UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1444

September Term, 2014

WILLIAM E. SATTERFIELD

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: September 4, 2015

Appellant William E. Satterfield was arrested and charged on suspicion of sexual abuse of his daughter, "K."[1] Following a one-day trial, a jury in the Circuit Court for Queen Anne's County convicted Satterfield of two counts of sexual abuse of a minor. The court sentenced Satterfield to a total of ten years in prison: 25 years, all but ten of those years suspended, for one count; and a consecutive, suspended sentence of fifteen years for the second count. Satterfield took a timely appeal to this Court.

QUESTIONS PRESENTED

Satterfield raises three issues for our review, which we have rephrased as follows:

I. Did the trial court abuse its discretion in declining to ask two of Satterfield's requested voir dire questions, concerning whether prospective jurors would attach more or less weight to the testimony of police officers solely because of their profession, and whether they would be unwilling to apply the presumption of innocence or the State's burden of proof?

II. Did the trial court erroneously admit evidence of other wrongs when it admitted a recorded statement by Satterfield that included an unspecified reference to the groping of a woman?

III. Did the trial court abuse its discretion in admitting a video-recording of a pretrial interview containing the alleged victim's prior consistent statement? [2]

[1] To protect personal privacy, we adopt the parties' practice of referring to Satterfield's daughter, the complaining witness in this case, by her first initial only.

[2] Satterfield originally phrased his questions in the following manner:

I. Did the lower court err in refusing to ask *voir dire* questions about whether prospective viewers would give more weight to the testimony of police officers than other witnesses, and whether prospective jurors would be unable or unwilling to apply the presumption of innocence?

(continued…)

For the reasons that follow, we hold that the court erred in admitting evidence of other wrongs without conducting the required three-part analysis under cases such as *Hurst v. State*, 400 Md. 397, 408 (2007), and *Faulkner v. State*, 314 Md. 630, 634-35 (1989). Accordingly, we must vacate the convictions. For guidance on remand, however, we consider and reject Satterfield's other challenges.

FACTUAL BACKGROUND

At trial, the State contended that Satterfield sexually abused his daughter on two separate occasions: once when she was eleven years old and again when she was thirteen. K., who did not report these incidents until several years later, was nineteen years old when she testified against her father at trial in May 2014.

At trial K. provided detailed testimony as to each act of sexual abuse. Both included sexual contact with her breasts.

K. testified that, following the second incident of abuse, she immediately texted her sister, M., to tell her what had happened. When M. "told [her] to leave the house and run down the road," K. "walked out the front door." Her father asked her what she was doing, and she "made up a lie" and told him that she "was going to the bathroom[.]" When she

(…continued)

II. Did the lower court err by allowing the State to play a recorded phone call that contained inadmissible and highly prejudicial prior bad acts evidence?

III. Did the lower court err by admitting a videotaped, pretrial interview between the complaining witness and a social worker, when the recording contained the witness's inadmissible, prior consistent statement?

tried to leave the house, "he pretended like he fell down the steps," and she "felt so bad [she] didn't know what to do." She testified: "I thought he was really hurt, so I ran back to see if he was okay." On cross-examination, the defense attacked K.'s credibility, pointing out, among other things, that when she was twelve she had falsely accused someone of raping her.

K.'s older step-sister, M., corroborated K.'s testimony that she text-messaged M. immediately following the second alleged incident of sexual abuse. M. stated that via text messages K. said that she had woken up after drinking with her father and "that he had touched her." K. "wanted to know if [M.] could come and get her and [M.'s other sister]." M. stated that "they were going to dart across the field, which was maybe like a half mile, mile . . . ," so that M. could pick them up, but that "next thing you know, I had gotten a text and it's like never mind, never mind, please don't come get me. [K.] said that he had woken up and come out of the house and gone down the driveway and was chasing after her . . . ." When M. offered again to pick her up, "she's like, no, don't do it, he'll get mad and then it will start a big fight and, you know, he might do other stuff, so please don't come get me." Neither K. nor M. reported the incident to the police.

Sergeant Michael Smith of the Maryland State Police also testified. He stated that in June 2013 he began investigating K.'s claims of previous sexual abuse and that he arrested Satterfield following that investigation on August 29, 2013. According to Sgt. Smith, Satterfield waived his Miranda rights and gave a statement following his arrest. Sgt. Smith stated that Satterfield called K. a liar once he was confronted with her allegations. In addition:

> [Satterfield] [l]eaned heavily on his intoxication at the time, saying that he didn't recollect anything. If he did it, he was sorry. I can't believe that I would do that, but if I did it, I'm sorry. I don't want to believe that I did that, but if I did it, I'm sorry. It was just continuous over and over. He never admitted to doing the acts, other than by stating that if he did, he was sorry.

As part of the investigation, the State surreptitiously recorded a telephone call in which K. attempted to engage her father in conversation about her allegations of sexual abuse. In that call, Satterfield apologized for anything that he may have done, but claimed to have no recollection of the events. He volunteered several examples of incidents, in which he drank excessive amounts of alcohol and blacked out. About one of the incidents, he said, "They said I put my hands on some chick, you know, was rubbing her tits and shit and everything or whatever. She tried to fucking hit me and everything. I don't remember nothing."

