in an official capacity to a lawyer, . . . a police officer . . . ?” and whether Mr. Davis had spoken to Kevin or Walter before testifying at trial.

On redirect, the State informed the court it would like to play Mr. Davis’s “full interview from June 20th, 2019” for the fact finder, as opposed to the “snippets” defense counsel played during cross-examination. Anticipating defense counsel’s objection, the State *first* cited Maryland Rule 5-106, also known as the rule of completeness, to explain why the full interview should be admitted into evidence:

In this case, there is a full statement that was given. This wasn’t, you know, a body cam where there was a question here and a question over here by different officers at different times.

This was a seated controlled environment for a full statement and the Defense, on cross, got to play what they wanted to play, which, fine, it was cross. I know I did object to that, because the State’s argument is that . . . the trier of fact, should be able to hear the whole statement in the interest of fairness, so that Your Honor can hear the context of everything that was actually said during that statement, can hear questions and answers that were given before and after.

Next, the State asserted the June 20, 2019 interview should be admitted in its entirety as a prior consistent statement under Maryland Rule 5-802.1(b). The State posited that during cross-examination, the defense had asked Mr. Davis “whether he basically colluded with other witnesses to change his statement today.” The State argued that defense counsel was “implying that maybe at this point was the first time [Mr. Davis] was saying things,” suggesting fabrication, “when there actually is a statement where [Mr. Davis] consistently testifies to a lot of what he said today.”

Finally, the State asked to play the complete interview under Maryland Rule

5-616(c)(2), which “allows the State to rehabilitate a witness if Defense has impeached them or tried to impeach them, and again, that talks about a prior consistent statement, and allowing the full statement to come in” The State argued that “[defense counsel] played 10 seconds of a clip, when 2 minutes later, on that same statement, when the witness is asked again about the same thing, and says something different, but yet, [defense counsel] only played 10 seconds of it, then asked the witness on the stand, is that what you said?”

Defense counsel objected “firmly” to allowing the State to play the June 20, 2019 interview in its entirety, arguing that “[t]he three rules . . . evidentiary prongs that [the State’s] trying to use, are totally taken out of context.” Defense counsel asserted that merely impeaching Mr. Davis “on inconsistent statements doesn’t give [the State] the right to put it all in.” The court ultimately “interpreted” the three evidentiary rules “a little differently” than defense counsel. Based on Rule 5-802.1(b)’s exception to hearsay as a prior consistent statement and Rule 5-616(c)(2)’s rehabilitation provision, the court ruled it would “allow the State to play the entire statement.” During the State’s redirect examination of Mr. Davis, the recorded statement was played almost in its entirety.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and generally is inadmissible. *See* Md. Rules 5-801, 5-802. As such, “prior out-of-court statements by a witness that are consistent with the witness’s trial testimony, generally, are not admissible to bolster the credibility of the witness.” *Thomas v. State*, 429 Md. 85, 96 (2012) (*citing Holmes v. State*, 350 Md. 412, 416–17 (1998)). A hearsay statement may be

admitted, however, if it falls within one of the recognized exceptions, two of which are Maryland Rules 5-802.1(b) and 5-616(c)(2).

1. *The trial court erred in admitting the recorded statement under Rule 5-802.1(b).*

“[U]nder Md. Rule 5-802.1(b) a prior consistent statement may not be admitted to counter all forms of impeachment or to bolster the witness merely because [they have] been discredited.” *Thomas*, 429 Md. at 102 (cleaned up).⁶ Prior consistent statements may be admitted as substantive evidence only to “rebut the impeachment undertaken, whether by an implied or express charge of fabrication or of bias or improper motive.” *Id.* at 103 (quoting *Holmes*, 350 Md. at 423). In other words, “Rule 5-802.1(b) is not an avenue for the admission of a witness’s consistent out-of-court statement unless the statement is introduced to rebut an impeachment based upon a specific event which is the source of the witness’s motivation to fabricate.” *Acker v. State*, 219 Md. App. 210, 226 (2014) (citation omitted).

