Circuit Court for Harford County
Case No. 12K-16-153

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 671

September Term, 2017

DEONTE STEPHEN COPENHAVER

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: September 28, 2018

After a jury trial in the Circuit Court for Harford County, Deonte Copenhaver, appellant, was found guilty of attempted first-degree murder, attempted second-degree murder, conspiracy to commit first-degree murder, and use of a handgun in the commission of a felony. He was sentenced to 60 years, with all but 25 years suspended, for attempted first-degree murder, a consecutive term of life, with all but 20 years suspended, for conspiracy to commit first-degree murder, and a consecutive term of 20 years, with all but 10 years suspended, the first 5 years to be served without the possibility of parole, for use of a handgun in the commission of a felony. The remaining convictions merged for sentencing purposes. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following three questions for our consideration:

> I. Did the circuit court err in failing to respond accurately to a jury note which asked, "Does the verdict need to be first or second degree attempted murder, or does it have to be both first and second degree?"
>
> II. Did the circuit court err in admitting evidence concerning a handgun and an air pistol which had no apparent connection to Mr. Copenhaver or the incident at issue?
>
> III. Did the circuit court err in failing to declare a mistrial after it *sua sponte* referred to a prosecution witness as a "[r]eluctant witness"?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

Between 9:30 or 10 p.m. on the night of December 30, 2015, Alicia McCoy was in the bedroom of her home located at 967 Topview Drive in Edgewood. She heard banging on her front door and her neighbor's door. She looked out a window, saw her neighbors

looking out their front door, and later, saw "a bunch of people running out in the street." Ms. McCoy heard 7 to 12 gunshots and saw one person fall in the middle of the street. The others ran away. The police arrived about two minutes later.

Harford County Sheriff's Deputy Paul Markowski responded to Topview Drive in response to a report of shots fired. When he arrived, he saw a man, later identified as Tashawn Kearney, stumbling in the yard of 973 Topview Drive. A woman, later identified as Kearney's sister, Nikia McKinnon, was standing behind Mr. Kearney. Mr. Kearney told Deputy Markowski that he had been shot and that Soulja and Reckless[1] were the shooters. An ambulance arrived and transported Mr. Kearney to a hospital.

Nikia McKinnon showed Deputy Markowski a Facebook account and stated that an individual pictured therein was one of the shooting suspects. Deputy Markowski observed several bullet holes in the residence at 973 Topview Drive, a shattered front door, and blood on the stairs. He also observed several items in the street including one damaged .45 caliber bullet, and seven .45 caliber Federal brand shell casings.

Approximately 49 feet from those items, other officers recovered six .25 caliber Remington Peter brand shell casings. In addition, a .25 caliber bullet was recovered from Mr. Kearney's clothing at the hospital and bullet holes were observed in his shirt, jacket, and pants.

[1] The name Reckless is spelled various ways throughout the record but, for consistency, we shall use this spelling.

Corporal Brad Ghaner of the Harford County Sheriff's Office, who testified as an expert in firearms operability, projection, and casing ejection, opined that the two clusters of casings suggested that two different firearms were used during the shooting.

At trial, Mr. Kearney testified that on the date of the shooting he lived at 973 Topview Drive with his mother, Sharon McKinnon, and his sister, Nikia McKinnon. He stated that Scaife (a/k/a Soulja), was his cousin and appellant (a/k/a Reckless), was "like my brother." Mr. Kearney did not recall what he was doing at 9 p.m. on the night of the shooting, but also testified that "[a] group of white people who looked like the Ku Klux Klan" approached him, he "got [his] ass whipped," and was shot "like three" times in his "ass" and side. Mr. Kearney stated that he was legally blind and did not see any guns. He could not recall who was at his house that night because he was an addict and was "high."

At trial, Mr. Kearney testified that he did not remember any officers visiting him in the hospital and did not recall telling anyone who shot him. According to Mr. Kearney, Soulja was a Caucasian male named Brandon Johnson who lived in a trailer park. Mr. Kearney denied ever identifying appellant as being involved in the shooting. He also said that appellant was like a brother and that he was not known as Reckless. Mr. Kearney explained that the allegations against appellant were all a miscommunication and that they were "kind of messing up, like, family/friendships."

