Circuit Court for Anne Arundel County
Case No. 02-K-14-001387

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 903

September Term, 2017

JOSEPH PATRICK SOULE

v.

STATE OF MARYLAND

Fader, C.J.
Shaw Geter,
Graeff,

JJ.

Opinion by Shaw Geter, J.

Filed: January 23, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a sixteen-day jury trial in the Circuit Court for Anne Arundel County, appellant, Joseph Patrick Soule, was found guilty of second-degree murder and subsequently sentenced to thirty years of incarceration. He timely filed this appeal and presents the following questions for our review:

1. Did the trial court err in granting the State's motion to preclude [a]ppellant's third-party perpetrator evidence which violated [a]ppellant's due process right to present a defense?

2. Did the trial court err in refusing to allow into evidence remaining portions of [a]ppellant's police interrogations where those portions were admissible under the doctrine of verbal completeness?

3. Did the trial court abuse its discretion and deprive [a]ppellant of a fair and impartial trial when it refused to allow defense counsel to conduct internet research of potential jurors during voir dire?

4. Did the trial court commit reversible error when it denied [a]ppellant's requested voir dire regarding [a]ppellant's constitutional rights?

For the reasons to follow we hold the trial court did not err, and, thus, we affirm its judgments.

BACKGROUND

Various facts were drawn out by the State and appellant through witness testimony and evidence admitted for consideration during motions hearings and at trial. However, we recite only those facts necessary for context regarding the issues before us.

I. Motion in Limine Regarding Evidence of Other Crimes

Both parties appeared before the trial court for a three-day hearing, which occurred on November 9th, 10th, and 18th of 2016. The hearing addressed the State's Motion in

Limine to Prevent and/or Limit Speculative Testimony Re: Victim Christie Pelland's Involvement with Police Investigations and/or Criminal Activity, arguing appellant should be prohibited from making any reference to or argument about two violent incidents involving the decedent victim. The State contended the victim's involvement in a stabbing on December 19, 2013, and a shooting on May 3, 2014, was "speculative at best, and of dubious relevance" to the case at hand. In response, appellant submitted a motion in opposition arguing the violent occurrences were relevant and admissible.

Both parties presented witnesses during the hearing and after consideration of the testimony, evidence, and relevant law the court made the following determination:

> The District of Columbia has some cases . . . [that are] . . . not binding upon the [c]ourt . . . [but] give some guidance and clarity to several of the issues.
>
> There is Johnson versus the United States [sic], a case . . . [that] held that the defendants have a constitutional right—and certainly I think this is correct—to present third party perpetrator evidence and that the criteria is that it need only tend to indicate some reasonable possibility that a person other than the defendant committed the charged offense.
>
> The focus of this standard for admissibility is not on the third party's guilt or innocence, but on the effect the evidence has upon the defendant's culpability and it only tends to raise any reasonable doubt that they did. In other words, that it tends to create a reasonable doubt that the defendant committed the offense. There is no requirement that the proffered evidence must prove or even raise a strong probability that someone other than the defendant committed the offense.
>
> It is what is known essentially as the reasonable possibility standard of admissibility. The defendant has to proffer some evidence or put forth some evidence, circumstantial or direct, of a third party's actions, motives, opportunities, statements or declarations against penal interest. It can [consist] of one fact or circumstance or a set of facts or circumstances[,] which in the aggregate establish the necessary link, connection or nexus

between the proffered evidence and the crime at issue.

. . . .

The murder in this case occurred on May the 12th of 2014. The first incident that is referenced is the incident on December 19th, 2013.

I heard from Detective Goldberg who interviewed Christine Pelin [sic] . . . regarding . . . a story [she gave] about a homeless person having [hurt her but that] was . . . not an accurate statement as based on the evidence that I heard.

I then heard from Reginald Carter. He had circumstantial evidence regarding an injury that Christine Pelin [sic] received when [Reginald Carter] was present that she indicated that Donnie Dorsey [was responsible for], [she further stated] in his presence [that] while she was not looking [Donnie Dorsey] hit her and that [Reginald Carter] later saw . . . stitches that she received. He took her to the hospital. He did not apparently stay with her at the hospital. And there was, in fact, no evidence from Reginald Carter that it was a stabbing incident. All I heard from Reginald Carter was that it was a hitting incident.

I heard from Donnie Dorsey who took his Fifth — who invoked his rights under the Fifth Amendment, and I heard from Detective Meyers who was the detective who investigated the homicide. He indicated that he looked into Donnie Dorsey as a potential suspect in the homicide investigation and that he could not find any connection between the homicide and Mr. Dorsey.

. . . .

So what I heard in terms of admissible evidence did not provide any link or nexus[.]

. . . .

[T]here is [no] link or nexus between the events that occurred on December 19th of 2013, no evidence that the person who caused the injury on that date is . . . in any way tied to the homicide, . . . the area, the time frame, anything of that sort. No evidence that — that he had any connection to what her — what occurred on May the 12th of 2014, or even had access regarding or information as to where the victim was on that particular date at that particular time.