At trial, the State argued that Mr. Davis’s entire June 20, 2019 recorded statement should be admitted under Rule 5-802.1(b) because defense counsel’s cross-examination of Mr. Davis “impl[ie]d a fabrication” that Mr. Davis “colluded with other witnesses to change his statement [at trial].” The court agreed with the State and admitted the entire statement under Rule 5-802.1(b). On appeal, Mr. Yatassaye argues that defense counsel

⁶ Rule 5-802.1(b) provides specifically that “[a] statement that is consistent with the declarant’s testimony, if the statement is offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive” is admissible as a hearsay exception.

didn't expressly or impliedly charge Mr. Davis with fabrication on cross-examination, but "merely impeached the credibility of Mr. Davis on cross-examination." He asserts that "[m]ere impeachment of a witness does not satisfy the predicate for admission of prior consistent statement[s] under Rule 5-802.1(b)"

We agree with Mr. Yatassaye, and we don't see how Mr. Davis's entire recorded statement rebuts defense counsel's impeachment of Mr. Davis based on a motive to fabricate testimony. On cross-examination, defense counsel impeached Mr. Davis using statements in the June 20, 2019 interview about whether Mr. Davis saw Mr. Yatassaye pull the knife out of his pocket and whether Mr. Davis saw Kevin with a tire iron. Because Mr. Davis gave different versions of these portions of the fight at trial than he did in the interview, defense counsel impeached Mr. Davis using his prior inconsistent statements.

But Mr. Davis didn't make any statements during his June 20, 2019 interview that were *consistent* with his statements at trial about these two portions of the fight. During the interview, Mr. Davis told the detective he saw Mr. Yatassaye pull the knife out; at trial, Mr. Davis testified the knife was already out. During the interview, Mr. Davis told the detective he never saw Kevin with a tire iron; at trial, he testified that he saw Kevin with a tire iron. The two statements he made on June 20, 2019 were "not consistent with [Mr. Davis's] testimony," as Rule 5-802.1(b) requires. And even if the defense was implying that Mr. Davis fabricated his trial testimony, Rule 5-802.1(b) doesn't apply because the State was not offering the entire statement as a prior consistent statement. Therefore, the court erred in admitting Mr. Davis's entire recorded statement under Rule 5-802.1(b).

2. *The trial court erred in admitting the recorded statement under Rule 5-616(c)(2).*

“Maryland Rule 5-802.1(b) is not the sole basis for admitting prior consistent statements in our courts. Maryland Rule 5-616(c)(2) . . . governs the rehabilitation of a witness whose credibility has been attacked” *Holmes*, 350 Md. at 426 (footnote omitted); *see also Quansah v. State*, 207 Md. App. 636, 658 (2012) (“When a prior consistent statement is inadmissible under Rule 5-802.1(b), it may nevertheless be admissible as nonhearsay to bolster credibility under Rule 5-616(c)(2)”).⁷ “Prior consistent statements used for rehabilitation of a witness whose credibility is attacked are relevant not for their truth since they are repetitions of the witness’s trial testimony. They are relevant because the circumstances under which they are made rebut an attack on the witness’s credibility.” *Holmes*, 350 Md. at 427. Therefore, “such statements by definition are not offered as hearsay and logically do not have to meet the same requirements as hearsay statements falling within an exception to the hearsay rule, *e.g.*, Md. Rule 5-802.1(b).” *Id.*

“A review of Rule 5-616(c)(2) indicates that there are three prerequisites to admission of a prior statement as rehabilitation: (1) the witness’ credibility must have been attacked; (2) the prior statement is consistent with the trial testimony; and (3) the prior statement detracts from the impeachment.” *Hajireen v. State*, 203 Md. App. 537, 555

⁷ Rule 5-616(c)(2) provides that “[a] witness whose credibility has been attacked may be rehabilitated by . . . evidence of the witness’s prior statements that are consistent with the witness’s present testimony, when their having been made detracts from the impeachment[.]”

