Circuit Court for Baltimore City
Case No.: 121028024

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 937

September Term, 2023

JAMES DAVIS, JR.,

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: July 15, 2025

James Davis, Jr., appellant, was charged in the Circuit Court for Baltimore City with sexually abusing three of his minor step-grandchildren. A four-day jury trial took place in December 2022. The children testified at the trial that appellant touched their "private parts" and made them "suck his private part and touch it" on multiple occasions while he was babysitting them. Appellant denied all allegations and testified that he was never alone with the children and it was his wife who occasionally babysat them. The jury convicted appellant of four counts of sexual abuse of the children. Appellant was sentenced to 95 years in prison.

Appellant presents two questions for our review, which as stated in his brief, are as follows:

1. Did the trial court abuse its discretion in refusing to strike for cause jurors who said they would give more weight to a child witness?
2. Did the trial court err in permitting the State to adduce hearsay evidence?

For the following reasons, we affirm the judgments of the circuit court.

BACKGROUND

On December 31, 2020, appellant's step-grandchild, L.Y., who was eleven years old, told her mother that appellant had been sexually abusing her, her sister K.Y., and her cousins B.Y. and R.Y. L.Y. testified that the sexual abuse started when she was seven years old. According to L.Y., appellant touched her vagina and breasts while they were watching TV. L.Y. testified that as the abuse continued, appellant "'took his drawers off and hugged [her] without any clothes on,' and then put her on the bed and 'started to rub on [her] boobs.'" L.Y. also stated that appellant made her and B.Y. "put [their] mouth[s] on

[appellant's] penis." Appellant's abuse stopped after L.Y. confided in her mother that New Year's Eve in 2020.

B.Y. also testified against appellant about the abuse that he suffered. B.Y. testified that when he was 9 years old, appellant "touched my hand and made me dig in his underwear and touch his private part. He was also touching my cousin, [L.Y.] in her private part." This abuse occurred when appellant, L.Y., B.Y., R.Y, and another cousin were all watching a movie together. According to B.Y., appellant made him and R.Y. "suck his penis" on multiple occasions. R.Y. also testified that appellant started sexually abusing him when he was around 4 or 5 years old.

Appellant's wife, who was the children's grandmother, testified on behalf of appellant. She stated that appellant was already at work during the time L.Y. and K.Y. were left alone at her home. Appellant's wife testified that L.Y. was never left alone with appellant and that B.Y., R.Y., and appellant were always with her when they were in the bedroom together.

Appellant denied the allegations of abuse and testified that he had a "loving" relationship with his step-grandchildren before the allegations. He claimed that he never babysat L.Y. and K.Y. and that their father was always present when they were at appellant's home. Appellant testified that his wife would occasionally babysit B.Y. and R.Y. but that he would be at work when she would watch them during the week.

The jury trial took place on December 2nd, 3rd, 5th, and 7th, 2022. The jury convicted appellant of two counts of sexual abuse of L.Y., one count of sexual abuse of

B.Y. and one count of sexual abuse of R.Y.

DISCUSSION

I. Did the Trial Court Abuse its Discretion in Refusing to Strike For Cause Jurors Who Said They Would Give More Weight to a Child Witness?

A. Voir Dire

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights grants defendants the right to "an impartial jury." U.S. Const. amend. VI. "[T]hese constitutional guarantees do not, however, insure that a prospective juror will be free of all preconceived notions relating to guilt or innocence, only that he can lay aside his impressions or opinions and render a verdict based solely on the evidence presented in the case." *Couser v. State*, 282 Md. 125, 138 (1978). Maryland Rule 4-312 ensures a fair and impartial jury through voir dire. *Wagner v. State*, 213 Md. App. 419, 449 (2013). The voir dire process allows the trial court to examine prospective jurors' biases through questions, put forth by the judge or parties, to ensure that the jury will be fair and impartial. *Id.*

After questioning, the parties can strike a juror from being on the jury though either peremptory challenges or for-cause challenges. *Curtin v. State*, 393 Md. 593, 601 (2006). Peremptory challenges are "exercised without a reason stated, without inquiry, . . . without being subject to the court's control and for either a real or imagined partiality that is less easily designated or demonstrable than that required for a challenge for cause." *Id.* (citation omitted). Defendants subject to at least 20 years imprisonment, on any single count, receive ten peremptory challenges. Md. Code Ann., Cts. & Jud. Proc. § 8-420; Md. Rule 4-313.

