UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0832

September Term, 2014

EMANUEL FOWLKES

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Hotten, J.

Filed: August 21, 2015

Appellant, Emanuel Fowlkes was convicted, by a jury sitting in the Circuit Court for Baltimore City, of voluntary manslaughter and wearing or carrying a dangerous weapon with intent to injure. The court imposed consecutive sentences of ten years' imprisonment, for the manslaughter conviction, and three years' imprisonment, for the wearing or carrying a dangerous weapon with intent to injure conviction. This appeal followed.

Appellant presents the following questions for our review:

I. Did the trial court err in refusing to instruct the jury on self-defense?

II. Did the trial court err in refusing to allow [a]ppellant to testify about stories he had heard about the victim's frightening behavior?

For the reasons which follow, we shall affirm the judgments of the trial court.

FACTUAL AND PROCEDURAL HISTORY

Although the various witnesses did not know the identities of all the parties involved, the identities of the principals are not in dispute and so we have inserted them for clarity.

On the evening of June 2, 2012, Robin Jordan ("Ms. Jordan"), was in her home, on Lafayette Street, when she heard a commotion outside. Ms. Jordan heard her daughter, who was already looking out of a window, say that a man was being stabbed.[1] When Ms. Jordan got to the window, she observed a man in a yellow shirt, later identified as appellant, holding a knife and sitting on the back of another man, later identified as Antonio Mattison ("Mr. Mattison"), who was being kicked in the face by a woman, later identified as Tameka

[1] At trial, on direct examination, Ms. Jordan testified that her daughter said "he's stabbing him." On cross-examination, she acknowledged that when she was interviewed by police, she had stated her daughter said "she's stabbing him."

Clark ("Ms. Clark"). At some point, Ms. Jordan saw a white car pull up to the scene; a woman, later identified as Gloria Glover ("Ms. Glover"), exited the vehicle. Ms. Jordan heard appellant tell Ms. Glover "[g]o in the house and get my son. Ma, go in the house and get my son because I am going to kill this motherfucker tonight." Ms. Jordan then observed Ms. Glover kick Mr. Mattison in the face, go into a house, come out with a child, and get back into the white car which then "rolled down the street." Thereafter, Ms. Jordan watched as appellant pulled back Mr. Mattison's chin while Ms. Clark jumped on his back and continued kicking him in the face. Next, Ms. Jordan saw appellant banging Mr. Mattison's head on the ground. Ms. Jordan then called 9-1-1 to report the events transpiring outside of her home. Moments later, a police officer arrived at the scene. Ms. Jordan had observed appellant toss the knife he had been holding into the street just before the officer arrived. During the entire time Ms. Jordan observed the incident, approximately five minutes, she did not see Mr. Mattison take any action.

When Officer Jean Sonatas ("Officer Sonatas"), of the Baltimore City Police Department, arrived at the scene, 1228 East Lafayette Street, he observed appellant, clad in a yellow shirt, and Ms. Clark assaulting Mr. Mattison, who was lying face-down on the ground. Specifically, appellant was straddling Mr. Mattison and punching him in the back of the head while Ms. Clark was, at the same time, kicking him in the head. Officer Sonatas then exited his patrol vehicle, ordered appellant and Ms. Clark to "stop," and attempted to render aid to Mr. Mattison. After finding that Mr. Mattison was unresponsive and struggling to breathe, Officer Sonatas immediately called for "any available units and medical assistance." Moments later, after medical assistance and other units arrived, and

the crime scene was being secured, Officer Sonatas noticed a knife on the ground that was surrounded by blood. The knife had the word "MTech" inscribed on it. The paramedics who arrived on the scene found that Mr. Mattison had no pulse, was not breathing, and had "three large stab wounds to the . . . left leg[.]" Both appellant and Ms. Clark also received medical treatment. Appellant had an injury to his right leg and a bite wound on his left arm. Ms. Clark was observed to have "surface injuries" to both of her arms and her right hand.

Subsequently, a search warrant for appellant's dwelling, a second-floor room at 1228 East Lafayette Street, was executed. Inside appellant's room, a "black sheath to an MTech knife" was found and collected as evidence.