(2012). Mr. Yatassaye argues that admitting the entire recorded statement did not detract from defense counsel’s impeachment of Mr. Davis because the rest of the statement was “unrelated to the specific topics of impeachment” defense counsel used during trial. In other words, Mr. Yatassaye argues that “[t]he State was not entitled to bolster the credibility of Mr. Davis on topics about which he was never impeached.”

There is no dispute that Mr. Davis’s credibility was attacked on cross-examination, the first prerequisite. The defense impeached Mr. Davis’s testimony at trial that Mr. Yatassaye already had the knife out when he approached the group and that Mr. Davis saw Kevin with a tire iron during the fight by introducing prior inconsistent statements from the June 20, 2019 interview. Defense counsel also asked Mr. Davis repeatedly whether he discussed his testimony with any other witnesses and why his version of events as to these two facts changed between June 20, 2019 and the time of trial.

We agree with the State the second prerequisite also was met. Many portions of the recorded statement are consistent with Mr. Davis’s testimony at trial. For example, on June 20, 2019, Mr. Davis told the detective he had an exchange with Mr. Yatassaye in the Chapala’s bathroom hallway. Mr. Yatassaye asked Mr. Davis whether he knew one of the women standing by the cash register, referring to Mr. Solorzano and the bartender. At trial, Mr. Davis testified to this very same exchange.

The issue here turns on whether the recorded statement satisfies the third prerequisite, whether those portions of the statement detract from defense counsel’s impeachment of Mr. Davis. “[I]f prior consistent statements offered for rehabilitative

purposes do not detract from the impeachment of a witness or rebut logically the impeachment undertaken, the statements are inadmissible under Rule 5-616(c)(2) and their admission may be reversible error.” *Thomas*, 429 Md. at 98 (citing *Holmes*, 350 Md. at 427). The prior consistent statement must show “some rebutting force beyond the mere fact that the witness had repeated on a prior occasion the statement consistent with his trial testimony.” *Hajireen*, 203 Md. App. at 557 (citation omitted).

Defense counsel impeached Mr. Davis only on his inconsistent statements about when Mr. Yatassaye pulled the knife from his pocket and whether Kevin had a tire iron. The rest of Mr. Davis’s recorded statement pertained to the April 26, 2019 incident, but defense counsel did not impeach Mr. Davis on these other topics. In other words, the recorded statement, save those two inconsistent statements, didn’t respond to the impeachment of Mr. Davis, and we struggle to find evidence that required rehabilitation of Mr. Davis’s testimony by admitting his out-of-court recorded statement. Therefore, the admission of Mr. Davis’s prior statement does not satisfy the standards applicable under Rule 5-616(c)(2). And to the extent the court relied on this rationale, it erred.⁸

⁸ The court itself questioned the State about whether the entire June 20, 2019 interview related to defense counsel’s cross-examination of Mr. Davis:

[THE COURT]: But does it have anything to do with anything that [defense counsel] cross-examined this witness on?

[THE STATE]: Yes, it has to do with the cross, which dealt with who was on scene, how he reacted, why he reacted to what he did, and his statements, and why he is saying what he is saying.

[THE COURT]: All right. So I just want to be clear that it’s the State’s position that you are rehabilitating this witness with

3. *Although the trial court erred in admitting the recorded statement, the error is harmless beyond a reasonable doubt.*

Mr. Yatassaye’s final contention is that “[i]n light of the fact that the credibility of the State’s witnesses was crucial to the case, it cannot be said that the erroneously admitted hearsay material in no way influenced the verdict.” We agree that witness credibility was central to the court’s finding of guilt, and we agree that Mr. Davis’s recorded statement was admitted improperly. We hold that the error was harmless, though, for all the reasons discussed below.