For-cause challenges, on the other hand, may only be used when the juror "displays a predisposition against innocence or guilt because of some bias extrinsic to the evidence to be presented." *McCree v. State*, 33 Md. App. 82, 98 (1976).

In the instant case, during voir dire, the trial court asked the prospective jurors: "Would any member of the jury panel give more or less weight to the testimony of a child witness simply because they were a child?" Eight prospective jurors indicated that they would give more weight to the testimony of a child witness. The court then undertook an examination of these jurors to determine if they could set aside those opinions and render a fair and impartial verdict. Based on the jurors' answers, as detailed below, the court denied appellant's motion to strike for cause as to each juror.

Juror 8466

THE COURT: Okay. You answered the question that you would give more or less weight to a child witness simply because they are a child. Is that correct?

JUROR: Yes.

THE COURT: Did you answer that question? Would it be more or less weight?

JUROR: More weight.

THE COURT: And why is that?

JUROR: Children normally don't lie.

THE COURT: Okay. **Would you be able to set aside your opinion that children don't lie and listen to the testimony as presented by both sides and be able to issue a fair and impartial verdict even if there is a child witness in this case?**

JUROR: **Yes.**

***

THE COURT: Okay. And you said that you would give more weight to the testimony of a child. Correct?

JUROR: Yes, I did.

THE COURT: Would you be able to set aside – **would you be able to set those feelings aside and listen to the evidence and testimony as presented by both sides, and issue a fair and impartial verdict?**

JUROR: **Yes.**

(Emphasis added).

Juror 8492

THE COURT: 8492. You answered that you believe a child witness over a – you would believe a child witness just because they're a child?

JUROR: As it relates to the subject matter. As it relates to the subject matter, yes.

THE COURT: Okay. And could you tell us why is that?

JUROR: Simply because I can sympathize with the situation as someone who felt unheard. And it would be very difficult for me to believe anything other than what they would have to say.

THE COURT: **Would you be able to set aside your own personal feelings, your prior experiences, and listen only to the facts and evidence as presented by the parties in this case, both parties, and the law as I instruct you, and issue a fair and impartial verdict in this case?**

JUROR: **Yes.** Yeah.

(Emphasis added).

Juror 8545

THE COURT: 8545. So you answered the question that you would give more or less weight to the testimony of a child witness because they're a child?

JUROR: Yes.

THE COURT: I just want to make – that's the question that –

JUROR: Yes.

THE COURT: Would it be more weight or less weight?

JUROR: So, the way I was thinking about the question was, I believe more. To answer that question. Because my view on that would be kids typically don't have a reason to lie.

THE COURT: Okay.

JUROR: At a certain age. I mean, it really depends on what you mean by child. But that was my view. Did I answer that properly?

THE COURT: Yes.

JUROR: I was just making sure.

THE COURT: And now, just -- **would you be able to set aside your belief that children don't lie, your prior experiences, and listen only to the facts and evidence as presented by both sides, and the law as I instruct you and issue a fair and impartial verdict?**

JUROR: **I mean, yeah**, Your Honor. You can try, right? I think the part that's hard to predict is the emotion aspect of it.

THE COURT: Okay. **Well, I'm asking you if you would be able to kind of separate your own personal experiences and only listen to what is presented in this courtroom by the parties here and the law as I instruct you.**

JUROR: **I think I could, yes.**

THE COURT: **Is that a yes or a no?**

JUROR: **I guess I'll go with yes.**

(Emphasis added).

Juror 8553:

THE COURT: You would give more or less weight to the testimony of a child witness because they are a child witness.

JUROR: Yes.

THE COURT: Would it be more or less weight?

JUROR: More.

THE COURT: And why is that?

JUROR: I have a daughter.

THE COURT: **Okay. Understanding that you have a daughter, would you be able to set aside your personal experiences with your own child, and only listen to the evidence and testimony as presented by the parties, and the law as I instruct you and issue a fair and impartial verdict in this case?**

JUROR: **It would be difficult, but yes.**

THE COURT: Okay. You say it would be difficult.

JUROR: Yes.

