Circuit Court for Montgomery County
Case No.: 137020C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 497

September Term, 2023

ALFREDO RIVERA LOPEZ

v.

STATE OF MARYLAND

Reed,
Zic,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: October 2, 2025

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

Following a seven-day trial, a jury sitting in the Circuit Court for Montgomery County convicted appellant Alfredo Rivera Lopez ("Lopez") of four counts of rape in the second degree; one count of sexual abuse of a minor; eight counts of sexual offense in the third degree; and one count of sexual offense in the second degree. The jury acquitted Lopez of two additional counts of sexual offense in the third degree. On May 11, 2023, the court sentenced Lopez to twenty years' incarceration for each of three counts of rape in the second degree, consecutive, with the fourth count to run concurrently. The sentences for the remaining counts were all to run concurrently, and the total executed time was sixty years.

On appeal, Lopez presents three questions for our review:

1. Did the circuit court err by preventing defense counsel from cross-examining the complaining witness about the potential immigration benefits to her participation in Lopez's prosecution?

2. Did the circuit court err in admitting the recording of a one-party consent phone call into evidence?

3. Did the circuit court err in allowing the prosecutor to ask improper and prejudicial questions on cross-examination of Lopez?

For the following reasons, we reverse the judgment of the circuit court.

BACKGROUND

This case arises out of a series of sexual contacts between Lopez and his eldest daughter, C.W., over a period of six years, ending in 2019.[1]

[1] Given the sensitive nature of this case, we adopt Appellant's counsel's convention of referring to the complaining witness, her mother, her brother, and her sister as C.W., M.W., B.W., and S.W., respectively.

Lopez was born in Guatemala in 1980 and came to the United States in 2001. **6.** In 1997, while he was still living in Guatemala, Lopez met M.W. and they began a romantic relationship. Their first child, B.W., was born in 2000. C.W. was born on June 25, 2002. Around 2006 or 2007, Lopez married M.W. Then, on November 9, 2007, their youngest child, S.W., was born.

The family lived together in Maryland until December 21, 2012, when M.W. moved to New Jersey. M.W. moved out because she "could no longer live with [Lopez] at home and he had given [her] 30 days to leave the home." She chose to move to New Jersey because Darwin Mendez, who lived in New Jersey at the time, was "the only person that could help [her]." M.W. moved in with Mendez when she got to New Jersey. Lopez and M.W. divorced about a year later, and M.W. eventually married Mendez. Following the divorce, Lopez was awarded custody of the children. He told the children, "[Y]our mother doesn't love you. If she would have loved you, she would've stayed here. Your mother left you." C.W. described this as Lopez "manipulat[ing] all three of us to believe that [M.W.] was the bad person and he was the best parent in the world."

After M.W. left, C.W. did not see or speak to her mother. C.W. was "very like angry with her and very sad at the time." She was angry because Lopez had told her that M.W. "left us for like another man. And since I was like very young, that's like very traumatizing for me. So, I just didn't want to speak to her at the time."

In 2013, shortly after M.W. moved out, Lopez began engaging in sexual acts with C.W. The first such act occurred early one morning, "right before, like the sun came out[.]" Lopez came to C.W.'s bedroom while she was sleeping, picked her up, and carried her to

his bed. Once they were in his bed, Lopez "started touching [C.W.] above [her] shirt, [her] breast." Lopez then "lifted off [her] shirt[,]" and "started to touch [her] breasts." In addition to using his hands, Lopez also "put his mouth on [C.W.'s] breasts." He was "sucking on [her] breasts" and "using his tongue to like press down on [her] breasts." After about thirty minutes, Lopez "picked [her] up again and put [her] back in [her] bed." C.W. was about twelve years old at the time.

A "couple months" later, a similar act occurred whereby Lopez walked out to the living room while C.W. was laying on the couch, pulled up her shirt, and touched her breasts with his hands and then with his mouth. This went on for about thirty minutes. Despite C.W. telling Lopez to stop, he did not. Then, about a "couple of weeks" later, it happened again. These types of incidents happened "a couple" more times before Lopez's actions got worse.