In criminal cases, our analysis does not end with a finding that the trial court committed error. We also must evaluate whether that error was harmless. *Dorsey v. State*, 276 Md. 638, 659 (1976). “To be sure, under the harmless error doctrine, not every error committed during a trial is reversible error.” *Moore v. State*, 412 Md. 635, 666 (2010) (citation omitted). Our role is “not to find facts or weigh evidence.” *Bellamy v. State*, 403 Md. 303, 332 (2008). Rather, “we must be able to declare, beyond a reasonable doubt, that the error in no way influenced the verdict” *Collins v. State*, 373 Md. 130, 148 (2003). When we determine that an error was harmless, we have concluded that the error was “unimportant in relation to everything else” considered by the factfinder. *Bellamy*, 403 Md.

something that’s yet to come.

* * *

Are there things left in this video that touch on areas that [defense counsel] cross-examined this witness on?

* * *

Are we going to hear anything about the crowbar?

at 332 (citations omitted). But we don't arrive at such determinations lightly—after all, “harmless error review is the standard of review most favorable to the defendant short of an automatic reversal.” *Nicholson v. State*, 239 Md. App. 228, 244 (2018) (cleaned up).

Based on our independent review of the record, we find no reasonable possibility that admitting Mr. Davis's entire recorded statement contributed to the trial court's finding of guilt or added “something that was missing” from the plethora of evidence the court did consider. *First*, the error was harmless because Mr. Yatassaye elected to proceed by way of bench trial. “In assessing the possible effect of an erroneous ruling on a factfinder, a volatile jury and a legally trained and steadfast judge are very different tribunals.” *Geiger v. State*, 235 Md. App. 102, 113 (2017). Indeed, the difference between a jury's verdict and a judge's verdict “can be a decisive factor in harmless error analysis.” *Id.* In *State v. Babb*, the Court of Appeals considered whether the trial court's decision to admit evidence of Mr. Babb's prior conviction for drunkenness was harmless error. 258 Md. 547, 548 (1970). The Court held that it was, and emphasized the distinction between a bench trial and a jury trial:

[W]e think the admission of the evidence pertaining to the prior conviction for drunkenness, if error at all, was harmless error. We are fortified in this belief by the fact that this was a non-jury case. The assumed proposition that judges are men of discernment, learned and experienced in the law and capable of evaluating the materiality of the evidence, lies at the very core of our judicial system. *Such an assumption would be completely unwarranted with regard to a jury of laymen* and the impact which evidence may have upon their deliberative powers. And, if this case had been tried before a jury, our conclusion may well have been different than that presently reached.

Id. at 550–51 (emphasis added).

Had Mr. Yatassaye been tried by a jury, we could not conclude that the admission of Mr. Davis’s entire recorded statement was harmless beyond a reasonable doubt. In this case, though, we are not left wondering whether “twelve unpredictable jurors” thought that Mr. Davis’s June 20, 2019 recorded statement was important when assessing Mr. Yatassaye’s guilt. *Geiger*, 235 Md. App. at 112. Quite the opposite.

And that brings us to the *second* reason we find the court’s error harmless—the court took considerable care to detail the factors it relied on when rendering its guilty verdict and Mr. Davis’s recorded statement was not among those it listed. The court recognized that because this was a bench trial, it was “not required to state the grounds for its decision,” but nevertheless found it important to explain its reasoning:

Pursuant to Maryland rules, in delivering a verdict in a bench trial, the Court is not required to state the grounds for its decision. Or anything beyond merely guilty or not guilty. However, this member of the bench believes that the facts and circumstances in this case do warrant some discussion as to the persuasive facts and evidence on which the verdict is based. And for all involved . . . to have an understanding as to the basis for this verdict.