Mr. Mattison, ultimately, succumbed to his injuries and his autopsy revealed that the cause of his death was the combined effect of: a total of four cutting wounds to the head, left thumb, left wrist, and right thigh, a total of nine stab wounds to the right arm, the back, and the left leg, and blunt force injuries to the head, neck, torso, and both upper and lower extremities. Specifically, Mr. Mattison's neck was broken. The manner of Mr. Mattison's death was ruled to be homicide. Moreover, the knife which was recovered as evidence was found to be consistent with having caused Mr. Mattison's stab wounds. Mr. Mattison's autopsy also showed that he had a blood-alcohol level of 0.07%.

At trial, Ceasar Neville ("Mr. Neville"), testified that he was the landlord of the property at 1228 East Lafayette Street where both appellant and Mr. Mattison rented rooms. He asserted that about a week before the subject incident, he had decided to begin the process of evicting Mr. Mattison, due to some complaints by other tenants, and had given

Mr. Mattison an eviction notice. Mr. Neville noted that he had also, personally, been concerned about Mr. Mattison due to an incident where he had seen Mr. Mattison walking up the street "talking to himself . . . cursing himself out[.]" Mr. Neville stated that he did not have a problem with Mr. Mattison when he first moved in, but that about two weeks before the subject incident, Mr. Mattison began to act strangely.

Gloria Glover, mother of appellant and Ms. Clark, testified that, on the night in question, she received calls from both appellant and Ms. Clark. She noted that when Ms. Clark called, she asked Ms. Glover to come pick up Marcus, appellant's son, but did not explain the reason for her request. Ms. Glover stated that when she arrived outside of appellant's residence, she heard him "hollering out, '[c]all the police.'" She asserted that she went right into appellant's residence and did not approach him. She recalled that appellant was "engaged" with Mr. Mattison and looked "afraid." She testified that she did not see appellant strike Mr. Mattison or express an intent to kill him. Ms. Glover asserted that she then retrieved her grandson from appellant's residence, put the child in her vehicle, and sat in her car for three hours until after all of the police who responded had left. She admitted that although she did speak with a detective at the scene, she did not state that she had seen any of the subject incident. She also admitted that when she was subsequently interviewed by Detective Eric Ragland ("Det. Ragland"), she did not tell him that she had received a call from appellant on the night in question. She also admitted that she failed to tell the detective that appellant had shouted "call the police" when she arrived on the scene, despite the fact that the detective had asked her if appellant had said anything to her at that time.

Tameka Clark, appellant's half-sister,[2] testified that on the evening in question, she encountered Mr. Mattison in the house where he and appellant rented rooms. She stated that she saw Mr. Mattison as she was walking toward the shared bathroom in the house and that he looked angry. She asserted that after she used the bathroom, she knocked on the door to Mr. Mattison's room and said "the bathroom is free[,] I'm done." She testified that Mr. Mattison responded by saying "[b]itch get away from my door[,]" and that she then walked back to appellant's room. She claimed that, thereafter, she could hear Mr. Mattison loudly say "I'll F him up" and "I wish he would try" and other statements laced with profanity. Ms. Clark stated that, at some point, she believed Mr. Mattison was referring to her in his profane statements and she asked "[w]ho the F are you talking to?" An argument between the two then ensued. Ms. Clark asserted that, subsequently, Mr. Mattison exited the house and left the door open and that she, later, went downstairs and closed the door, but did not lock it. She testified that, later, Mr. Mattison confronted her again and then went back outside of the building and said "[b]itch, get out here." Ms. Clark noted that she then went to the front steps of the building and told Mr. Mattison he was "too old to be acting like this[,]" at which point, Mr. Mattison ran up the steps and punched appellant, who had come down from his room, unbeknownst to Ms. Clark. She recalled that she then fell off the steps and saw that Mr. Mattison and appellant were "tussling." Ms. Clark asserted that when she went to pull Mr. Mattison off of appellant, she fell to the ground again and Mr. Mattison then ended up straddling her with his hand in the air as though he

[2] Although appellant and Ms. Clark share the same mother, they have different fathers.

were about to strike her. She claimed that she then heard appellant say "[g]et off my sister" and the next thing she knew, Mr. Mattison was no longer over top of her. Ms. Clark testified that she then got up and tried to subdue Mr. Mattison as he was fighting with appellant. She claimed that she kicked Mr. Mattison in the head several times and then Ms. Glover arrived and Ms. Clark told her to take appellant's son from the house.