Eventually, Lopez and the children moved to a new apartment in Gaithersburg. At the new apartment, Lopez and his two daughters slept in one bedroom, while Lopez's son, B.W., slept in the living room. One night, while C.W. was sleeping, she woke up to find "someone on top of [her]." She quickly realized that the individual on top of her was Lopez. C.W. felt Lopez pull his pants down, and then pull her pants down. Then, Lopez "put his penis inside of [her.]" He also "started to play with [her] breasts with one hand and then with his mouth he was on the other breast." While this was happening, C.W. "just started to cry there. [She] just, [she] froze. [She] couldn't believe what was happening. [Her] body like shut down." This lasted about thirty to forty minutes.

More incidents like this one followed. In addition to using his penis, Lopez also began giving C.W. "oral sex[,]" which C.W. described as Lopez "touching his mouth with my vagina." While Lopez did this, he was using his hands to push open C.W.'s legs because she was trying to keep them closed. Lopez would also use his fingers to "rub[] [C.W.'s] vagina" and he would "put like, his fingers inside of [her]."

At the time, C.W. was closest with her brother, B.W. However, C.W. never told her brother about what was going on because Lopez "told [her] that [she] couldn't tell anyone because he was going to go to jail[,]" and that it would be her fault if he went to jail. Lopez would "use that against [her]" since she "didn't have like a good relationship with [her] mother at that time[.]"C.W. did not tell her friends or her teachers about what was going on either. When she had annual doctor's appointments, Lopez would "tell [C.W.], don't say anything." He would "coach" her and "be like, if she says, do you have a boyfriend? Say yes. If she says, are you having sex? Say yes. Say you're doing with your boyfriend when I never had a real – I didn't have a boyfriend." In other words, Lopez was telling C.W. to lie to her doctor.

The incidents of sexual contact between Lopez and C.W. continued until 2019. By the time C.W. told her mother what was going on, Lopez had put his mouth on her breasts more than 100 times; he had put his fingers inside of her vagina more than fifty times; he had performed oral sex on her more than 100 times; and he had put his penis inside of her vagina more than 100 times.

C.W. reconnected with her mother for the first time in 2018 when Lopez allowed her and S.W. to visit for two weeks during their school recess. At the end of the two weeks,

the girls went back to Maryland. Then, about a year later, the girls visited their mother in New Jersey again. On Sunday, August 25, 2019, M.W. took C.W. to church. During the service, M.W. noticed C.W. was crying, so she asked what was going on. C.W. "wouldn't calm down." After they left the church, M.W. again asked her daughter what was wrong, and C.W. responded, "[M]y father, Alfredo, is abusing me sexually." C.W. explained to her mother that "at the beginning he used to touch me, but then he got on my bed, he raped me, and he took my virginity away." The next day, they went to the police and told them what Lopez had done.

On February 13, 2020, Lopez was charged in the Circuit Court for Montgomery County with sixteen counts, including one count of sexual abuse of a minor; ten counts of sexual offense in the third degree; four counts of rape in the second degree; and one count of sexual offense in the second degree.

Lopez's trial commenced with jury selection on February 3, 2023, and concluded with the jury's verdict on February 13, 2023. The State called five witnesses during its case-in-chief, including C.W., M.W., B.W., S.W., and Detective Kyle Conrad of the Montgomery County Police.

Testimony of C.W. and Family

C.W. was the State's star witness, and she testified at length about the incidents of sexual abuse committed by Lopez. Then, M.W. testified about the lack of a relationship with her daughters until 2018, and how C.W. finally revealed the allegations of sexual abuse to her in August of 2019. B.W., the eldest child, testified that the only touching he observed between Lopez and C.W. was Lopez's frequent slapping of C.W.'s rear end at

random times. B.W. also testified that, at one point, he had seen a condom in the bedroom shared by Lopez and the girls. Finally, S.W., the youngest child, testified that she would sometimes hear noises from her sister's bed when she went to sleep, and that she believed the noises were C.W. telling Lopez to "go back to your bed, or like, get off." S.W. also testified about one time when she walked into the bedroom and saw C.W. "bent over the bed, and [Lopez] was on top of her." S.W. saw that both Lopez's and C.W.'s pants were below their knees, that Lopez was "behind her[,]" and that their "private parts" were touching.