Mr. Kearney's sister, Nikia, testified that in December 2015 she lived at 973 Topview Drive with her mother, daughter, and Mr. Kearney. On the day of the shooting, she and Mr. Kearney were at her aunt's home doing laundry. Between 9 and 10 p.m., she walked back home, and Mr. Kearney walked some distance behind her. When Ms.

McKinnon got home, she went inside the house. At some point, she heard gunshots outside. She went upstairs to her bedroom and called 911. Shortly thereafter, Mr. Kearney entered the house and said he was hurt. Ms. McKinnon was "pretty sure" he had been shot. Mr. Kearney then went back outside because the police were there.

Ms. McKinnon acknowledged that Mr. Kearney was friends with Soulja and Soulja's girlfriend and that Soulja's real name was Ronald Scaife.

Detective Robert Horner of the Harford County Sheriff's Office interviewed Mr. Kearney at Johns Hopkins Bayview Hospital just past 10 p.m. on the night of the shooting. The interview was recorded, but because of Mr. Kearney's bullet wounds and the fact that he was wearing an oxygen mask, it was difficult to understand what he said. The following morning, December 31, 2015, Detective Horner returned to the hospital to conduct another interview of Mr. Kearney. Mr. Kearney stated the following. He identified the two people who shot him as Soulja and Reckless. Mr. Kearney said he hung out with Reckless and knew Soulja "very well" and would be able to recognize them even if they tried to disguise themselves. In a photographic array, Mr. Kearney identified Ronald Scaife as Soulja and appellant as Reckless. Mr. Kearney stated that although Soulja shot at him, the gun merely clicked and did not fire. Mr. Kearney stated that Soulja wore dark clothing and appellant wore a red shirt. After being shot, Mr. Kearney went into his home at 973 Topview Drive, went upstairs, wrapped up his wounds, and then went back outside and knocked on neighbors' doors until the police arrived. Over objection, Mr. Kearney's December 31, 2015 recorded statement to investigators was played for the jury.

Mr. Kearney testified that he gave another statement on January 21, 2016 in which he identified Reckless as "Deonte." At trial, he did not "recall saying that." In the same statement, Mr. Kearney said that some of the people in the group that approached him wore ski masks, but Scaife did not wear a ski mask and Reckless's face was visible. Reckless wore a red shirt. The statement was admitted into evidence.

On January 4, 2016, Harford County Sheriff's Deputy Brian Henfey responded to an apartment building at 135 Hanover Street in Aberdeen because he had information that Scaife, appellant, and another individual, Byron Craig, might be hiding in apartment B. Deputy Henfey, Deputy Roland Gittings, and two other sheriff's deputies sat in an unmarked car watching the main entrance to the apartment building. At one point, Deputy Henfey approached the apartment building, looked through some window blinds into the subject apartment, and saw people watching television. Several hours later, he again looked in the window and observed a black man with dreadlocks and a white shirt and another man wearing a dark shirt. One of the men held a very small caliber gun, loaded a magazine, and pointed the gun around. The other man also had a small caliber weapon and the men passed the guns back and forth. According to Deputy Henfey, one gun was black and the other was silver.

Deputy Henfey reported back to the undercover vehicle and told the other deputies what he had observed. At that point, all of the sheriff's deputies exited the vehicle and surrounded the apartment building. Deputy Henfey saw two men exit the apartment building. The shorter man wore a red jacket and the taller man wore a dark jacket. Deputy Henfey, who was about 40 feet behind the men, believed they were the same two men he

had observed in the apartment. Deputy Henfey pointed and indicated to Deputy Gittings that the men exiting the building were the subjects. At that point, the man wearing the red jacket turned around, tapped the other man, and both began to run.

Deputies Henfey and Gittings chased the two men. When they got to an open area in a parking lot, the two men split up. Deputy Henfey followed the man wearing the red jacket. As the chase continued, Deputy Henfey saw the man he was chasing discard something and heard a "loud thud" that sounded like metal hitting the roof of the apartment rental office. Deputy Henfey was unable to catch the man wearing the red jacket. He returned to the place where he had heard the loud thud and recovered a small silver handgun from the roof of the rental office. The gun was a loaded .25 caliber Raven Arms model handgun.