. . . .

> Even if I were to find a link in the weighing of the probative value of that information versus the prejudicial impact I find that the prejudicial impact outweighs the probative value of that particular incident. So I'm not going to allow evidence regarding that particular incident in at trial.

Thereafter, the State interjected as the court had not yet addressed an important piece of text message evidence regarding the December 19, 2013, alleged stabbing between the decedent victim and Donnie Dorsey—who appellant maintained was her assailant on that date. In response the court made an additional finding and stated:

> Detective Meyers was the one who testified that . . . he did a cell phones record check and . . . there was some evidence of recent phone calls [between Donnie Dorsey and the decedent victim], but I don't think that . . . was a sufficient link. And I did not forget that in my analysis I'm glad you raised it.

The court then articulated its findings and holding regarding the second violent incident related to the decedent victim, the Royal Farms shooting:

> As to the incident that occurred on May 3rd of 2014, I heard first from Corporal Dautters [sic] . . . the individual who stopped the vehicle that Christine Pelin [sic] was driving away from the area where the shooting occurred. He took a statement from Christine Pelin [sic] at that time.
>
> The first part of the statement theoretically would fit into an excited utterance exception [.]
>
> He said that she was calm later in this statement when she started talking about Tony V. But the initial part that he described her being in an excited state. And I would ordinarily find that was sufficient under the hearsay exception.
>
> However, the reason behind the hearsay exceptions is that statements given pursuant to the exceptions are inherently credible, that they are inherently

truthful. And so the problem that I come to is that both sides presented evidence that what Christine Pelin [sic] said at that point in time was, in fact, not truthful because she described being shot at.

And the evidence is, and I think both sides agree, that she was not, in fact, shot at; that the shooting was done by the gentleman—that man that was with her. That—that seems to be what both sides are saying. So it's not inherently credible, so I do—I don't see it as admissible information.

Detective Goldberg also testified. He talked about his interview with Christine Pelin [sic]. He talked about his investigation, who he spoke to. He talked about their—the fact that there's a video. He talked about . . . who Black [the street name of the man who accompanied the decedent victim on the date of the shooting] was, and he did indicate that there was no evidence of crossfire.

. . . .

I heard from Reginald Carter. He . . . testified that Christine Pelin [sic] told him about the Royal Farms shooting after the fact; that he observed her trying to get in touch with the individual that's been referred to as Black; that she was hurt; that he didn't seem to care about her, he being Black and didn't respond. He testified that there were no threats that he was aware of from Black toward Christine Pelin.

He also talked about two incidents that occurred: [o]ne, he was not present for, but Ms. Pelin [sic] described to him that she was pushed into a bathroom by some—a group of men that they indicated that they had no problem with her. They were just trying to find Black.

And then the other incident was at a pizza place on Harness Branch Road. They were getting food. Some guys came in and nothing happened basically. They were not intimidating. They were not aggressive. They didn't say anything to her. He, Mr. Carter, just had concerns about their presence and—and that was kind of it regarding those incidents.

I also heard from Detective Meyers . . . the detective who conducted the . . . investigation and he testified [about] the Royal Farms shooting and [he] found no connection between the Royal Farms shooting and the homicide. He did indicate . . . the victim [of the shooting] was Mr. Drummond (ph)[sic] and that he did try to get a statement from Mr. Drummond. He was

> uncooperative. He did testify and the evidence certainly was that the incident occurred nine days prior; that he could find no direct link between the two.
>
> . . . .
>
> Where I have cause for concern with this incident is that it occurred just nine days prior to the murder . . . [however] the vast majority of [the evidence heard] . . . would not be admissible at trial in the manner in which I heard it.
>
> . . . .
>
> [W]hat would have to be presented in trial is admissible evidence. So I heard a lot of kind of speculative evidence. I heard a fair amount of hearsay evidence.
>
> However, I—what gives me pause for concern is that this event occurred just nine days before the murder.
>
> At this point in time I am going . . . based on what I have heard in terms of admissible evidence I would find that the prejudicial impact outweighs the probative value.

On December 6, 2016, at a subsequent motions hearing, appellant orally raised a Motion for Reconsideration and asked the court to reassess its decision regarding the State's Motion in Limine to Prevent and/or Limit Speculative Testimony Re: Victim Christie Pelland's Involvement with Police Investigations and/or Criminal Activity. Appellant contended the court was mistaken previously and stated:

> Your Honor was concerned that certain hearsay might not find its way via an exception or that certain excited utterances are inherently unreliable.
>
> . . . .
>
> Specifically, Your Honor cited *Johnson v. United States* . . . [that] says defendants have a constitutional right to present third-party perpetrator evidence based on, quote "reasonable possibility standard" and it only must tend to create a reasonable doubt.