THE COURT: Because?

JUROR: Well, I was also sexually assaulted by a grandfather when I was also a child.

THE COURT: And is that why you answered question number twelve regarding the strong feelings on the –

JUROR: Yes.

***

THE COURT: **Understanding your prior experience, would you be able to set aside those feelings and your experience and only listen to the evidence and testimony as presented by both sides in this case, and the law as I instruct you, and issue a fair and impartial verdict?**

JUROR: **Yes. Yes.**

***

THE COURT: I just want to be very clear regarding the first question you answered regarding -- **you said you would give more weight to the witness -- to a child witness. Correct? And you said it was because of your daughter. And then I asked you could you set those things aside.**

JUROR: **Yes.**

THE COURT: Right? Did you say it would be difficult for you to set those things aside?

JUROR: I did.

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JUROR: Just because of my personal -- what happened to me as a child. I wouldn't want that to happen to her. It happened to my sister as well. So, just, it's just difficult.

THE COURT: You're saying, would it be difficult for you to -- **what I need to know is will you be able to set aside your feelings about your daughter and your past experience, and now that I know about your sister, your sister's past experience, would you be able to set all of that aside and listen only to the evidence that's presented by both sides and the law as I instruct you** –

JUROR: **Yes.**

THE COURT: -- **and issue a fair and impartial verdict?**

JUROR: **Yes.**

(Emphasis added).

Juror 8564:

THE COURT: … You answered several questions. The first is that you said that you would give more or less weight to the testimony of a child because they're a child. Is that correct?

JUROR: Yeah, and its personal reasons because my child kind of went through some of this.

THE COURT: Okay. So, would it be more -- would you give more or less weight?

JUROR: I would be more lenient towards the child.

THE COURT: You would give more weight to the child.

JUROR: Yes.

THE COURT: And you said -- you were saying –

JUROR: Personal. Yeah.

THE COURT: Personal because something your child went through?

JUROR: My child, yes.

THE COURT: Okay. And how long ago was that?

JUROR: It's been about twenty years, about twenty years, but it's still-

THE COURT: I understand. And I'm sorry.

JUROR: Thank you.

THE COURT: Was anybody charged or anything?

JUROR: No.

THE COURT: **[U]understanding that your child went through a similar experience, would you be able to listen only to the evidence as presented by both sides, and the law as I instruct you, and issue a fair and impartial verdict, setting aside your own personal experience and past experience? Would you be able to do that?**

JUROR: **Yeah, I would definitely, you know, follow what the law says, but I can't say that it won't be hard, but I would be fair. I would listen to both sides.**

(Emphasis added).

Juror 8584

THE COURT: You answered the question that you would give more or less weight to the witness of a child. Would it be more or less weight, which one?

JUROR: More

THE COURT: More weight to the child witness. Why is that?

JUROR: I am a new mother and have a heightened sense of protectiveness with children and minors.

THE COURT: Okay. And that is very understandable. **Understanding that you are a new mother and you have a sense of protection, would you be able to set aside your personal experiences and listen only to the evidence and testimony as presented by both sides and the law as I instruct you, and issue a fair and impartial verdict [in] this case?**

JUROR: **Yes.**

(Emphasis added).

Juror 8829

THE COURT: Okay. You also answered the question that you have strong feelings regarding the nature of these charges. Can you tell us what are your strong feelings?

JUROR: Yeah, I work with children. I work in an organization that works with children.

THE COURT: What do you do with the children?

JUROR: I run programs, summer camps for students. So academically talented students, we run in person, overnight camps with them, so we are, as part of the nature of my job, I'm a mandated reporte[r]. I bear the burden of believing children when they've said that they have had -- that they've been abused. So, you know, anything involving children who have been

abused or any type of misconduct around them, I bear the burden of believing them, and I strongly believe children when they say that they have suffered.