Deputy Gittings testified at trial that he was familiar with Scaife and appellant from prior occasions and that they were the men observed in the apartment at 135 Hanover Street in Aberdeen. He identified appellant as wearing a red sweatshirt and Scaife as the man dressed in black.

The gun recovered by Deputy Henfey was processed for fingerprints, but none were obtained. DNA testing revealed a partial DNA profile for one or more individuals including at least one male, but the testing could neither include nor exclude appellant as a contributor of that DNA. A firearms examiner testified that the gun was functional and that six casings found at the scene of the shooting had been fired from it.

On January 7, 2016, a warrant was executed by sheriff's deputies at a residence located at 5919 Belair Road in Baltimore City. Scaife was arrested at that location.

Deputies recovered an ID for Bruce Anthony Fowlkes, Jr., an Airsoft pistol, and a cell phone.

On March 24, 2016, a warrant was executed at 233 Razor Strap Road in Cecil County. Appellant and his girlfriend were there, and appellant was arrested. Deputies recovered a .32 caliber American Bulldog revolver. No fingerprints were found on the gun. DNA swabs were taken from the gun, but were not submitted for analysis because the sheriff's office did not have a lab and Maryland State Police required DNA swabs from "everybody that could have had access to that gun" and because no .32 caliber bullets were recovered from the scene of the shooting.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Appellant contends that the trial court erred in failing to respond accurately to a question from the jury. During deliberations, the jury sent a note asking, "[d]oes the verdict need to be first or second degree assault, or does it have to be both first and second?" The court responded, "[t]here is only one count of assault, first degree assault."

Shortly thereafter, the jury asked, "[d]oes the verdict need to be first or second degree attempted murder, or does it have to be both first and second degree? Previous question worded incorrectly." Initially, the judge suggested that it refer the jurors to the Allen charge at the end of the written jury instructions. Defense counsel objected on the ground that the jury did not indicate it was unable to reach a verdict and stated:

It's the defense position that if you find Mr. Copenhaver not guilty on Count I, being attempted first degree murder, then you should consider second degree murder.

I think their question is should they consider both of those, but if it's guilty on first degree murder, then they don't proceed to second degree murder. If it's not guilty on first degree murder, then they should proceed to attempted second degree murder.

The following colloquy then occurred:

THE COURT: The jury instructions don't say that though, and this question isn't about – this question asks the Court to help them decide what the verdict should be, either one or two or to both. I don't think that the Court can tell them what the verdict ought to be to any of the questions. That's within the jury's province.

So the only other thing that I – the only other thing I could suggest is: You must answer each question to the best of your ability; and then the second paragraph of the Conclusion: The verdict must represent the considered judgment of each juror. In order to reach a verdict, all 12 of you must agree. Your verdict must be unanimous.

[DEFENSE COUNSEL]: So that's fine to refer them to the end part you made reference to, and then I would just object for the record. I am thinking that it should be one or the other, not both.

THE COURT: I am not going to presume what the answer is to be either.

[DEFENSE COUNSEL]: Right.

THE COURT: Whether it's guilty or not guilty. I think that if the verdict appears to be inconsistent, that we address that if it comes back with an inconsistent verdict rather than presuming what the verdict may be as to either question.

[PROSECUTOR]: That's fine with the State, Your Honor.

THE COURT: At this point, I would just tell the jury: You must answer each question to the best of your ability, and refer them to that second paragraph.

[DEFENSE COUNSEL]: I'd just note the objection, Your Honor.

THE COURT: So noted.

The court instructed the jury consistent with its proposed instruction. The jury later convicted appellant of both first and second-degree attempted murder.

A.