> So, again, based on *Johnson*, based on that very, very small threshold, basically *Johnson* just says opportunity and motive, we would ask Your Honor to reconsider.

In response, the State averred that appellant's analysis was no longer pertinent:

> Just—we're in a slightly different position than we were a week ago. And that is because the *Taneja* case came down. And before we were relying on D.C. case law for its persuasive value even though it wasn't controlling. And since that time the *Taneja* case has come out [from] . . . the Court of Special Appeals[.]

Following that exchange the court ruled and stated:

> I agree that we are in a different posture now that this *Taneja* case has come down from the Court of Special Appeals which affirmed the trial court. The court in *Taneja* held that the evidence that the [d]efense wanted to put on was only tangentially relevant and had a high probability of confusing, distracting, and misleading the jury. That the evidence sought to be introduced was disconnected and remote and had no other effect than to raise the barest of suspicions that someone else, essentially, might have killed the victim in that case.
>
> I think we have a similar set of circumstances here and my findings continue to be that I believe that there is a high probability that such evidence would be confusing, distracting, and misleading to the jury . . . I think while there could be a bare suspicion raised or a conjecture, that it is too speculative and too tenuous to reconsider the ruling particularly in light of *Taneja.*

II. Motion for Verbal Completeness and Reconsideration

On December 6, 2016, following appellant's motion for reconsideration regarding evidence of the victim's alleged other crimes, the court heard argument on appellant's verbal completeness motion. Appellant motioned to admit several statements, which consisted of appellant's repudiations of guilt made during his lengthy interrogations on May 13th and 15th of 2014. In response, the trial court ruled that it was necessary "to go

through the transcript" line by line, allowing each party to argue for admission, before making a final determination. As the parties scoured over the transcript the following colloquy occurred:

> [State]: Again, that's not why we have clip two in there. Clip two is basically a question on voluntariness. What were you told before you got here. And it's relevant that the defendant has a canned story that he just makes up and tries to spit it out. There is a difference, though. Here he's—they're asking him to walk through the timeline and he instead of walking through the timeline he's starting to talk about what he knew, and Ramon, and what he told him. It's all hearsay within hearsay. It's self-serving. And it does not relate to the purpose of why we are introducing clip number two.
>
> . . . .
>
> [Appellant]: It goes to, again, fundamental fairness. This is really—the State is putting all this, every clip in to build their case. He has opportunity, he's with her all the time, he is arguing with her enough that she's hitting him. In clip eleven he has a knife. Clip nine she allows him to go with her at least once to clean. He is with—you know, six, seven and eight—he is with her the most, according to him. He is with her every day for about a week-and-a-half.
>
> So to allow this very damning evidence in and then say, wait a minute, the jury at the key moment—every single juror is going to be saying, well, what did Joe have to say about whether he did it or not?
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> . . . .
>
> And I believe it is a fair reading of *Conyers* with a very bare minimum of concerning—meaning 5-402. Nothing could be more fundamentally unfair. For the jury to be left with the impression that Joe never said, I

didn't do it.

[The Court]: Ms. Prigge.

[State]: Your Honor, I think it would be different if we put some kind of statement in where he said, all right, I did it, and then his denial would be allowed to come in. Essentially, I would just go back to the *Conyers* case also where it says the doctrine of verbal completeness does not allow evidence that it [sic] otherwise inadmissible as hearsay to become admissible solely because it is dragged from a single interview conversation. This is classic self-serving hearsay. I mean, if he—he has a right to take the stand and certainly deny it. But this denial that he didn't kill her is not responsive to any of the clips that we are trying to admit.

. . . .

[The Court]: So I would agree with the Defense if there were a statement somewhere in—really on either day—where defendant in any way admitted his involvement. But there is none. And it does not connect with anything else, really, that is coming in through any of the clips or anything that I've indicated that I am going to allow in. It is self-serving hearsay under the hearsay statute. So I don't think that it is admissible. It is just as likely that the jury could reach the conclusion if he had admitted that he had done this, surely the State would have to put it into evidence. They put in enough other statements that he made. So I am not going to allow eighty-two seven through twenty-one.

Again, appellant suggested to the court that more statements reflecting his denials of guilt should be admitted into evidence and the following interaction occurred:

[Appellant]: And in terms of fundamental fairness to allow the State to cherry pick what they want here that all amount to—their closing argument just using what is now coming

into evidence could amount to twenty minutes at the end of this case—or fifteen minutes at the end of the case. That's a very powerful he did it circumstantial argument, inference argument to the jury. And we're not allowed to say the obvious by the way, ladies and gentleman, when put—he didn't inject it in—when they brought it up directly, he responded directly by saying I didn't do it.

. . . .

[State]: Our clips don't ask, though, where he was, whether or not he was on Hospital Drive. Our clips don't discuss the detectives' theories of the case which is what this is all talking about. They're posing their theories and the defendant is just basically denying it.