THE COURT: Okay. **So understanding that, in your professional experience with children and that you're a mandatory reporter and that you bear the burden of, what'd you say, of believing them, would you be able to set that aside and listen in this case to only the evidence presented here in this Courtroom in this case and the law as I instruct you, and issue a fair and impartial verdict?**

JUROR: **It would be difficult for me.**

THE COURT: Okay. Well, what I need to know is whether you can do it or not. I'm not, either, whatever it is for you, that's the answer. But we need to know so that we can make sure that we have 12 jurors that can be fair in this case, so –

JUROR: I can follow directions. I can follow what is being told to me. I can follow all of those pieces. **I feel strongly that it would be difficult, but I can do it.**

THE COURT: Okay, what I also need -- I understand you can follow directions. **What I need to know is can you be fair and impartial in this case and listen only to the evidence as presented in this case and the law as I instruct you, and be fair and impartial?**

JUROR: **Yes.**

***

THE COURT: Okay, I'm just going to ask you again. **Understanding that you believe it's a personal and professional obligation that you bear the burden of believing children, can you set that aside and your experience as a mandatory reporter contacting Child Protective Services and law enforcement and involved with reports of abuse of children and listen only to the evidence as presented in this case and the law as I instruct you, and issue a fair and impartial verdict?**

JUROR: **Yes.**

(Emphasis added).

Juror 8929

THE COURT: Good. You answered two questions. The first that you would give more or less weight to the testimony of a child witness because they are a child.

JUROR: Correct.

THE COURT: Okay. Would it be more or less weight?

JUROR: More weight.

THE COURT: And why is that?

JUROR: I – just experiences with children that I've raised and grew up with.

THE COURT: And when you say experiences – what do you mean experiences that you – with children you raised and grew up with?

JUROR: I guess the experiences I had with children on issues where things of great importance have come up. They tend to tell the truth.

THE COURT: Okay. And have you had any personal experiences or experience with friends or close family or friends dealing with the nature of these charges. Have you had any --

JUROR: Not – well as I understand it, so –

THE COURT: And so understanding that your personal experiences with children and understanding the great importance that you would you say that they have difficulty coming forward with things of great importance? Is that what you –

JUROR: Yes

THE COURT: Okay. **Would you be able to set that aside, and listen only to the evidence that's presented in Court in this case and the law as I instruct you, and issue a fair and impartial verdict?**

JUROR: **I believe I can be objective.**

> THE COURT: Okay. Do you believe you can be objective? Is there something that is – is that a manner of speaking? Is there something that is stopping you from being objective?
>
> JUROR No, there is nothing stopping me.
>
> THE COURT: Okay. So are you – **I need to know whether or not you can listen to the evidence presented and pay attention to the law as I instruct you, and issue a fair and impartial verdict?**
>
> JUROR: **Yes. Yes I can.**

(Emphasis added).

Appellant used seven of his peremptory challenges to strike the first seven of the above eight jurors. The eighth juror was not called to sit on the jury. Appellant used his remaining three peremptory challenges to strike three prospective jurors for reasons other than their responses to the child witness question.

B. Standard of Review

"The decision as to whether to excuse a juror for cause is ordinarily left to the sound discretion of the trial judge and will not be disturbed on appeal except for an abuse of discretion." *Ware v. State*, 360 Md. 650, 666 (2000). Deference is given to the trial court's decision as the trial court witnesses a juror's demeanor and can determine the juror's credibility. *Id.*; *see Wainwright v. Witt*, 469 U.S. 412, 426 (1985). Our Court's "only proper inquiry is whether the trial judge had some rational basis for exercising his discretion as he did." *Morris v. State*, 153 Md. App. 480, 504 (2003).

C. Arguments of the Parties

Appellant contends that the trial court abused its discretion by refusing to strike for cause "[a]ll prospective jurors who indicated they would be more likely to believe a child witness, and whose responses to follow-up questions did not establish that they could overcome that bias[.]" Although the jurors stated they could be fair and impartial after additional questions from the trial court, appellant argues that the jurors could not "be both predisposed to believe a child who testifies and be a fair and impartial juror." For support, appellant cites our Court's decision in *Tisdale v. State*, 30 Md. App. 334 (1976), *overruled on other grounds by White v. State*, 300 Md. 719 (1984), in which we stated that "[t]he fact that a prospective juror would give more weight to the testimony of a police officer plainly indicates his lack of impartiality-assurances to the court of an ability to weigh the evidence impartially being patently inconsistent[.]"