The court noted that “due to the volume of evidence, witness and exhibits, my comments cannot address every piece of evidence, nor every argument that factors into my decision,” but it went on to describe specifically the evidence on which it *did* rely. The court “reviewed and considered the totality of all of the evidence, the testimony of all of the witnesses, 200 plus exhibits, dozens of photographs, many jail calls, body-worn camera videos, surveillance video, medical records, and observed the witnesses while testifying to determine credibility.”

The court began its reading of the verdict by recounting the events leading up to the fight in Chapala’s parking lot, noting that these events were “the subject of six days of trial testimony.” The court detailed each witness’s testimony and acknowledged that because “[t]he majority of [the] interaction or portion of events is not captured on video surveillance,” it had to consider the credibility of all witnesses “to determine what actually happened.” The court then provided a careful explanation about its role as factfinder:

I am the trier of the fact and the sole judge of whether a witness should be believed. In making this decision, I may apply my own common sense and life experiences. In deciding whether a witness should be believed, I should carefully consider all of the testimony and evidence, as well as whether the witness’ testimony was affected by other factors. I considered all of the following factors for credibility for all of the witnesses.

The witness’ behavior on the stand and manner of testifying. Whether the witness appeared to be telling the truth. The witness’ opportunity to see or hear the things for which testimony was given. The accuracy of the witness’ memory. Whether the witness has a motive not to tell the truth. Whether the witness has an interest in the outcome of the case. Whether the witness’ testimony was consistent. Whether other evidence that I believe supported or contradicted the witness’ testimony. Whether, and the extent to which, the witness’ testimony in court differed from the statements made by the witness on any previous occasion. And whether the witness has a bias or prejudice.

I recognize that I am the sole judge of whether a witness should be believed. I need not believe any witness, even if the testimony is uncontradicted. I may believe all, part, or none of the testimony of any witness.

From there, the court recognized the inconsistencies within the State’s witnesses’ versions of events:

Were there inconsistencies among the testimony of all of the witnesses? Absolutely. Is it natural for memories to fade over

time? Yes. Did some of the details vary from statements made in 2019 to the court testimony? Yes. Did [Ms. Solorzano], [Mr. Davis], Kevin, and Walter’s testimony differ as to who was stabbed first, second third? Yes. Who was standing where when? Yes. Who saw Kevin get the tire iron? Yes. Did those inconsistencies impact their credibility as to who was the aggressor?

The court ultimately answered this question in the negative.

As it considered the evidence, the court “began with the bedrock principle of criminal law, that Mr. Yatassaye is presumed to be innocent of the charges. And it is the State that has the burden to establish his guilt beyond a reasonable doubt.” With these principles in mind, the court “considered the totality of all of the evidence[.]” And then the court detailed what it *did* consider.

First, the court considered the jail calls between Mr. Yatassaye and Mr. Khandagle. While Mr. Yatassaye was detained before trial, he made ninety calls to Mr. Khandagle, nine of which were admitted into evidence. The court found that what Mr. Yatassaye remembered on the jail calls was vastly different from what he claimed to remember when he testified at trial:

In each call, Mr. Yatassaye is very concerned about the video from Chapala’s and what may be seen. On the call on May 23, 2019, 26 days after this incident, Mr. Yatassaye calls [Mr. Khandagle] and says “Have you seen the video? I’m trying to remember exactly what happened. I’m trying to see what the fuck I remember. I don’t think I was the only one with the knife? Did you talk to dude? Don’t say his name. What is he saying?”

On May 31, 2019, 34 days after the incident, [Mr. Yatassaye] calls [Mr. Khandagle] and says, “I want to know exactly what happened. You want to tell me, tell me from us walking away.”

[Mr. Khandagle] says, “We walked away, went to the car, and

came back.”

Mr. Yatassaye, “When we went to the car, what did we do?”

[Mr. Khandagle], “We smoked a cigarette.”

Mr. Yatassaye, “Okay, then what?”