On cross-examination, Ms. Clark admitted that, in her own case related to the charges stemming from the subject incident, she had pled guilty to second-degree murder. Ms. Clark acknowledged that a portion of the facts read into the record when she pled guilty indicated that "while [she] was kicking Mr. Mattison in the head, [appellant] was kneeling over top of Mr. Mattison repeatedly punching him in the head." She clarified that the reason she had called and asked Ms. Glover to come get appellant's son was because she did not feel the situation was safe. Ms. Clark also claimed that Mr. Mattison was never incapacitated during the incident and that even when he was on the ground he was "fighting" by waving his arms and kicking his legs.

Testifying on his own behalf, appellant described several situations, prior to the incident in question, when he had encountered Mr. Mattison engaging in behavior that was "not normal":

> [APPELLANT]: . . . the first time I noticed something wasn't right, I went downstairs and Mr. Mattison was in the dining room and he was staring out of a window and I asked him what he was staring at and he turned around and looked at me with a weird look and he just walked off and went upstairs.
>
> * * *

One day I came home, it was the daytime. It was the coldest part of winter and he was outside on the front steps drinking a . . . beer with no shirt on. I've also noticed him mumbling and talking to himself. . . .

Every time when I came in the house, I would have to go past the first bedroom to get through the hallway to my bedroom. As I came up the steps and I rounded into the hallway I heard, "[f]uck you bitch." But the thing about that is . . . the rooms in this house are very thin.

* * *

When I would come home at night . . . all of the . . . lights on the second floor would be off. Now, this is by the time where there had been enough incidents and through conversations . . . that I was . . . for lack of a better word . . . aware of the erraticness of [Mr. Mattison's] behavior . . .

* * *

So with me living in a house with a person who clearly has some sort of mental illness or mental condition, I started to be aware. But there is one particular incident that I did forget to mention which is the actual incident which . . . really made me want to pay attention to my surroundings when I [came] in the house.

I was coming in the house with a female friend, and as I started up the stairway I got halfway up the stairway and Mr. Mattison comes out of his room and he has a brick in his hand and he says, "You have something you want to say to me?"

Now, this threw me off, because me and this man had never got into any kind of arguments or we never had . . . any kind of bad words exchanged between the two of us or anything like that.

* * *

. . . I just pretty much said, "No." I said, "No, I didn't have anything to say to you." I was so surprised by this[.]

* * *

. . . it didn't' develop into an argument. It just . . . the aggressiveness of his nature I just . . . said whatever came to mind to try to diffuse the situation.

Appellant also testified that, prior to the subject incident, he had called his sister and told her that if anything were to happen to him, he wanted her to take care of his son. He noted that when his sister asked why he would say something like that, he told her about the "erraticness" of Mr. Mattison's behavior. Specifically, appellant testified that he had been worried about the "worse-case scenario" of "getting in a . . . confrontation and for some reason not surviving" because of Mr. Mattison's behavior.

Appellant asserted that on the evening in question, Mr. Mattison gave him and Ms. Clark a "weird look" and that Ms. Clark subsequently confronted Mr. Mattison. Appellant claimed that he implored Ms. Clark to leave Mr. Mattison alone. He recalled that, thereafter, Mr. Mattison went outside and stood looking up at the window to appellant's room. He stated that Ms. Clark then shouted down at Mr. Mattison "I see you bitch." Appellant testified that he then called Ms. Glover to come pick up his son because he was "afraid." He asserted that approximately fifteen minutes later, Mr. Mattison re-entered the house and got into an argument with Ms. Clark. He claimed that upon hearing the argument, he grabbed his knife, thinking that if he brandished the weapon it would "quell the situation." Appellant stated that he then went down to the front steps, clearly displaying his knife, to observe the argument between Ms. Clark and Mr. Mattison and was, subsequently, struck in the face by Mr. Mattison. Appellant noted that, thereafter, Mr. Mattison threw a cup of liquid in Ms. Clark's face and that he assumed, at worst, the liquid could have been bleach. Appellant claimed that he then positioned himself between Ms. Clark and Mr. Mattison, but that Ms. Clark rushed Mr. Mattison and the two began to "tussle" on the ground. He stated that when he saw Mr. Mattison mount Ms. Clark, he