So if we don't introduce any of that evidence I don't know how they can. And, essentially, what the Defense arguments amount to is we don't like this rule on verbal completeness there should be some policy considerations because it's not fair, which is not really the legal theory of why we're here.

[The Court]: As previously, I'm not going to allow this. And this is—the bulk of this is the detectives talking and the defendant responding with short denials of what they are saying. And it doesn't link to the other clip so I am not going to allow that in.

This same verbal completeness issue was revisited on January 24, 2017, at a subsequent motions hearing, where the following exchange ensued:

[The Court]: I was concerned that the prejudice to the defendant as a result of excluding that was too great, looking at the overall circumstances and being concerned about what a jury might conclude as a result of taking that out and allowing in that which I have allowed in on behalf of the state. So I was inclined to reconsider that portion. But I did want to give both sides an opportunity to be

heard on that issue.

. . . .

[Appellant]: And I agree that we wanted it in and it's probably the one that I said is most important. But I can't say for sure.

. . . .

[The Court]: Okay. So this what I'm going to do. I am going to reverse my—or, reconsider my earlier ruling on page ninety-four four through nineteen and allow that portion of the transcript or of the statement in.

Throughout the entirety of the above-referenced hearing, the court assessed the admissibility of statements offered by appellant under the verbal completeness rule. The court analyzed the "incidents," considering the admissibility of "hearsay information," and whether the appellants responses "relate[d] directly to [his] ability to recall, recollect, and [relate to] moment[s] in time"

Furthermore, on May 4th and 10th of 2017, appellant raised the issue of verbal completeness, as it related to the denials he made while in police custody, for a third and fourth time during trial. Each successive motion was denied by the court.

III. Oral and Written Motion to Permit Internet Research on Jurors

Appellant asked the court "for permission to do internet research on the jurors," during an April 7, 2017, motions hearing. The State offered their opinion on the matter and initially indicated that they also had an interest in "check[ing] up to see that the jurors are providing correct answers in terms of criminal activity or involvement," but noted that

desire would have to be balanced to "protect[] the anonymity of jurors." The court asked appellant for "authority" on the issue and indicated that it would "give it some consideration."

On April 17, 2017, appellant filed a Motion to Permit Internet Research During Jury Selection and the State responded in opposition three days later. Both parties appeared in court on April 21, 2017, for the first day of trial and the court issued the following ruling denying appellant's motion:

> I received both sides—the Defense motion and the State's response objecting. [T]here is no case law in Maryland on the issue. I have looked at that which was provided by both sides. And I have determined that it is not appropriate to allow, essentially, the Defense to start looking on social media and to make that part of the voir dire process. It's my thought that that would be allowing either side to be relying [sic] on facts that would not be a part of the record. [T]he [c]ourt has no way of knowing the accuracy of that which is posted on social media and other sites.
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> . . . .
>
> Additionally, . . . [it would] have a potential chilling effect—on jury selection itself should the potential members of the jury see this to be going on. While they are answering questions see that they are being researched on the internet. It could impede them from answering questions forthrightly. And I simply believe it is expanding the voir dire beyond that which is permitted or required by Maryland law.

Following that conversation, the court indicated that it could not "prevent" either side from consulting the internet "after jury selection" and then issued an instruction reminding counsel of their "legal and ethical obligation not to share" the identities of jurors.

Appellant's Proposed Voir Dire

As the jury selection process occurred on April 21, 2017, appellant requested that the

court include additional jury instructions related to unreasonable doubt, the perception of an individual who invokes the Fifth Amendment, the weight jurors assign to witness testimony, unanimity, and the presumption of innocence. The State asserted that it would "defer to the court" on these issues and did not present any further argument. In response, the court indicated the following:

> I do ask [a] question . . . which indicates that I would instruct as to the law. [The instruction states that] I will instruct you of the law applicable to the facts of the case. You will be instructed to determine the guilt or lack of guilt of the defendant based on the law as I define it for you and no other law, rule, or standard. Is there any member of the prospective jury panel who feels he or she would be unable to follow the law and decide the case based on the law as I instruct it to you even though you may disagree with it[?]
>
> And so I think that covers the jury instructions. The State had a number of jury instructions included in their questioning as well. I eliminated the jury instruction question for both sides. I would note in particular that the jury instruction questions for both sides submitted each contained jury instructions and not the jury instruction in its entirety. I would also note that the proposed revision to the—the proposed pre-trial introductory instruction does, in fact, highlight the presumption of innocence and reasonable doubt jury instruction which is more than the [c]ourt is required to do according to the Maryland Criminal Pattern Jury Instructions as they exist at this point. The instructions are included in their entirety and I think that's the—if that's going to be done the most appropriate place and time for it to be done.

A jury was selected and the second day of trial concluded with the State's Opening Statement.

At the close of appellant's sixteen-day trial he was found guilty of second-degree murder. Consequently, appellant was sentenced to thirty years of incarceration and this timely appeal followed.