Defense counsel sought to cross-examine C.W. and M.W., who were both undocumented immigrants, about their interest in acquiring a U visa in exchange for their cooperation with the State. Prior to opening statements, the State moved that the defense be barred from discussing anything about the immigration status of any of the State's witnesses. The circuit court responded that it would only allow defense counsel to broach the subject if there was "some proof of an overt act, or some positive action towards getting a green card or whatever the immigration status is to make a person legal." The court reserved its ruling but instructed the defense not to mention anything during its opening statement.

The next day, defense counsel raised the issue again and offered evidence of a text message sent by C.W. to her friend that read, "Did I tell you that we are going to talk to a [*sic*] immigration lawyer and see if I can become a citizen?" The text message was sent on October 13, 2019. Defense counsel also proffered that C.W. had entered the search, "what is a U visa" on her phone multiple times in November of 2019. The State admitted that

C.W. had "apparently googled what is a U visa four times or five times," but argued that the questioning should not be allowed because C.W. had not contacted the State about applying for a U visa. The circuit court ultimately granted the State's motion *in limine*, explaining:

> Okay. I think based on the totality of the situation, I'm going to disallow - - and based on [*Kazadi v. State*, 240 Md. App. 156 (2019)], and based on the evidence of what's been presented to me at this point - - there's been no benefit received, and there's no attempt to receive a benefit. The only thing we have is an inquiry. . . . So I'll deny that, and that goes for the mother and the daughter, alleged - - alleged victim. . . .

The next day, after the State rested, defense counsel reiterated his desire to examine C.W. and her family with respect to any hope or expectation of immigration benefits. The court eventually decided to take M.W.'s testimony out of the presence of the jury to inquire into her motivation for making the charges. Under questioning from both the court and defense counsel, M.W. repeatedly denied seeking any type of immigration benefit from the State. She also testified that she was unaware of any efforts by C.W. to obtain a change in her immigration status, other than her filing an application for DACA at the Langley Park Hispanic Center.

After hearing M.W.'s testimony outside the presence of the jury, the circuit court reaffirmed its earlier ruling, reasoning that there was "no new information that would change the Court's opinion on this." Defense counsel then requested to call C.W. out of the presence of the jury for the same purpose, arguing that "mom doesn't know what [C.W.] discussed at the Hispanic Center to ask the same type of questions you did." The court denied this request, explaining its reasoning as follows:

> **[THE COURT]:** No, I'm not going to allow that. I'll tell you why, because the mother initiated this action. And based on the evidence here, the daughter broke down crying and the mother had to pry it out of her. What was it? Then that started the ball rolling to New Jersey.
>
> You don't have any - - not you, individually, there's no evidence to suggest that this was a ploy concocted by [C.W.], siblings, mother, to basically improve their immigration status and bring rape charges against husband and father.
>
> So I'm not going to - - I'm going to deny you the request to take [C.W.] out of the presence of the jury for the reasons stated on there. And the mother was quite clear, she brought the action, both places, domestic violence and the New Jersey, and there's no indication that they have to follow through on this case before any immigration status will change.
>
> The mother doesn't even have any application pending, so - - and if the father took her to do something, he certainly knows, but the mother didn't, and she's the one that brought the criminal action, she's the one that brought the domestic violence.
>
> So I'm going to put a period there. Let's bring in the next witness. Let's bring the jury in, yes.

Detective Conrad and the Sting Call

The State's final witness was Detective Conrad, who testified about a one-party consent "sting" call that he set up between C.W. and Lopez during the investigation. He testified that he was present during the call, and that the call was recorded. The sting call was then played for the jury in open court and the transcript was admitted into evidence as State's Exhibit #2. The transcript reads as follows:

> **[LOPEZ]:** Hello.
>
> **[C.W.]:** Hello.
>
> **[LOPEZ]:** Yes.
>
> **[C.W.]:** It's [C.W.] Hello.