The State responds that the trial court properly exercised its discretion in denying appellant's motions to strike the eight prospective jurors for cause. The State explains that "[t]he court was not required to strike these jurors for cause simply because they initially responded affirmatively to the child witness voir dire question." Rather, according to the State, "[i]t is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." (citing *Calhoun v. State*, 297 Md. 563, 580 (1983)). Because, in the instant case, "each of the prospective jurors affirmatively told the court that they could set aside their personal feelings and be fair and impartial," the

State concludes that the trial court did not abuse its discretion in denying appellant's motions to strike.[1]

D. Analysis

The U.S. Supreme Court, the Supreme Court of Maryland, and this Court have held that, to be competent, jurors need only set aside their preconceived opinions and render a fair and impartial verdict based only on the evidence presented at the trial. In *Irvin v. Dowd*, the U.S. Supreme Court stated:

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

366 U.S. 717, 722-23 (1961).

Writing for our Supreme Court in *Couser*, Chief Justice Robert Murphy observed:

> It is true, of course, that the due process clause of the fourteenth amendment and Article 21 of the Maryland Declaration of Rights guarantee the right to an impartial jury to an accused in a criminal case; these constitutional guarantees do not, however, insure that a prospective juror will be free of all preconceived notions relating to guilt or innocence, only that he can lay aside

[1] The State also argues that appellant waived any challenge to the eight prospective jurors because "defense counsel expressed satisfaction with the jury as empaneled at the conclusion of jury selection." Although Maryland law recognizes a waiver of a party's voir dire objections "if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process," *State v. Stringfellow*, 425 Md. 461, 469 (2012), such acceptance by appellant did not occur in the instant case. As appellant properly points out in his reply brief, at the conclusion of the selection of the jury, the trial judge simply stated, "So this is the panel that we have, okay?", to which defense counsel said, "Yes, your honor." From this colloquy we cannot conclude that defense counsel accepted "unqualifiedly" the jury panel, and thus we hold that appellant did not waive his voir dire objections.

> his impressions or opinions and render a verdict based solely on the evidence presented in the case.

282 Md. at 138.

In *Morris v. State*, Judge Charles Moylan Jr. quoted the following statement of our Supreme Court in *Kujawa v. Balt. Transit Co.*, 224 Md. 195, 201 (1961):

> A juror to be competent need not be devoid of all beliefs and convictions. All that may be required of him is that he shall be without bias or prejudice for or against the parties to the cause and possess an open mind to the end that he may hear and consider the evidence produced and render a fair and impartial verdict thereon.

153 Md. App. at 501 (emphasis omitted).

In the instant case, eight prospective jurors initially stated that they would give more weight to the testimony of a child witness. However, on further examination by the trial court, all the jurors stated affirmatively that they could put their opinions and personal experiences aside to render a fair and impartial verdict based on the evidence presented in the case and instructions of law from the trial court. "In all of these discretionary calls on challenges for cause, what matters most is the final position asserted by the challenged juror and the judge's conclusion as to the significance of that response." *Morris*, 153 Md. App. at 502. The court believed that the eight prospective jurors would be fair and impartial based on their final responses to that question. Because, under the law, setting aside preconceived opinions and rendering a fair and impartial verdict based only on the evidence

at trial is all that is required for a juror to be competent, we conclude that the trial court did not abuse its discretion in denying appellant's motions to strike for cause.[2]

II. Did the Trial Court Err in Permitting the State to Adduce Hearsay Evidence?

A. Facts

During direct examination of LaBryant Young, the father of L.Y., the State asked:

> [THE STATE]: Mr. Young, did there come a time when you learned that your daughter had been sexually assaulted?
>
> [MR. YOUNG]: Yes.

***

[2] The State also claims that "[e]ven if the trial court erred, [appellant] suffered no prejudice because none of the jurors were seated on the jury." The State relies on *United States v. Martinez-Salazar*, 528 U.S. 304 (2000), in which the Supreme Court of the United States stated that if a defendant does "elect[] to cure such an error by exercising a peremptory challenge, and is subsequently convicted by a jury on which no biased juror sat, he has not been deprived of any [federal] rule-based or constitutional right." *Id.* at 307. Appellant responds that he was prejudiced because the trial court's refusal to strike the jurors at issue for cause required him to exhaust his peremptory challenges to remove them. As a result, according to appellant, his statutory right to ten peremptory challenges had been impaired. For support, Appellant cites this Court's opinion in *Tisdale v. State*, which states in relevant part:

> Since appellant was required to use peremptory challenges in order to eliminate the two jurors who had properly been challenged for cause, his total number of peremptories was effectively reduced from 20 to 18. The failure of the trial court to allow the appellant 20 peremptory strikes was reversible error. No showing of prejudice is necessary.