DISCUSSION

I. The court did not err in granting the State's motion to preclude appellant's third-party perpetrator evidence.

Appellant argues the court erred when it prohibited appellant from presenting third-party perpetrator evidence by granting the State's motion to exclude two violent incidents involving the decedent victim. Appellant maintains the evidence at issue demonstrated there was "more than 'a bare suspicion' that others had motive and opportunity to murder the victim." He further contends the court committed error when it found the probative value of the third-party perpetrator evidence was substantially outweighed by the danger of unfair prejudice. In response, the State asserts the court "applied the correct standard of law and in the proper exercise of its discretion found that there was no evidence beyond mere speculation that there was a connection between either or both of these events and the victims murder."

Pursuant to the United States Constitution and the Maryland Declaration of Rights criminal defendants have a right to produce their own witnesses in their defense. U.S. Const. amends. VI, XIV; Md. Const. Declaration of Rights, art. 21. However, the right to present witnesses is not absolute and does not allow a defendant to offer "testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor v. Illinois*, 484 U.S. 400, 407–10 (1988). Moreover, the evidence put forth in support of the defendant must be "sufficiently relevant" and do more "than cast a bare suspicion upon another." *Holmes v. South Carolina*, 547 U.S. 319 323–24 (2006).

Here, we are tasked with reviewing the trial court's exclusion of appellant's third-party perpetrator evidence for an abuse of discretion. *Smith v. State,* 423 Md. 573 (2011) (citing *Martinez v. State,* 416 Md. 418, 420 (2010)). And we must engage in a *de novo* review of the court's "ruling that evidence is legally relevant." *Williams v. State of Maryland,* 232 Md. App. 342, 352 (2017). In assessing the relevance of third-party perpetrator evidence, courts first examine Maryland Rule 5-401, which defines relevant evidence as any "evidence having 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." Under Maryland Rule 5-402, courts are generally permitted to accept "all relevant evidence," although Maryland Rule 5-403 allows for the exclusion of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice [and] confusion of the issues."

In determining whether proffered third-party perpetrator evidence is relevant, appellant suggests a court must merely find that the evidence "tend[s] to indicate some reasonable possibility that a person other than the defendant committed the charged offense." *Johnson v. United States,* 136 A. 3d 74, 80 (D.C. 2016). Furthermore, appellant maintains this court should adopt the "reasonable possibility standard of admissibility" articulated by our neighboring jurisdiction the District of Columbia, which requires a defendant to "proffer some evidence, either circumstantial or direct, of a third party's actions, motives, opportunity, statements or declarations against penal interest." *Id.* (internal citations omitted). We find the reasoning of our courts clear and we take a

different approach.

In Maryland we consider third-party perpetrator evidence to be relevant "only when, through proper analysis and reasoning, it is related logically to a matter at issue in the case, i.e., one that is *properly provable* in the case." *Taneja v. State*, 231 Md. App. 1, 11 (2016) (citing *Snyder v. State*, 361 Md. 580, 591 (2000) (emphasis added)). Additionally, "[w]e are mindful that evidentiary questions are left to the sound discretion of the trial court, and are not to be disturbed—even if we were inclined to rule differently—absent a clear abuse of discretion." *Taneja v. State*, 231 Md. App. 1, 18 (2016). Moreover, a court may exclude relevant evidence because it is unfairly prejudicial "when it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Burris v. State of Maryland*, 435 Md. 370, 392 (2015) (citing *Odum v. State,* 412 Md. 593, 615 (2010) quoting Lynn McLain, Maryland Evidence: State and Federal § 403:1(b) (2d ed. 2001) (internal quotations omitted)).

A brief review of Maryland precedent addressing the admission of third-party perpetrator evidence is instructive. For example, in *Smith v. State*, a defendant on trial for murder attempted to put forth evidence of a conspiracy that the decedent's niece was motivated to harm the victim because the niece sought to gain from his will. 371 Md. 496, 505–6 (2002). There, the court ruled that there was "no rudimentary basis for a connection between the will and the testimony of the niece," and that if there was any it was "marginal at best," and therefore defendant's argument was excluded as its "probative value was substantially outweighed by the danger of unfair prejudice." *Id.* In *Marshall v. State*, we

held a trial court properly exercised its discretion in excluding evidence that "other suspect[s] who were developed early on in the investigation . . . had possible motive and the opportunity to commit the crime" because at the time of the murder at issue both potential assailants were far away from the scene of the murder. 174 Md. App. 572, 581 (2007). We found defendant's theory in *Marshall* to be "totally speculative and tenuous." *Id.* Moreover, in *Taneja v. State*, the defendant on trial for the murder of his ex-wife attempted to adduce evidence that his son had motive to kill the decedent victim because of an alleged threat made during a law suit, which occurred one year prior to her death. 231 Md. App. 1, 13 (2016). There, we held "such evidence would have been, at best, only tangentially relevant and had a high probability of confusing, distracting, and misleading the jury." *Id.* at 18.