[LOPEZ]: Hello. What . . . what's up [C.W.]. Give me, give me a minute. Just wait for me . . . . Tell me.

[C.W.]: Uh, I went to the doctor today and, they took out blood and they said that I had a, I have an STD.

[LOPEZ]: A what?

[C.W.]: An STD. Something that you only get to, when you have sex.

[LOPEZ]: OK.

[C.W.]: And you were the only person that, that did to me, uh, that uh, that I had sex with.

[LOPEZ]: OK.

[C.W.]: So, I am just telling you that you passed that to me, you, you gave that to me.

[LOPEZ]: OK. So, um . . . I can't say anything. Why are you calling me?

[C.W.]: Because I am telling you that I have that.

[LOPEZ]: Yes, but remember that your mom got an order of, of protection that I can't, I can't speak with you.

[C.W.]: You can't call me, but I can call.

[LOPEZ]: No, you can't, [C.W.] And I am not going to, no. . . . Look, I'm going to tell you something, I am not going to say anything, I am just going to say OK, OK, OK, OK. Because no . . . we are going to take care of that in Court. I have, I have, in the, in Court we . . . we are going to take care of that [C.W.] So . . . .

[C.W.]: What do you mean? What, what are you going to see? What? That I have an STD?

[LOPEZ]: We are going to take care of that in Court. I have everything, all the, the record. Remember that . . . to the doctor two, uh, one month before.

[C.W.]: Yeah? Yes, I have the, the thing . . . .

[LOPEZ]: I have the, I have the . . . the record, and I am not going to go say anything right now. I don't, that's why I'm telling you I don't know why you are calling me. I can't speak with you, and I am going to hang up right now, otherwise they're going to put me in jail. So, tell your mom that you shouldn't be calling me. I don't know if she asked you to call me.

[C.W.]: Well, I need why, how I got an STD.

[LOPEZ]: Listen [C.W.] We are going to, I am going to take care of all that in Court. In Court. I am not going to, I have nothing to say to you, and I am going to hang up. I am very sorry. OK? Goodbye.

[C.W.]: No, wait!

[LOPEZ]: What do you want? I am not going to say anything to you. I have nothing to say to you. We are going to take care of everything in Court.

[C.W.]: What do you mean you have nothing to say to me? You gave me that!

[LOPEZ]: Bye. Take care.

[C.W.]: Oh, my God! You gave me that. Because I'm just saying that you gave it to me. . . . with the sex you gave that to me?

[LOPEZ]: [C.W.,] I am not going to say anything to you. Take care. Bye. Goodbye.

[C.W.]: No! I need an answer why.

State's Ex. 2.

Lopez Testifies in His Own Defense and the State Asks Whether Other Witnesses Were Lying

Following the close of the State's case-in-chief, the defense called several witnesses who testified that they knew Lopez to be a very honest and peaceful person. The defense also called two more witnesses, Ingrid Sarceno and Oscar Orellana, who testified that M.W. was a very dishonest person. Finally, Lopez testified in his own defense and denied C.W.'s

allegations. On cross-examination of Lopez, the prosecutor asked the following line of questions:

> **[STATE]:** So at no point at night, you, I believe you said, just to clarify, she never went into your bedroom at night, correct?
>
> **[DEFENSE COUNSEL]:** Objection.
>
> **[THE COURT]:** Sustained.
>
> **[STATE]:** So if she said she was in your bedroom at night, she's lying?
>
> **[DEFENSE COUNSEL]:** Objection.
>
> **[THE COURT]:** She's lying. Overruled.
>
> **[LOPEZ]:** Yes.
>
> * * *
>
> **[STATE]:** So you were in - - just trying to clarify, you were in the living room alone with her?
>
> **[LOPEZ]:** No. With my three children.
>
> **[STATE]:** Okay. So if [C.W.] said there was times when you were alone with her in the living room, she must be mistaken?
>
> **[DEFENSE COUNSEL]:** Objection.
>
> **[THE COURT]:** Sustained.
>
> * * *
>
> **[STATE]:** Did you ever walk over and tuck her in after you got home, or have any contact with her at all while she was sleeping?
>
> **[LOPEZ]:** No.
>
> **[STATE]:** So if [S.W.] says she remembers seeing you in bed with [C.W.], is [S.W.] lying?