The decision whether to give a supplemental jury instruction in response to a question from a jury after its deliberations have commenced is within the discretion of the trial judge. *Sidbury v. State*, 414 Md. 180, 186 (2010); *Holmes v. State*, 209 Md. App. 427, 449 (2013). We shall not disturb a trial court's discretionary decision "'except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Jarrett v. State*, 220 Md. App. 571, 584 (2014)(quoting *Bazzle v. State*, 426 Md. 541, 549 (2012)).

B.

Appellant argues that the trial court's response failed to answer the jury's question involving an issue central to the case in a way that clarified the confusion evidenced by the query. At trial, appellant maintained that the trial judge should have instructed the jury that "[i]f it's not guilty on [attempted] first degree murder, then they would proceed to attempted second degree murder." On appeal, he argues that the trial judge should have instructed the jury that it need not convict as to either or both counts, but could

> acquit – or convict – as to both, or could give a disjunctive verdict (as suggested by the question) by convicting Mr. Copenhaver of attempted second degree murder, and acquitting him of attempted first degree murder. Further, the jury could return a verdict as to the lesser charge, but find itself at an impasse – and fail to return a verdict – as to the greater offense.

Preliminarily, the State argues that appellant's issue on appeal goes beyond the argument raised in the trial court and, as a result, is not preserved. We disagree. Certainly, with respect to jury instructions, including supplemental instructions, Maryland Rule 4-325(e) requires a party to "object on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Our review of the record convinces us that appellant's objection at trial was sufficient to place the matter before the trial court which considered the issue and addressed it through the supplemental instruction that was given to the jury. *See generally,* Md. Rule 8-131(a)(Ordinarily we will not consider an issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]"); *Robinson v. State*, 410 Md. 91, 103 (2009)("Fairness and the orderly administration of justice is advanced by requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings.")(quotation marks and citations omitted).

The record reflects that the court interpreted the jurors' note as a request for help in deciding "what the verdict should be, either one or two or both." The judge specifically stated that if the verdict appeared to be inconsistent, it would address that at the proper time "rather than presuming what the verdict may be as to either question." The court then instructed the jury that it "must answer each question to the best of your ability" and that the "verdict must represent the considered judgment of each juror. In order to reach a verdict, all 12 of you must agree. Your verdict must be unanimous."

The trial court did not abuse its discretion in responding to the jury's note as it did. There was no need for the judge to inform the jurors again that it could acquit of one or both of the attempted murder charges because that had been made clear in the original jury instructions and by the court's review of the verdict sheet. The court instructed the jury that if it was not convinced of the defendant's guilt beyond a reasonable doubt, "then reasonable doubt exists, and the defendant must be found not guilty." In addition, with respect to all of the charges except the use of a handgun charge, the court specifically instructed the jury that it "must consider each charge separately and return a separate verdict for each charge." The court made clear that the jury could either acquit or convict as to each count. This was further clarified when the court instructed the jury not to consider the use of a handgun charge until after it had reached a verdict on the other charges. The court explained:

> Only if your verdict on any one of those charges is "guilty" should you consider whether the defendant is guilty or not guilty of the use of a handgun in the commission of a felony. If, however, your verdict on all of those charges is "not guilty," you must find the defendant "not guilty" of use of a handgun in the commission of a felony.

With this instruction, the court made clear that the jury did not have to return an "all or nothing" verdict, but rather was to consider each charge separately and return a separate verdict for each. Viewing the trial court's response to the jury's note in the context of all of the instructions, we find no abuse of discretion in the court's decision to respond to the jury's note as it did.

II.

Appellant next contends that the trial court erred in admitting evidence that a .32 caliber revolver was found in the apartment where he was arrested and evidence that an Airsoft pistol was found in the residence where Scaife was arrested. He argues that there was no evidence that a .32 caliber weapon was used in the shooting, there was no evidence connecting him to that weapon, and there was no evidence that he used a revolver at any time. According to appellant, even if the evidence was relevant and even if it had some "minimal probity," its value was outweighed by the substantial risk of unfair prejudice. Similarly, appellant asserts that the Airsoft pistol found in the residence where Scaife was arrested had no connection to him or the offense at issue, lacked probative value, and was prejudicial.

A.