Here, appellant claims the court erroneously excluded testimony and evidence related to a stabbing incident that occurred five months before the murder of the decedent victim. After considering the testimony and evidence presented by both parties during the motions hearing the court indicated that "there is no tie that I heard in the evidence that was presented that there was a link or nexus between [the murder at issue in this case and] the events that occurred on December 19th of 2013." The court noted that there is "no evidence the person who caused the injury on [December 19, 2013,] . . . is in anyway tied to the homicide, the area, the time frame, anything of that sort." Even after the court acknowledged evidence that the victim had received phone calls from the December 19, 2013, assailant sometime near the night of her death—the court found that evidence did

not "sufficient[ly] link" that individual to the murder at hand. Ultimately, the court held that the "prejudicial impact" of the introduction of the December 19, 2013, evidence "outweighs the probative value of that particular incident." Like the *Taneja* court, the court here, carefully weighed the evidence presented by appellant and ruled that it was minimally probative and highly prejudicial. As such, we find the trial court did not abuse its discretion in excluding evidence related to the December 19, 2013, stabbing.

Appellant further alleges the court erred when it failed to admit evidence of the victim's alleged proximity to a shooting which occurred nine days before her murder. At the pre-trial motions hearing, the court considered testimony that the victim was with a friend who exited her car and became involved in a shooting at a Royal Farms gas station. Appellant claimed this information was relevant because the victim's presence at the shooting caused her vehicle to be impounded, leading appellant to provide her with transportation in the days before her murder. Furthermore, appellant asserted that various individuals who participated in the shooting later approached the victim as a part of an alleged intimidation campaign. In response, the court noted that the evidence was "kind of speculative," that a "fair amount" was "hearsay," although it was "concern[ed] that this event occurred just nine days before the murder." The court summarized witness testimony regarding the event and noted that the testimony indicated the decedent victim received "no threats" from participants in the shooting following the incident. Furthermore, the court indicated the bulk of witness testimony demonstrated that the victim was not "intimidate[ed]." Ultimately, the court held "based on what [it] heard in terms of

admissible evidence [it] would find the prejudicial impact outweighs the probative value."

Appellant relying on *Kelly v. State*, claims the court impermissibly focused on the admissibility of the evidence presented. 392 Md. 511, 532 (2006). We disagree. In *Kelly*, the Court of Appeals held that it was error for a trial court to sua sponte exclude witness testimony offered by a defendant based solely on a proffer by counsel that suggested the testimony was hearsay. *Id.* There, the Court of Appeals noted that the exclusion of the potential hearsay testimony was "premature" because no objection had been raised. However, the matter at hand, is distinguishable from *Kelly*. *Id.* Although, the court noted that some of the evidence presented would likely be excluded at trial because it was hearsay, its ruling was not based on the objectionable nature of the testimony. Instead, the court focused on relevancy in determining that the third-party perpetrator evidence was inadmissible. The trial court in this matter recognized and considered the importance of timing and found the shooting incident to be of significance since it occurred nine days before the murder. Unlike the situation in *Taneja* where the defendant attempted to admit evidence of an incident which occurred a year before, the incident at issue here occurred a few days before the murder. The trial court was not convinced that the admissible evidence proffered by appellant was sufficiently probative. No shooter was identified by appellant, no motive was developed, and no evidence suggested the participants in the shooting knew the victim's whereabouts. Like, *Marshall*, the trial court, exercised its discretion in excluding a "totally speculative and tenuous" third-party perpetrator defense. As we see it, the court merely noted that the testimony presented at the hearing was likely hearsay

before articulating its reasoning on the record stating that "the prejudicial impact outweighs the probative value." We find there was no abuse of discretion by the court in focusing on relevancy when it determined evidence of the victim's proximity to a shooting was more prejudicial than probative.

II. The court did not abuse its discretion by refusing to admit into evidence appellant's remaining portions of police interrogations pursuant to the doctrine of verbal completeness.

Appellant suggests the court "erred when it allowed the State to selectively edit the content of appellant's interrogation statements in a way contrary to Maryland law." Appellant also claims the denials that he made during conversations with detectives about the murder would have completed the content of the police interrogation statements admitted by the State and should have been admitted under the doctrine of verbal completeness. In opposition, the State contends that the declarations appellant sought to admit neither "provide[d] context [n]or complete[d] the statements included in the[ir] . . . excerpt," and are therefore outside the scope of the verbal completion doctrine.

We review a trial court's application of the doctrine of verbal completeness for an abuse of discretion. *Conyers v. State*, 345 Md. 525, 543 (1997). "An abuse of discretion exists where 'no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding principles.'" *Alexis v. State*, 437 Md. 457, 478 (2014). Under the long-standing doctrine, once a party offers part of a statement or conversation the opposite party has the right to have the "whole" statement or

conversation admitted. *See Smith v. Wood,* 31 Md. 293, 296–97 (1869) (holding "the offer in testimony of a part of statement or conversation, upon a well-established rule of evidence, always gives to the opposite party the right to have the whole"). Maryland Rule 5-106 partially codifies the common law doctrine of verbal completeness stating:

> [w]hen part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

However, "otherwise inadmissible evidence" does not become admissible "under the common law doctrine" or Maryland Rule 5-106, "except to the extent that it is necessary in fairness to explain what the opposing party has elicited." *Conyers v. State*, 345 Md. 525, 541–42 (1997) (internal quotations and citations omitted).