[DEFENSE COUNSEL]: Objection.

[THE COURT]: Sustained.

Following the third "were they lying" question, defense counsel requested a bench conference and subsequently asked the court to either strike the improper question, issue a curative instruction, or declare a mistrial. The court declined all three of defense counsel's requests. First, the court explained that, "[y]ou don't strike questions really; what you do is - - [defense counsel], you know that. What you're doing is that you strike an answer." The court also declined defense counsel's requests for a curative instruction or a mistrial, reasoning that the court had already sustained objections to the improper questions, and that there were no answers given to those questions that had to be cured.

Lopez is Convicted and Notes a Timely Appeal

The jury ultimately convicted Lopez of four counts of rape in the second degree; one count of sexual abuse of a minor; eight counts of sexual offense in the third degree; and one count of sexual offense in the second degree. The jury acquitted Lopez of two additional counts of sexual offense in the third degree. Lopez was sentenced on May 11, 2023, to twenty years' incarceration for each of the three counts of rape in the second degree, consecutive, with the fourth count to run concurrently. The sentences for the remaining counts were all to run concurrently, and the total executed time was sixty years.

Lopez noted this timely appeal on May 12, 2023.

STANDARD OF REVIEW

"An appellate court reviews without deference a trial court's restriction of cross-examination where that restriction is based on the trial court's understanding of the legal

rules that may limit particular questions or areas of inquiry." *Gonzalez v. State*, 487 Md. 136, 166 (2024) (quoting *Kazadi v. State*, 467 Md. 1, 49 (2020)). Where the trial court restricts cross-examination because the danger of undue prejudice substantially outweighs its probative value, however, we review that determination for abuse of discretion. *Id.* at 182–83.

Relevant evidence is generally admissible. Md. Rule 5–402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5–401. Whether evidence is relevant is a conclusion of law that we review de novo. *Akers v. State*, 490 Md. 1, 24 (2025). Even where evidence is relevant, however, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5–403. "Th[is] second inquiry - - the trial judge's discretionary ruling of the admissibility of evidence under Rule 5-403 - - is subject to the abuse of discretion standard." *Akers*, 490 Md. at 25.

DISCUSSION

I. The Circuit Court's Ruling *In Limine* was Based on an Incomplete Factual Predicate

Lopez's primary argument on appeal is that the circuit court erred when it prohibited defense counsel from questioning C.W. on cross-examination about potential immigration benefits from her participation in Lopez's prosecution. Specifically, defense counsel

sought to question C.W. about her interest in acquiring a U visa, which is "a visa for noncitizens who are the victim of certain qualifying crimes and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity." *Gonzalez*, 487 Md. at 143. However, we need not reach the question whether the circuit court erred in restricting defense counsel's cross-examination of C.W., because a narrower ground for reversal exists.

Under Maryland Rule 5–616(a)(4), a witness's credibility may be impeached by "[p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely[.]" Md. Rule 5–616(a)(4). When a trial judge is asked to rule *in limine* that a witness cannot be asked questions permitted by Rule 5–616(a)(4), "an on the record evidentiary hearing, with the jurors out of the courtroom, is *necessary*[.]"[2] *Leeks v. State*, 110 Md. App. 543, 557 (1996) (emphasis added). This Court explained that

> Rules 5–401 and 5–403 apply at this hearing, interrogation should be limited to the matters listed in Rule 5–616(a)(4), and counsel are not entitled to turn the hearing into a discovery deposition. At this hearing, however, the trial judge must afford counsel an adequate opportunity to question the witness about every fact that would reasonably suggest the existence of bias. The issue of bias is often generated by circumstantial evidence, and does not disappear merely because the witness denies any reason to be biased. If such circumstantial evidence exists, the trier of fact is entitled to observe the witness's demeanor as he or she responds to questions permitted by Rule 5–616(a)(4).