"Determinations regarding the admissibility of evidence generally are left to the sound discretion of the trial court." *Easter v. State*, 223 Md. App. 65, 74, *cert. denied*, 445 Md. 488 (2015)(citing *Hajireen v. State*, 203 Md. App. 537, 552, *cert. denied*, 429 Md. 306 (2012)). A ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. *King v. State*, 407 Md. 682, 697 (2009)(quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

Although the abuse of discretion standard is applicable to the trial court's determination of relevancy, Maryland Rule 5-402 makes clear that a trial court does not have discretion to admit irrelevant evidence. *See also Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 620 (2011)(trial court does not have discretion to admit irrelevant evidence). As a result, a trial court's evidentiary ruling encompasses both a legal and a discretionary determination, which in turn implicates two separate standards of review: (1) a *de novo* standard, which we apply to the trial court's legal conclusion that the evidence was relevant; and (2) an abuse of discretion standard, which we apply to the trial court's determination that the probative value of the evidence is outweighed by any substantial prejudice. *State v. Simms*, 420 Md. 705, 725 (2011).

Evidence is relevant if it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "Evidence is material if it bears on a fact of consequence to an issue in the case." *Smith v. State*, 218 Md. App. 689, 704 (2014). "Probative value relates to the strength of the connection between the evidence and the issue . . . to establish the proposition that it is offered to prove." *Id.* (citations and quotations omitted). Generally, evidence that is relevant is admissible; evidence that is not relevant is not admissible. *See* Md. Rule 5-402.

Even if legally relevant, evidence may be excluded "if the probative value of such evidence is determined to be substantially outweighed by the danger of unfair prejudice." *Andrews v. State*, 372 Md. 1, 19 (2002). "We determine whether a particular piece of evidence is unfairly prejudicial by balancing the inflammatory character of the evidence

against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith*, 218 Md. App. at 705. "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003)(citing *Martin v. State*, 364 Md. 692, 705 (2001)).

B.

The State asserts that this issue is not properly before us because evidence of both the .32 caliber revolver found at the address where appellant was arrested and the Airsoft pistol found in Scaife's residence was admitted without objection. We agree and explain.

With respect to evidence pertaining to the .32 caliber revolver found at the residence where appellant was arrested, the defense did not object to the testimony of Detective Kenneth Smith who testified that he collected from a shelf in the master bedroom of 233 Razor Strap Road a .32 caliber American Bull Dog 5-shot revolver bearing serial number 9156, that the gun had five live rounds in the cylinder, that there was "ammo that was in the gun," that the gun was loaded, and that he processed the gun for latent fingerprints. Although defense counsel objected to the admission of photographs of that weapon that were taken by the detective, there was no objection to Detective Smith's testimony about the revolver. Because the essential content of the challenged evidence was presented to the jury without objection, reversal is not warranted.

Similarly, with respect to the Airsoft pistol, Detective Michael Pachkoski of the Harford County Sheriff's Office testified, without objection, that police recovered "an ID, an Airsoft pistol, and another cell phone" at 5919 Belair Road. Detective Pachkoski described an Airsoft pistol as "a plastic handgun that shoots Airsoft pellets, and it has an

orange tip that's on the front of it. Oftentimes they are taken and the tips are removed or spray painted to make it look like a real handgun." Again, because the essential content of the challenged evidence was presented to the jury without objection, reversal is not warranted.

III.

Appellant's final contention is that the trial court erred in failing to grant his motion for mistrial after the court referred to Nikia McKinnon as a "reluctant witness." During the direct examination of Ms. McKinnon, defense counsel objected to a question on the ground that it was leading. The trial judge responded, "[o]verruled. Reluctant witness[,]" and defense counsel again lodged an objection. Questioning continued for ten pages in the transcript, and defense counsel lodged objections to more than ten different questions, before the following occurred at a bench conference:

> [DEFENSE COUNSEL]: I would put on the record, I would ask for a mistrial in that the State identified the Court, which has much more authority than anything the lawyers might say, identified this witness as a "reluctant witness" in front of the jury. It is highly prejudicial to Mr. Copenhaver, and I would ask for a mistrial based on that.