believed she was in danger and so he stabbed Mr. Mattison in the leg "a few times" and then threw the knife away so that Mr. Mattison would not get it. He denied saying anything regarding an intention to kill Mr. Mattison. Appellant asserted that, subsequently, Ms. Clark re-engaged with Mr. Mattison and the two struggled over the knife. He claimed that during the struggle he saw Ms. Clark make a stabbing motion toward Mr. Mattison's back and that he then said "[n]o, Meka[,] [w]e're not trying to kill him" and grabbed the knife from Ms. Clark and threw it away again. Appellant testified that he then straddled Mr. Mattison and grabbed him "around the facial area" in an attempt to subdue him until the police arrived. He denied ever punching Mr. Mattison but said that he struck him with an open hand on the side of the head and did kick him "a few times." He also denied striking Mr. Mattison as Officer Sonatas approached. Appellant also claimed that Mr. Mattison was still struggling as Officer Sonatas arrived on the scene, that Officer Sonatas did not order him to get off of Mr. Mattison, and that he did so willingly. Appellant stated that he was treated at the scene, and later at the hospital, for breathing difficulties related to his asthma. He also asserted that Ms. Glover never kicked Mr. Mattison.

Subsequently at trial, appellant's counsel requested the jury instructions found at MPJI-Cr 4:17.2 and 5:07. The State objected to both instructions. After consideration, the trial judge declined to give the noted instructions and explained "I'm not satisfied that it's appropriate given the facts that have been presented in this case."

Ultimately, appellant was convicted of voluntary manslaughter and wearing or carrying a dangerous weapon with intent to injure.

Additional facts shall be provided, *infra*, to the extent they prove relevant addressing the issues presented.

DISCUSSION

I.

Appellant contends that the trial judge erred by refusing to give the self-defense jury instructions he requested, MPJI-Cr. 4:17.2 and 5:07. He asserts that the subject instructions were correct statements of the law, generated by the evidence, and were not fairly covered by the instructions which were given. Accordingly, he insists that the court's refusal to give the instructions in question was reversible error.

With respect to a trial court's instruction of the jury, Maryland Rule 4-325 provides, in pertinent part:

> **Rule 4-325. Instructions to the jury.**
>
> (a) **When given.** The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate. In its discretion the court may also give opening and interim instructions.
>
> * * *
>
> (c) **How given.** The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

We review a trial court's decision of whether or not to give a requested jury instruction under the abuse of discretion standard. *Jarrett v. State*, 220 Md. App. 571, 584 (2014) (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)). In the course of such review,

we consider the following factors: "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Id*. (quoting *Stabb*, 423 Md. at 465).

In the case at bar, neither party disputes that the requested pattern jury instructions were correct statements of law. Indeed, trial courts are encouraged to give pattern jury instructions when possible. *See Green v. State*, 127 Md. App. 758, 771 (1999) ("[W]e say for the benefit of trial judges generally that the wise course of action is to give instructions in the form, where applicable, of our Maryland Pattern Jury Instructions.").

With respect to whether the instructions at issue were applicable under the facts of the case, MPJI-Cr 4:17.2 provides, in relevant part:

> Self-defense is a complete defense, and [the jury] [is] required to find the defendant not guilty, if all of the following four factors are present:
>
> (1) the defendant was not the aggressor . . . ;
>
> (2) the defendant actually believed that [he] . . . was in immediate and imminent danger of death or serious bodily harm;
>
> (3) the defendant's belief was reasonable; and
>
> (4) the defendant used no more force than was reasonably necessary to defend [himself] . . . in light of the threatened or actual force. [[This limit on the defendant's use of deadly force requires the defendant to make a reasonable effort to retreat. The defendant does not have to retreat if [the defendant was in his or her home] [retreat was unsafe] [the avenue of retreat was unknown to the defendant] [the defendant was being robbed] [the defendant was lawfully arresting the victim]].

MPJI-Cr 5:07 is largely similar to MPJI-Cr 4:17.2 and provides, in pertinent part:

> Self-defense is a complete defense and [the jury] [is] required to find the defendant not guilty if all of the following four factors are present:
>
> (1) the defendant was not the aggressor [[or, although the defendant was the initial aggressor, [he] . . . did not raise the fight to the deadly force level]];
>
> (2) the defendant actually believed that [he] . . . was in immediate and imminent danger of bodily harm;
>
> (3) the defendant's belief was reasonable; and
>
> (4) the defendant used no more force than was reasonably necessary to defend [himself] . . . in light of the threatened or actual harm.
>
> [Deadly force is that amount of force reasonably calculated to cause death or serious bodily harm. If you find that the defendant used deadly-force, you must decide whether the use of deadly-force was reasonable. Deadly force is reasonable if the defendant actually had a reasonable belief that the aggressor's force posed an immediate and imminent threat of death or serious bodily harm.]
>
> [[In addition, before using deadly force, the defendant is required to make a reasonable effort to retreat. The defendant does not have to retreat if [the defendant was in [his] . . . home], [retreat was unsafe], [the avenue of retreat was unknown to the defendant], [the defendant was being robbed], [the defendant was lawfully arresting the victim]]. [If you find that the defendant did not use deadly-force, then the defendant had no duty to retreat.]