In *Otto v. State*, the Court of Appeals reviewed a trial court's decision to exclude the statement excerpts of a defendant on trial for rape. 459 Md. 423, 450–52 (2018). There, the Court of Appeals reaffirmed the requirements that emanate from the doctrine of verbal completeness and trigger its application recognizing the "three corollaries to the rule," which indicate:

> [1] No utterance irrelevant to the issue is receivable;
>
> [2] No more of the remainder of the utterance than concerns the same subject, and is explanatory of the first part, is receivable;
>
> [3] The remainder thus received merely aids in the construction of the utterance as a whole, and is not in itself testimony.

Id. In applying the above-referenced test, the Court in *Otto* upheld a trial court's exclusion

of the averments at issue. *Id.* The statements "did not explain or aid in constructing" the admitted portions because the defendant was on trial for rape and the assertions at issue addressed finances, family relationships, and various other unrelated subjects. *Id.* at 453.

Additionally, "the doctrine is further limited in that the remainder of a writing or conversation sought to be introduced must not be irrelevant and should be excluded if the "danger of the prejudice outweighs the explanatory value." *Id.* at 542 (quoting *Richardson v. State*, 324 Md. 611, 622–23 (1991) (internal quotations and citations omitted)). The rule of verbal completeness "does not allow . . . an utterance that is otherwise inadmissible hearsay to become admissible solely because it is derived from a single writing or conversation." *Lindsey v. State*, 235 Md. App. 299, 319 (2018) (citing *Conyers v. State*, 345 Md. 525, 541 (1997)). Generally, "self-serving declarations . . . are not admissible in evidence as proof of the facts asserted in the declaration," since they constitute inadmissible hearsay. *Braxton v. State*, 57 Md. App. 539, 546 (1984). Only in circumstances where an admission is introduced does "the accused in a criminal prosecution . . . [have] the benefit of [introducing] the entire conversation" including "self-serving" statements. *Id.* at 546.

The trial court in this matter considered arguments from both appellant and the State regarding the admissibility of statements made by appellant in conversation with investigating detectives. The State was successful in having the court admit statements where appellant admitted to detectives that "he was with [the decedent victim] all the time," that they were "arguing," and she was "hitting him." In response, appellant argued it would

be "fundamentally unfair . . . [f]or the jury to be left with the impression that [appellant] never said, I didn't do it," suggesting that appellant's denials of the crime should be admitted for fairness under the doctrine of verbal completeness. The court ultimately excluded appellant's commentary disclaiming guilt, holding that there was no statement admitted by the State where the appellant "in anyway admitted his involvement." The court further held appellant's denials were unconnected to "anything else" admitted by the State, and that the statements constituted "self-serving hearsay."

Here, we find no abuse of discretion. On multiple occasions, the trial court assessed the statements offered by appellant against the verbal completeness doctrine and its "three corollaries" and excluded several statements on the basis of relevancy. The court held that some averments did not "link to the other clip[s]" offered by the state and that other assertions "did not connect with anything else that is coming in through the clips." The trial court also noted that the State did not seek to enter any admissions or confessions recognizing that appellant is not entitled to admit self-serving hearsay. Under *Braxton*, self-serving hearsay statements become admissible once an admission or confession is admitted. 57 Md. App. at 546. Moreover, appellant contended that the statements should be admitted as a result of "fundamental fairness" and provided no legal basis for that proposition. We agree with the State. There was no abuse of discretion as the record before us demonstrates that the court considered fully the applicable law when it excluded the statements.

III. The court did not abuse its discretion when it refused to allow defense counsel to conduct internet research of potential jurors during voir dire.

Appellant maintains the court improperly prohibited him from "conduct[ing] internet research" during the voir dire process about potential jurors, subsequently depriving him of his right to a "fair and impartial trial." In support of that argument, appellant suggests that his right to conduct research is a natural extension of Maryland law. In contrast, the State relying on *Pearson v. State*, argues appellant's claims are without merit because the Maryland voir dire process is not designed to promote the "intelligent exercise of preemptory challenges." 437 Md. 350, 356–57 (2014).

We review a trial court's "conduct of voir dire for abuse of discretion." *Collins v. State*, 452 Md. 614, 628 (2017). In "evaluating a court's exercise of discretion during the voir dire [process we assess] whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present." *White v. State*, 374 Md. 232, 242 (2009). Moreover, "[t]he manner of conducting voir dire and the scope of inquiry in determining the eligibility of jurors is left to the sound discretion of the [trial] judge." *Washington v. State*, 425 Md. 306, 314–15 (2012) (citing *Curtin v. State*, 393 Md. 593, 603 (2006); *Whittemore v. State*, 151 Md. 309, 315 (1926)).