The court denied the request for a mistrial, stating:

> I am going to deny the motion for mistrial. I don't find there to be manifest necessity in this case, and all those factors, demeanor of the witness in this case, hardly answering the questions in an audible tone of voice, and indicating that she doesn't remember to a number of the questions that are being asked, and certainly given the information about her ability to appear for testimony today and her ability to answer the questions in a forthright manner, I think characterizing her as a reluctant witness is appropriate and an obvious description of her behavior.

Appellant argues that by labeling Ms. McKinnon a reluctant witness, the trial judge assessed the witness's demeanor and, thereby, "abdicated her neutral role at trial, and usurped one of the critical functions of the jury." According to appellant, this "created prejudice so grave that only the declaration of a mistrial could salve its impact." We disagree.

A.

A mistrial is "an extreme sanction that courts generally resort to only when no other remedy will suffice to cure the prejudice." *Rutherford v. State*, 160 Md. App. 311, 323 (2004)(internal quotations and citations omitted). Whether a mistrial is necessary depends on "whether the defendant was so prejudiced by the improper reference that he was deprived of a fair trial." *Parker v. State*, 189 Md. App. 474, 494 (2009). The Court of Appeals has identified five factors that are relevant to the determination of "whether the evidence was so prejudicial that it denied the defendant a fair trial," thus necessitating a mistrial. *Rainville v. State*, 328 Md. 398, 408 (1992)(quoting *Kosmos v. State*, 316 Md. 587, 594 (1989). Those factors are as follows:

> "[W]hether the reference to [the inadmissible evidence] was repeated or whether it was a single isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]"

Rainville, 328 Md. at 408 (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)). These factors are not exclusive and do not comprise the test; they are "simply helpful in the resolution of the question. *Kosmos v. State*, 316 Md. 587, 594-95 (1989).

B.

In the instant case, we are not persuaded that the trial court's refusal to declare a mistrial constituted an abuse of discretion. The judge's statement was a single isolated event and Ms. McKinnon was not the principal witness upon which the prosecution relied. Defense counsel did not request a curative instruction at the time of the judge's statement, but at the conclusion of the evidence, the court instructed the jury as follows:

> During the trial, I may have commented on the evidence or asked a question of a witness. You should not draw any inferences or conclusions from my comments or questions either as to the merits of the case or as to my views regarding the witness.

Moreover, the judge's statement was made in response to defense counsel's objection on the ground that a question was leading. It is well established that leading questions are permissible on direct examination when a witness is hostile or reluctant. Maryland Rule 5-611(c) specifically addresses leading questions, stating that "[o]rdinarily, leading questions should be allowed . . . (2) on the direct examination of a hostile witness, ..." *See generally* Lynn McLain, *Maryland Evidence, State and Federal*, § 611:3 (June 2018 update)("leading the witness on a material point is a tool to be used by the party with whom the witness is expected to be less cooperative"); Kenneth S. Broun and Robert P. Mosteller, *McCormick on Evidence*, § 6 (7th ed., 2016 update)(if witness on direct "is legally identified with the opponent, appears hostile to the examiner, or is reluctant or uncooperative, the danger of suggestion disappears. In these circumstances, the judge will permit leading questions."); Barbara E. Bergman & Nancy Hollander, *Wharton's Criminal Evidence*, § 8:15 (15th ed. 1998)(Leading questions on direct examination are permissible

"when the witness is hesitant, evasive, reluctant, adverse, or hostile."). The permissibility of leading questions is within the sound discretion of the trial judge and shall not be overturned on appeal unless there has been such an abuse of discretion as to prejudice the defendant's right to a fair trial. *Hubbard v. State*, 2 Md. App. 364 (1967), *cert. denied*, 393 U.S. 889 (1968).

The record before us makes clear that Ms. McKinnon was a hesitant, evasive, and reluctant witness and the judge's statement was factually correct. Contrary to appellant's assertion, the judge's observation was not a declaration on Ms. McKinnon's credibility because, as the State points out, a reluctant witness might be either credible or not credible. For all these reasons, we find no abuse of discretion in the trial court's denial of appellant's motion for mistrial.

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