Later in the call, Mr. Yatassaye says, “Maryland’s self-defense law is weird. That’s why I want you to watch the video.”

On the call on June 3, 2019, 37 days after the incident, Mr. Yatassaye calls [Mr. Khandagle]. “I know I asked this a million times, but does the video show who swung first or not?” On June 11, 2019, 45 days after the incident, Mr. Yatassaye calls [Mr. Khandagle]. “I hope, I hope—I don’t remember, but I hope I did not swing first or something like that. Did I?”

[Mr. Khandagle], “No, you did. Once it went down, it happened so fast.”

Then, on January 29, 2021, and February 2, 2021, 669 days—or 673 days after the incident, in court, Mr. Yatassaye was able to testify that he remembered everything in great detail. He remembered who swung first. He remembered what happened step by step. In fact, he testified, “It was not hard to remember what occurred that night.”

To the court, the fact that Mr. Yatassaye couldn’t remember what happened less than a month after the April 26, 2019 incident but then suddenly remembered everything almost two years later “severely damaged” his credibility. Based on the observation that “Mr. Yatassaye’s memory was significantly informed by what he could, and more significantly, what could not be seen on the video,” the court concluded that “[o]ver time, [Mr. Yatassaye] has constructed a narrative that fit his defense.”

The court *then* detailed why it found the jail calls between Mr. Yatassaye and Mr. Khandagle about Mr. Ledesma concerning. The court noted that “Mr. Yatassaye was very concerned what Mr. L[e]desma would say to the detective and the prosecutors” and “used cryptic codes such as references to dude in the jail calls.” The court recounted these

conversations:

[Mr. Khandagle] says, “[Mr. Ledesma] said he has to talk to detectives this week. He’s not mad. You just have to take care of him.”

Mr. Yatassaye, “I will take care of him. He knows what to say?”

[Mr. Khandagle], “[I told him what to say.”

In another call, Mr. Yatassaye, “Do you have dude’s number? He wasn’t mad? You said he had to go for an interview, but I don’t know what he said. Does he think I did it or does he not know?”

[Mr. Khandagle], “What do you mean?[]”

[Mr. Yatassaye], “I just saw him grab the other dude, so why would I do that? Or maybe I could not see nothing. I just need you to talk to him. Last time you talked to him, what did he say?”

[Mr. Khandagle], “He was talking about the detective. He was bringing up his bills.”

Another call, Mr. Yatassaye, “Did you talk to dude?”

[Mr. Khandagle], “I talked to [Mr. Ledesma] yesterday. He said he ain’t talked to no one yet.[]”

Mr. Yatassaye, “For real? Tell him not to talk to nobody.”

[Mr. Khandagle], “Yeah, I did.”

[Mr. Yatassaye], “Tell him, fuck that shit.”

The court *went on* to explain that after Mr. Yatassaye called Mr. Khandagle ninety times, he started calling Mr. Ledesma “directly in the summer of 2020 up through just a few short weeks before his trial in 2021.” In one call, Mr. Yatassaye apologized to Mr. Ledesma for stabbing him, “if it was me.” Mr. Yatassaye told Mr. Ledesma that Mr. Khandagle “did not want to come to court” and “did a 360 on” Mr. Yatassaye. After listening to all of these jail calls and taking note of what exactly Mr. Yatassaye said, the

court concluded that his “jail call conversations conflicted with his court testimony as to what he did and did not remember, and what he did and did not do, and what he saw when.” “All of this,” the court stated, “impacted the Court’s determination as to [Mr. Yatassaye’s] credibility.”

The court *next* specified why Mr. Yatassaye’s behavior at the hospital was evidence of consciousness of guilt. The court noted that Mr. Yatassaye’s choice to leave Chapala’s after the fight and find a hospital could “have an innocent explanation that supports innocence, such as going to the hospital.” But upon arriving at the hospital, Mr. Yatassaye threw the knife away in the woods. He also “asked specifically for [staff] not to call the police when he advised that he had been attacked by three strangers.”