[2] Black's Law Dictionary defines "necessary" as "1. That is needed for some purpose or reason; essential <three elements necessary to meet standing requirements>. 2. That must exist or happen and cannot be avoided; inevitable <necessary evil>." Necessary, Black's Law Dictionary (12th ed. 2024).

Id.

Here, the circuit court permitted defense counsel to question C.W.'s mother in an on-the-record hearing, outside the presence of the jury. Crucially, however, the circuit court denied defense counsel "an adequate opportunity to question [C.W.] about every fact that would reasonably suggest the existence of bias." *Leeks*, 110 Md. App. at 557.

The State argues that "defense counsel looked to use the *Leeks* hearing as a discovery tool for questioning the complaining witness, not as a way of testing the admissibility of proffered evidence." The State does not, however, cite anything in the record indicating that this was defense counsel's intent. Additionally, the State argues that "the only proffered evidence linking [C.W.] to a potential U-visa was that she Google searched 'what is a U visa.'" Therefore, the State argues, the circuit court did not err in denying defense counsel's request to question C.W. outside the jury's presence because "[t]here was no proffer by either party of any additional relevant evidence . . . that the court needed to consider in order to rule intelligently on the motion *in limine*." *Perez v. State*, 168 Md. App. 248, 293 (2006).

The case at bar is distinguishable from *Perez*. In *Perez*, the appellant was convicted of two counts of felony murder and related charges, and he moved for a new trial "on the basis, among others, of 'newly discovered evidence' that [another individual] had confessed to the [] murders." *Perez*, 168 Md. App. at 289. An evidentiary hearing was held on the appellant's motion for new trial, after which the court denied the motion. *Id.* at 289–91. The appellant appealed his convictions, and this Court vacated on different grounds and remanded for a new trial. *Id.* at 276. At his new trial, the court granted the State's

request for a motion *in limine* to preclude the defense from introducing evidence of the allegedly "false confession" on cross-examination of a State's witness, and the appellant was again convicted of two counts of felony murder and related charges. *Id.* at 255, 293. On appeal, the appellant argued that the court erred in refusing to hold an evidentiary hearing before ruling on the State's motion *in limine*. *Id.* at 292. This Court disagreed, holding that the trial court did not err in declining to hold a *Leeks* hearing on the State's motion in limine because

> the hearing on the new trial motion had been a full evidentiary proceeding at which the appellant had been represented by counsel and at which all of the witnesses who had had anything relevant to say about [the] "false confession," and the circumstances leading up to it, had testified.

Id.

Here, on the other hand, Lopez was not afforded a "full evidentiary proceeding . . . at which all of the witnesses who had had anything relevant to say about [C.W.'s potential bias] had testified." *Id.* Crucially, the circuit court denied defense counsel the opportunity to question the one witness who would know the most about C.W.'s potential interest in acquiring a U visa in exchange for her testimony against Lopez: C.W. herself. By denying defense counsel "an adequate opportunity to question [C.W.] about every fact that would reasonably suggest the existence of bias" during the *in limine* hearing, the circuit court committed reversible error. *Leeks*, 110 Md. App. at 557.

The State argues that the proper remedy here would be to "remand this case to the trial court so that the lower court can receive and consider that testimony in light of *Gonzalez*." The State suggests that

> If following the receipt of that evidence Rivera-Lopez's proffer does not satisfy the *Gonzalez* standard, his convictions would stand (assuming the State prevails on the other issues in this appeal). If the proffer does satisfy the *Gonzalez* standard, Rivera-Lopez would be potentially entitled to a new trial.

Lopez, however, argues that under *Leeks*, a remand for a new trial is required. In *Leeks*, this Court concluded,

> We are unable to affirm the ruling that insulated Thompson from questions directed at revealing his potential bias. As a result of the restrictions imposed on defense counsel at the in limine hearing, that ruling was based on an incomplete factual predicate. *Ebb* requires that the trial court give defense counsel a full and fair opportunity to establish the bias of a State's witness. Appellant was denied such an opportunity. Accordingly, we must reverse appellant's convictions and remand his case for a new trial.

Leeks, 110 Md. App. at 558–59.