"A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012). "[A] defendant needs only to produce 'some evidence' that supports the requested instruction[.]" *Id*. at 551 (citation omitted). Moreover, "'[i]n evaluating whether competent evidence exists to generate the requested instruction, we view the evidence in the light most favorable to the accused.'" *Id*. (quoting *General v. State*, 367 Md. 475, 487 (2002)) (footnote omitted).

Here, first, appellant testified that Mr. Mattison initiated the physical altercation that took place, *i.e.*, Mr. Mattison was the aggressor. Second, appellant's testimony indicated

that he was generally fearful of Mr. Mattison, due to his strange behavior, and that he believed Mr. Mattison was a threat to his safety during the physical conflict that took place.

As to the third factor required for the complete defense of self-defense, we are not persuaded that it was reasonable for appellant to believe that he was in immediate and imminent danger of death or serious bodily harm. By appellant's own admission, he brandished a knife even before the nature of the confrontation progressed from an argument to a fight. By contrast, none of the evidence adduced at trial showed that Mr. Mattison was armed. Further, with the exception of the punch which started the physical altercation, there was no evidence of Mr. Mattison being in a position to direct physical aggression at appellant. To the contrary, the evidence spoke only to appellant having subdued, stabbed, struck, and kicked Mr. Mattison, often when Mr. Mattison was otherwise engaged with Ms. Clark. Although appellant claimed that he sustained a stab wound near his right knee, he did not know how that injury occurred. Given the clearly one-sided nature of appellant versus Mr. Mattison portion of the altercation, we cannot conclude that it was reasonable for appellant to believe that he, personally, was in imminent danger of serious injury or death.

Similarly, as to the fourth required factor in both MPJI-Cr 4:17.2 and MPJI-Cr 5:07, we are not convinced that there was any evidence that appellant's use of force was no more than necessary to defend himself in light of the threatened or actual level of force employed by Mr. Mattison. Again, appellant was armed with a knife from the start of the altercation and there was no evidence that Mr. Mattison was ever armed or threatened to employ deadly force against appellant. Indeed, after the single occasion when Mr. Mattison

punched appellant, it was appellant who maintained a consistent advantage over Mr. Mattison, an advantage which he chose to increase by continuing to stab, strike, and kick Mr. Mattison, even when the only threat posed by Mr. Mattison was the flailing of his arms and legs as he was on the ground. Lastly, there was no evidence that appellant attempted to retreat from the subject conflict or that the circumstances of the incident relieved him of the obligation to try and do so.

Accordingly, where the facts of the case, even when viewed in a light most favorable to appellant, did not establish the applicability of MPJI-Cr 4:17.2 or MPJI-Cr 5:07, we must hold that the trial court did not err by refusing to give those instructions.

II.

Appellant contends that the trial court erred by sustaining the State's objection, on the ground of hearsay, to his testimony regarding what a former neighbor told him about Mr. Mattison's "erratic" behavior. He insists that the subject testimony was not hearsay because it was not being offered for its truth, rather it was being presented to show appellant's state of mind as it related to his fear of Mr. Mattison. Moreover, appellant claims that the indicated limitation of his testimony "hampered his ability to generate his self-defense jury instruction." Accordingly, he contends that the exclusion of the subject testimony requires reversal.

"A ruling on the admissibility of evidence ordinarily is within the trial court's discretion." *Hajireen v. State*, 203 Md. App. 537, 552 (2012) (citation omitted). We review such rulings for an abuse of discretion. *Id*. (citation omitted).