The court *then* considered Mr. Khandagle’s attempt to distance himself from the case. Even though Mr. Khandagle “was Mr. Yatassaye’s star eyewitness, and was next to him and observed the entire event,” he “wanted absolutely nothing to do with this case.” The court found Mr. Khandagle’s reluctance understandable, but also observed certain actions by Mr. Khandagle that pointed to Mr. Yatassaye’s guilt:

He left the scene, returned to the bar, and purposefully left through another exit to avoid the police. When contacted to speak with the police, he did not. He made no attempt to contact authorities to exonerate his friend. He admitted that he knew his friend may be in trouble and did nothing to help.

The court *next* took into account the surveillance video from Chapala’s, which the court reviewed “second by second[.]” The court recognized that only the latter portion of the fight was captured on camera, but still was able to determine that Mr. Yatassaye was

the initial aggressor based on Mr. Yatassaye's actions:

It is clear to the Court that when the fight actually shows up on the video at the infamous 13:21:11, the fight had already begun and Walter and [Mr. Davis] had already been stabbed. Kevin grabbed the tire iron from the trunk. Everyone testified that the beginning of the fight was not on video.

At 13:21:11, when the fight appears on the video, Mr. Yatassaye's hand [is] out and appears to have a knife in his hand. At that point, there is no one behind him and he has an avenue of retreat. There is no one immediately to his left blocking his retreat back down the walkway where [Mr.] L[e]desma was standing. At 13:21:14, everyone is backing away from Mr. Yatassaye as he continues forward. Mr. Yatassaye was the aggressor. Seen on the video, Mr. Yatassaye chased [Mr. Davis]. Mr. Yatassaye is the aggressor.

You can see on the video when Kevin is swinging the tire iron and striking Mr. Yatassaye. And Mr. Yatassaye's swinging the knife. You can see [Ms. Solorzano] waving for help. [Mr. Ledesma] runs and jumps into the fight, grabs Kevin, and then he is stabbed. Mr. Yatassaye then continued forward. [Mr. Khandagle] had to push him back. Mr. Yatassaye was the aggressor.

This step-by-step analysis of the surveillance video, the court found, “[did] not support the defense’s version of events.”

Finally, the court found that the complaining witnesses’ medical injuries “simply [did] not support Mr. Yatassaye’s version of events.” The court recalled that Mr. Yatassaye stabbed Walter two times in the back, Mr. Davis once in the back and once in the stomach, Mr. Ledesma on the side, and Kevin nine times in the back, arms, front, stomach, and side. The court reasoned that “[t]he location of the stab wounds in the back” was inconsistent with Mr. Yatassaye’s testimony that he was attacked.

The court found that all of this evidence revealed Mr. Yatassaye’s “consciousness

of guilt and not the actions of a victim of an attack by random strangers.” His credibility, the court reasoned “was severely damaged by his own words in his jail calls and the contradictions to his trial testimony.” Had the court rendered its guilty verdict without this in-depth analysis, we would be unable to conclude that its error in admitting Mr. Davis’s statement was harmless. But it did, and so we can. “This case did not just involve a bench trial. It involved a bench trial in which the trial court specified precisely what evidence was the basis for [its] credibility determinations[.]” So we know, in ways we never could with a jury verdict or even a silent bench trial conviction, that the trial court’s error in admitting the entire statement was unimportant in relation to everything else. In light of the specific facts of the court’s ruling, we cannot conclude that the omission of Mr. Davis’s recorded statement would have led the court to reach a different outcome.⁹

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**

⁹ Mr. Yatassaye also asserts that the recorded statement was inadmissible under the doctrine of verbal completeness. But the trial court didn’t admit the recorded statement under the completeness doctrine. Instead, the court stated that it was allowing the statement to come in under Rules 5-802.1(b) and 5-616(c)(2).