We agree with Lopez. Here, as in *Leeks*, defense counsel was denied "a full and fair opportunity to establish the bias of a State's witness." *Id.* As a result, the circuit court's decision to "insulate[] [C.W.] from questions directed at revealing [her] potential bias" was "based on an incomplete factual predicate." *Id.* at 558. Therefore, as in *Leeks*, "we must reverse [Lopez's] convictions and remand his case for a new trial." *Id.* at 559.

II. The Circuit Court Erred or Abused its Discretion in Admitting the Recorded Phone Call

Lopez contends that the circuit court erred in admitting into evidence the recording of a one-party consent phone call. Relying on *Weitzel v. State*, 384 Md. 451 (2004), he argues that his "equivocal statements and invocations of silence lacked probative value for the very reasons identified in *Weitzel*." The State, however, argues that *Weitzel* does not apply here and, therefore, Lopez's argument necessarily fails.

The Maryland Wiretap Act generally requires the consent of all parties to a communication before the communication may be lawfully intercepted. Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 10–402(c)(3). However, where only one party consents to the interception, such interception is lawful if it is done "at the prior direction and under the supervision of an investigative or law enforcement officer[,]" and where the purpose of the interception is "to provide evidence . . . [o]f the commission of" certain enumerated crimes, including rape. CJP § 10–402(c)(2).

Here, Lopez does not challenge the lawfulness of the recorded phone call under the provisions of the Maryland Wiretap Act. Rather, he challenges the admission of the phone call on the ground that his "equivocal and ambiguous statements followed by invocations of silence lacked any real probative value and any such value was far outweighed by the prejudice engendered by the inflammatory accusations leveled against him."

To be relevant, and therefore admissible, evidence must have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. In other words, the evidence must be both material and probative. *Akers*, 490 Md. at 26. "Evidence is probative if it is 'related logically to a matter at issue in the case[.]'" *Id.* (quoting *Snyder v. State*, 361 Md. 580, 591 (2000)). "In turn, for evidence to be 'related logically' to a matter at issue, the court 'must be satisfied . . . that its admission increases or decreases the probability of the existence of a material fact.'" *Id.* (quoting *Snyder*, 361 Md. at 591). Whether evidence is relevant is a conclusion of law that we review de novo. *Id.* at 24.

Evidence "lacks probative value when its relevancy depends on attributing meaning to actions too 'ambiguous and equivocal' to support the proposition for which it is offered." *Akers*, 490 Md. at 27 (quoting *Snyder*, 361 Md. at 596). "When a person's conduct is equivocal and therefore equally consistent with multiple interpretations, it invites improper speculation by the factfinder as to the meaning of that conduct." *Id.* In *Akers*, the Court held that a defendant's internet searches about terminating a pregnancy during a period in which she would be able to legally obtain an abortion were not probative of an intent to kill or harm a baby at delivery many months later, because the admission of this evidence "invited the jury to speculate about, among other things, why she sought this information and why she did not obtain an abortion." *Id.* at 40.

In *Weitzel*, police arrived at an apartment building in Baltimore County where they found a woman, Effland, lying unconscious and severely injured at the bottom of a public stairwell. *Id.* at 453. Also present at the scene were Weitzel and another man named Crabtree. *Id.* The police interviewed Crabtree, who "pointed to Weitzel and indicated that 'he' had thrown Effland down the stairs." *Id.* Weitzel was approximately four feet away from Crabtree when he made this accusation. *Id.* However, despite appearing "conscious and cognizant," Weitzel remained silent as Crabtree accused him of throwing Effland down the stairs. *Id.* at 453–54. At trial, the circuit court denied Weitzel's motion to exclude the evidence of his silence, ruling that the evidence was admissible as a tacit admission. *Id.* at 454. In reversing, the Supreme Court of Maryland noted that "there are many reasons why a defendant may remain silent before arrest, such as a knowledge of his or her *Miranda* rights or a fear that the statement may not be believed." *Id.* at 461. Therefore, the Court

held that "pre-arrest silence in police presence is not admissible as substantive evidence of guilt under Maryland evidence law." *Id.*

The State argues that the case at bar is distinguishable from *Weitzel* for two reasons. First, the State notes that unlike Mr. Weitzel, Lopez was not in the presence of police when speaking to C.W., nor was there any evidence that he knew that C.W. was in the presence of police. Second, the State notes that unlike Mr. Weitzel, Lopez was not silent during the recorded phone call. For these reasons, the State argues that *Weitzel* does not apply here. We disagree and hold that the sting call was irrelevant, and therefore inadmissible.