Maryland courts recognize that "voir dire is critical to the protection of a criminal defendant's right to a fair and impartial jury," although we engage in a limited and focused process. *State v. Logan*, 394 Md. 378, 395–97 (2006). "Maryland employs limited voir

dire," in that its "sole purpose . . . is to ensure a fair and impartial jury by determining the existence of [specific] cause[s] for disqualification." *Pearson v. State*, 437, Md. 350, 356 (2014) (internal quotations and citations omitted). Voir dire in our jurisdiction is not designed to "facilitat[e] the intelligent exercise of peremptory challenges." *Id.* (internal quotations and citations omitted). Instead, our voir dire procedure focuses on "determin[ing] whether prospective jurors meet the minimum statutory qualifications for jury service" and "discover[ing] the juror's state of mind as to the matter in hand or any collateral matter reasonably liable to unduly influence him." *Logan*, 394 Md. at 396 (citing *Davis v. State*, 333 Md. 27, 35–36 (1993) (internal quotations omitted)).

In this matter, appellant motioned for permission to conduct internet research on the prospective jurors as a component of voir dire. However, after considering argument on both sides, the court "determined that it is not appropriate to allow . . . the [d]efense to start looking on social media and to make that part of the voir dire process." The court held that doing so would be akin to "allowing either side to . . . [rely] on facts that [are] not [a] part of the record." The court further held that there was "no way of knowing the accuracy of that which is posted on social media and other sites." Ultimately, ruling that openly conducting internet research during voir dire "could impede [potential jurors] from answering questions forthrightly," if they perceived counsel engaged in the search.

In exercising its discretion, the court found that it would likely impede the process by making jurors less communicative. Trial courts have broad discretion over, "[t]he manner of conducting voir dire and the scope of inquiry in determining the eligibility of jurors."

Washington v. State, 425 Md. 306, 314–15 (2012). We find the court did not abuse its discretion by denying appellant's motion to conduct internet research during voir dire under these circumstances.

IV. The court did not abuse its discretion when it denied appellant's requested voir dire.

Appellant alleges the "court improperly refused to allow voir dire questions" he offered in violation of his constitutional rights. Appellant contends that he was prejudiced when the court declined to ask questions which focused on the State's burden of proof, his right to remain silent, and his right not to testify. In response, the State maintains that the trial court is not required to ask all of appellant's questions as long as the court addressed the issues raised through other queries.

In determining, whether the trial court erred in conducting voir dire we review its actions for an abuse of discretion. *See Collins v. State*, 452 Md. 614, 623–24 (2017) (finding that "the trial court reaches the limits of its discretion only when the voir dire method employed by the court fails to probe juror biases effectively"). Accordingly, the Court of Appeals has held that it is an abuse of discretion:

> for a trial court not to question the venire regarding racial, ethnic, cultural or religious bias; whether more or less credence would be given to a police officer simply because of that officer's position; and whether the venire harbors an unwillingness to convict a defendant of a capital crime.

Collins v. State, 452 Md. 614, 623–24 (2017). When requested "a trial court must ask a *voir dire* question if and only if the *voir dire* question is 'reasonably likely to reveal [a] [specific] cause for disqualification.'" 437 Md. at 356. After a request, courts are also

compelled to ask "during voir dire" if any potential jurors "have strong feelings about the crime with which the defendant is charged." *Id.* at 363 (internal quotations and citations omitted). "Yet, even for these mandatory subjects of inquiry" courts are not required to ask a "specific form of question" or follow a singular "procedure." *Collins v. State*, 452 Md. 614, 623–24 (2017) (internal quotations and citations omitted). As long as courts conduct their own inquiry which covers "[t]he rules of law stated in the proposed questions" and "fully and fairly" address the law "in subsequent instruction to the jury" there will be no finding of abuse. *Twinning v. State*, 234 Md. 97, 100 (1964).

Appellant asked the court to inquire about the weight jurors would assign to appellant's testimony, their ability to maintain a presumption of innocence, and their understanding of the reasonable doubt standard. In response, the court indicated that the jury instruction it selected "covers" the issues raised by appellant. The court noted the "introductory instruction does, in fact, highlight the presumption of innocence and reasonable doubt jury instruction." In conducting its analysis, the trial court, here, clearly indicated that the law regarding the State's burden would be addressed in the jury instruction exactly as required pursuant to the holding of *Twinning*. 234 Md. at 100. There is no requirement that the court ask questions in a "specific form," as the Court of Appeals held in *Collins*. 452 Md. at 623. Thus, we find the court did not abuse its discretion by refusing to ask some of the questions offered by appellant, as it addressed the issues raised with its own voir dire inquiries and jury instructions.

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