In the case at bar, when appellant attempted to testify as to what a former tenant in his building had told him about the "erraticness" of Mr. Mattison's behavior, the following colloquy occurred:

> [APPELLANT]: Through conversations with Alexis, that's when I first learned of [the] erraticness of [Mr. Mattison's] behavior. She was the one that told me that every time she would have company [Mr. Mattison] would –
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> [STATE]: Objection.
>
> THE COURT: Sustain.
>
> [APPELLANT'S COUNSEL]: Your Honor, may we approach?
>
> THE COURT: You may.
>
> (Counsel and [appellant] approached the bench, and the following ensued:)
>
> [APPELLANT'S COUNSEL]: Your Honor, I would submit that we are proceeding on the defense of self-defense and in that defense, there are incidents of the victim that would place [appellant] in fear [and] would be admissible. Not necessarily for the truth here, but for the fact that it would place [appellant] in a position where he would fear the eventual victim in the case. So I think that would be admissible on that basis.
>
> [STATE]: Your Honor, it's clear from the question that this is actually being offered for the truth of the matter asserted to show [Mr. Mattison] in a certain light. If Counsel wanted Ms. Alexis, here then they should have subpoenaed Ms. Alexis.
>
> THE COURT: If what?
>
> [STATE]: If he wanted her here, he should have subpoenaed her.
>
> [APPELLANT's COUNSEL]: But the issue isn't what she's saying. The issue is . . . it's [e]ffect on . . . [appellant].
>
> THE COURT: What's the proffer of what she said allegedly?

[APPELLANT'S COUNSEL]: The proffer is just more of [Mr. Mattison's] erratic behavior of talking to the walls, mumbling through the halls.

THE COURT: So this female who . . . was not at the home . . . at the time of the incident . . .

[APPELLANT'S COUNSEL]: Right.

THE COURT: . . . she no longer lived there, at least had moved out by that point. . . . she left . . . like a week before [the subject incident]; am I right?

[APPELLANT'S COUNSEL]: Yes, Your Honor.

THE COURT: Is that the recollection?

[STATE]: Yes, Your Honor.

THE COURT: So what is it that you're using that statement that she may have said? Why?

[APPELLANT'S COUNSEL]: It's just – because [its] [effect] on [appellant]. In other words, if . . . someone tells me that a certain person is behaving strange, I'm put in fear and that fear goes into the mix of how I behave when I'm asserting my defense of self-defense.

THE COURT: Okay.

[STATE]: It doesn't open up the door to every single thing that's said about Mr. Mattison comes in and we just get to throw hearsay out of the door. If you wanted her to come in, you should have –

THE COURT: Objection is sustained.

We note that although the State did not expressly state a ground for the subject objection, the supporting argument made clear that its basis was hearsay. That in mind, Maryland Rule 5-801(c) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Although hearsay evidence must be excluded, unless it is permitted

under an applicable exception, here, appellant's counsel stated that the testimony in question was being offered to show its effect on appellant, not for its truth. *See* Md. Rule 5-802 ("Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible."). As such, the testimony appellant's counsel sought to elicit was non-hearsay and, therefore, the court erred in excluding it by sustaining the State's objection on hearsay grounds.

Nevertheless, we are persuaded that the noted error was harmless. *Dorsey v. State*, 276 Md. 638, 659 (1976) ("[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated."). Appellant's counsel proffered that the testimony at issue would speak to the fact that appellant's former neighbor had told him of Mr. Mattison's "erratic behavior" and, specifically, that she had observed Mr. Mattison "talking to the walls [and] mumbling through the halls." This testimony would not have differed in any significant way from that already given by appellant and Mr. Neville, regarding their own observations of Mr. Mattison, and so, in our view, was cumulative. Notably, in *State v. Simms*, 420 Md. 705, 739-40 (2011), the Court of Appeals explained:

> Evidence is cumulative when, beyond a reasonable doubt, we are convinced that "there was sufficient evidence, independent of the [evidence] complained of, to support the appellant['s] conviction[]." *Richardson v. State*, 7 Md. App. 334, 343 (1969). In other words, cumulative evidence tends to prove the same point as other evidence presented during the trial or sentencing hearing. . . . "The essence of this test is the determination whether the cumulative effect of the properly admitted evidence so outweighs the

> prejudicial nature of the evidence erroneously admitted that there is no reasonable possibility that the decision of the finder of fact would have been different had the tainted evidence been excluded." *Ross v. State*, 276 Md. 664, 674 (1976).

(quoting *Dove v. State*, 415 Md. 727, 743-44 (2010)) (internal parallel citation omitted).

Accordingly, where the evidence in question was effectively cumulative to that already admitted, we hold that the error in excluding it was harmless beyond a reasonable doubt.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.