While the facts here are distinguishable from *Weitzel* in that Lopez was not technically silent during the phone call and he was not in the presence of police, the Court's reasoning in *Weitzel* applies with equal force to these facts. The statements that Lopez made in response to C.W.'s allegations on the phone call were, in general, invocations of silence. For example, after C.W. accused him of having sex with her and giving her an STD, Lopez simply responded, "OK." He later explained that he was "just going to say OK, OK, OK, OK" because he did not want to say anything else. Then, for the rest of the call, Lopez repeatedly told C.W. that he had nothing to say to her, and that they would "take care of everything in Court." As with Mr. Weitzel's silence, Lopez's general invocations of silence were "too ambiguous to be probative" and thus posed a "substantial risk" that jurors would "assign much more weight to [them] than [wa]s warranted." *Weitzel*, 384 Md. at 456, 460 (citation omitted).

Additionally, although Lopez was not in the presence of police during the phone call, he was under similar pressures to remain silent. At the time of the sting call, Lopez

was prohibited from speaking with C.W. under an outstanding protective order. Lopez even acknowledged as much during the call when he said, "remember that your mom got an order of, of protection that I can't, I can't speak with you." Furthermore, Lopez was clearly aware of the consequences of violating that protective order, stating, "I can't speak with you, and I am going to hang up right now, otherwise they're going to put me in jail."

By allowing the call to be heard by the jury, the circuit court "invite[d] the jury to speculate" that Lopez's invocations of silence were "indicative" of a guilty conscience. *Akers*, 490 Md. at 28 (quoting *Snyder*, 361 Md. at 596). There may have been "many reasons why [Lopez chose to] remain silent before arrest," such as his desire to avoid violating an outstanding protective order and the "natural caution that arises from his knowledge that anything he says might be later used against him at trial." *Weitzel*, 384 Md. at 460-61. Therefore, Lopez's invocations of silence during the recorded phone call were "too speculative, ambiguous, and equivocal" to be probative of guilt. *Akers*, 490 Md. at 50.

III. The Circuit Court Erred in Allowing the Prosecutor to ask a "Were they Lying" Question on Cross-Examination of Lopez

Lopez contends that the circuit court erred when it allowed the prosecutor to ask him three "were they lying" questions on cross-examination. The State does not contend that the three questions were proper on the merits. Rather, the State points out that defense objections were sustained on two of the questions, and as for the one "were they lying" question to which the court did not sustain an objection, the State argues that any error was harmless beyond a reasonable doubt.

Generally, 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). That is because "[i]n a criminal case tried before a jury, a fundamental principle is that the credibility of a witness and the weight to be accorded the witness' testimony are solely within the province of the jury." *Id.* In *Hunter v. State*, 397 Md. 580 (2007), where the petitioner was asked five "were-they-lying" questions by the prosecutor, the Supreme Court of Maryland held that "[t]hese questions were impermissible as a matter of law because they encroached on the province of the jury by asking petitioner to judge the credibility of the [witnesses] and weigh their testimony[.]" *Hunter*, 397 Md. at 595.

Here, as the State now concedes on appeal, the prosecutor's "were they lying" questions posed to Lopez on cross-examination were improper. The circuit court correctly sustained objections to two of those questions, but overruled defense counsel's objection to one of them. By allowing the prosecutor to ask Lopez a "were they lying" question about another witness, the circuit court erred.

The State argues that the circuit court's error was harmless beyond a reasonable doubt. However, since we reverse on the first and second questions, we need not reach the question of harmless error here.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS REVERSED. CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS ARE TO BE PAID BY APPELLEE.