30 Md. App. at 339 (citations omitted).

Because we hold that the trial court did not abuse its discretion by denying appellant's motions to strike the eight prospective jurors for cause, we need not address the State's claim of no prejudice in this case.

[THE STATE]: Mr. Young, how did you come to learn this?

[MR. YOUNG]: So, I was in the room and [L.Y.] and Shatarra came in from the living room and came in the room, and they was just crying. They was just crying. She was just like, like she was just froze. Shatarra, her mother, was just froze. And she said, she's like, she was like, "He molested my daughter." And I'm like, "Who? What?" Like, just, because I'm like, "all right, calm down. Just say something, say what's going on." And they just crying and just yelling. And then she was like, "He touched --"

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Approach.

THE COURT: Basis? Oh, I'm sorry.

[DEFENSE COUNSEL]: Hearsay.

THE COURT: Hearsay?

[DEFENSE COUNSEL]: Yes.

THE COURT: I'll hear from [the State].

[THE STATE]: Your Honor, his answer is moving to hearsay, so I will --

THE COURT: Well I'm going to overrule the objection. Well, you know what? Are you withdrawing the question?

***

[THE STATE]: I'm not withdrawing the question. I will stop him, his answer. I don't think the question was hearsay. I think his answer –

***

[DEFENSE COUNSEL]: I'm objecting to everything he's about to say about what somebody told him. He's about to testify to a whole bunch of hearsay.

THE COURT: Excited Utterance?

[DEFENSE COUNSEL]: It's not excited utterance, Your Honor. How is that excited utterance? That's not – the foundation hasn't even been laid for that.

THE COURT: He just testified that – let me – he testified they came in, they were crying, she was upset, and she made the statements. Is that not excited utterance?

[DEFENSE COUNSEL]: Has to be some type of event to create the excitement to then utter something. He just said they just came in crying one day. That's not a proper foundation of excited utterance. How is that – and it's also not a prompt reporting. So, it's not like she came to somebody, something happened to her and she reported it, and now –

THE COURT: I didn't say it was a prompt report.

[DEFENSE COUNSEL]: That's what I'm saying. So, it's all hearsay. It goes back to my original objection. He's testifying to what somebody else said. And he's offering it for the truth of the matter which is that [appellant] did something, and that's what we're here for. It's all hearsay. I can't cross those witnesses about what he's going to be able to testify they said.

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[THE STATE]: Your Honor, I can move on from the question.

THE COURT: Okay. Move on. You may step back.

[DEFENSE COUNSEL]: Your Honor, I'm going to ask that the court make a ruling on the defense's objection.

THE COURT: I made a ruling on the record.

[DEFENSE COUNSEL]: Thank you, your Honor.

THE COURT: If you recall, the ruling was overruled. The State said that she was moving on.

B. Standard of Review

Hearsay is defined 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." Md. Rule 5-801(c). A trial judge "has no discretion to admit hearsay in the absence of a provision providing for its admissibility." *Bernadyn v. State*, 390 Md. 1, 8 (2005). The trial court's factual findings as to the circumstances in which the statement was made is reviewed for clear error. *Curtis v. State*, 259 Md. App. 283, 289 (2023). Whether the statement is hearsay is reviewed *de novo*. *Bernadyn*, 390 Md. at 8.

C. The Law

When determining whether a statement is hearsay, we must first identify the out-of-court statement and the declarant. *Esposito v. State*, 264 Md. App. 54, 80 (2024). Then we must identify the assertions made in the statement and the reason that the statement was offered, *i.e.*, if it was made for the truth of the matter asserted. *Id.* at 81. If the statement is being offered to prove the truth of the matter asserted, then it is hearsay. *Id.* A statement is not hearsay if it is offered for "a purpose other than to prove its truth." *Id.* (citation omitted).

> An out-of-court statement is considered to have been offered to prove the truth of the matter asserted if it would "only have any probative value. . . if the out-of-court declarant was both sincere and factually accurate as to the fact(s) he was asserting at the time he made the statement." McLain § 801:7, at 236; *see Handy v. State*, 201 Md. App. 521, 540, 30 A.3d 197 (2011) (quoting McLain, § 801:1(C) at 14–15 (2d ed. 2001)). The relevant inquiry is, "[D]oes a fact asserted in the out-of-court statement have to [have] been sincerely and accurately stated, in order for the out-of-court statement to help to prove what it is offered to prove?" *See State v. Young*, 462 Md. 159, 170, 198 A.3d 806 (2018) (quoting, in part, McLain § 801:7, at 235). If the answer is yes, the statement is hearsay; otherwise, it is nonhearsay and consequently not subject to the hearsay rule. McLain § 801:7, at 235.

Id. at 81.

Maryland Rule 5-803 provides exceptions to the Rule Against Hearsay for declarants whose unavailability is not required. *Mason v. State*, 258 Md. App. 266, 288

(2023). Rule 5-803(b)(2) allows for the admissibility of an excited utterance, which is defined as "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Md. Rule 5-803(b)(2).

> The essence of the excited utterance exception is the inability of the declarant to have reflected on the events about which the statement is concerned. It requires a startling event and a spontaneous statement which is the result of the declarant's reaction to the occurrence. The rationale for overcoming the inherent untrustworthiness of hearsay is that the situation produced such an effect on the declarant as to render his reflective capabilities inoperative.

Mason, 258 Md. App. at 289 (quoting *Mouzone v. State*, 249 Md. 692 (1982)).

We must consider the totality of the circumstances when determining whether a statement is an excited utterance. *State v. Harrell*, 348 Md. 69, 77 (1997). One factor in the totality of the circumstances "is the time between the startling event and the declarant's statement. Time, however, is not alone determinative." *Id.* The statement must also be "related" to the startling event. *Id.* at 81-82. "[T]he declarant's statement must pertain to, be associated with, or concern the startling event which prompted the statement. That is, the declarant's statement must be more than just the result of, or caused by, the startling event." *Id.* at 82. Finally, the emotional state of the declarant at the time of the statement governs admissibility. *Davis v. State*, 125 Md. App. 713, 716-17 (1999).

D. Analysis

Appellant argues that the trial court erred in overruling his hearsay objection to Mr. Young's testimony. Appellant contends that Mr. Young's testimony was hearsay as it contained an out-of-court statement by a declarant offered for the truth of the matter asserted, *i.e.*, that L.Y. was sexually abused by appellant. The State, on the other hand,

argues that Mr. Young's testimony was not hearsay because it was not offered to prove that appellant sexually abused L.Y., but was offered to show how Mr. Young learned about the abuse allegations. Therefore, according to the State, the trial court properly overruled appellant's hearsay objection.

The first step in determining if Mr. Young's testimony was hearsay is to identify the out-of-court statement and the declarant. *Esposito*, 264 Md. App. at 80. The out-of-court statement was made by Shatarra, L.Y.'s mother, when she said to Mr. Young, "*He molested my daughter*" and "*He touched* --." Next, we need to determine if Shatarra's out-of-court statements were offered to prove that appellant molested L.Y. Mr. Young's testimony was in response to the State's question asking him how he came to learn about the abuse allegations. His testimony was not offered to prove that appellant abused L.Y. but was offered to show how and when Mr. Young learned about the abuse allegations. Therefore, Mr. Young's testimony is not hearsay, and the trial court did not err by overruling appellant's hearsay objection.

Even if Mr. Young's testimony was hearsay, it was admissible as an excited utterance. *See* Md. Rule 5-803(b)(2). Shatarra's statements to Mr. Young were made when she was under the emotional reaction to her daughter's disclosure of appellant's abuse, and the statements related to that startling event. Mr. Young testified that Shatarra made the statement, "He molested my daughter," when she was crying and she "just froze." Mr. Young stated that Shatarra said, "He touched --," when she was "crying and yelling." Also, the trial judge immediately recognized and suggested that Shatarra's statements were

excited utterances. We agree and hold, in the alternative, that Mr. Young's testimony regarding Shatarra's statements were admissible as an excited utterance exception to the hearsay rule. *See* Md. Rule 5-803(b)(2).

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