The State's final witness was a licensed social worker, Ms. Jody Simmons. Ms. Simmons testified that she conducted a "forensic interview" with K., as part of the police investigation into the sexual abuse allegations against Satterfield. Over the defense's objection, the court allowed the State to play a video recording of that interview, during which K. had described the two alleged incidents of sexual abuse.[3]

Satterfield testified in his own defense and denied K.'s allegations in their entirety. K.'s other sister, "A.," then testified that K. never told her that their father had sexually abused her. A. also testified that K. "tells some lies sometimes."

[3] Satterfield's challenge to the recorded interview forms the basis of Issue III.

The jury found Satterfield guilty on both charges of sexual abuse, and the trial court later sentenced Satterfield to ten years of executed prison time.

We shall introduce additional facts as they become pertinent to the issues presented on appeal.

DISCUSSION

I. Voir Dire Questions

Before the start of trial, the trial court read a number of voir dire questions to the selected venire panel. Not among those questions were Satterfield's requested questions 8 and 16, which were written as follows:

> 8. There may be testimony from one or more police officers. Would any of you attach more or less weight to the testimony of a police officer simply because of his or her profession?
>
> 16. In our legal system, a criminal defendant is presumed innocent unless the State proves beyond a reasonable doubt that he or she is guilty. Does any prospective juror have any objection to or reservation about these principles or believe that the fact that a person has been charged is evidence that the person is guilty?

When the trial court completed reading its questions to the venire, it asked the parties whether "there are any other questions that counsel wish me to ask[.]" The full extent of both parties' objections to those questions proceeds as follows:

> [DEFENSE]: The couple that I feel strongly about would be the presumption of innocence, if somebody has any —
>
> THE COURT: No, they'll get instructed on that. I'm not giving that.
>
> [DEFENSE]: No, I'm looking to see if they have any biases against that and would be unable to do that in order – because if they can't, I don't want them on the jury. Additionally, any religious, philosophical or racial

biases against a defendant or witness. That's kind of encompassed in a few questions.

THE COURT: All right.

[DEFENSE]: Specifically, Number 20 – 19 and 20.

THE COURT: I'm not giving 19, but I'll give 20.[4] I just asked that question, generally, and didn't get any affirmative answers.

[DEFENSE]: The only other one that I would strongly suggest would be Number 18, that has to do with the – giving more weight to any arguments of the state's attorney as opposed to defense counsel.

THE COURT: No, you can ask the ones that are going to come up that, if you want to.

[DEFENSE]: Certainly.

THE COURT: I'm not giving that. Any others?

[PROSECUTOR]: No, Your Honor.

[DEFENSE]: No.

After asking the venire one final question – whether any member "would be prejudiced against the defendant because of the defendant's race, color, nationality,

[4] Satterfield's questions proposed questions 19 and 20, as written in the "Proposed Voir Dire" Satterfield had filed with the court, read as follows:

19. Do you have any religious or philosophical views that would prevent you from sitting in judgment of someone facing criminal charges?

20. Is there any member of the prospective panel who would be prejudiced against a Defendant because of the Defendant's race, color, nationality, religion, age, appearance, or gender?

religion, age, appearance or gender" – the trial court announced that it was in session and began the trial.

Satterfield contends that questions 8 and 16 were directed toward specific causes for juror disqualification – namely bias or prejudgment – and that the trial court's failure to read such questions when requested was an abuse of discretion constituting reversible error.

The State responds that Satterfield has failed to preserve his challenge regarding the first voir dire question and that, as to the second, trial judges are not required to ask voir dire questions that inquire only as to whether prospective jurors would follow or apply stated rules and principles of law.

A. Legal Standards

Voir dire is "the process by which prospective jurors are examined to determine whether cause for disqualification exists[.]" *Moore v. State*, 412 Md. 635, 644 (2010) (quoting *Dingle v. State*, 361 Md. 1, 9 (2000)) (internal quotation marks omitted). Voir dire is critical to ensuring that trial courts honor a criminal defendant's guarantees to a fair and impartial jury, as mandated by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. *Washington*, 425 Md. at 312 (citing *Stewart v. State*, 399 Md. 146, 158 (2007)). "'Without an adequate *voir dire* the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled.'" *Stewart*, 399 Md. at 158 (quoting *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981)).

Maryland employs "limited voir dire," meaning that, in contrast to most other jurisdictions, "the intelligent exercise of peremptory challenges" is not a purpose of voir dire in Maryland. *Washington*, 425 Md. at 312 (citing *State v. Logan*, 394 Md. 378, 396 (2006)); *see also Pearson v. State*, 437 Md. 350, 356-57 & n.1 (2014). The "sole purpose of voir dire 'is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification[.]'" *Pearson*, 437 Md. at 356 (quoting *Washington*, 425 Md. at 312).

Thus, trial courts may decline to ask voir dire questions that are "not directed at a specific ground for disqualification, which are merely 'fishing' for information to assist in the exercise of peremptory challenges, which probe the prospective juror's knowledge of the law, ask a juror to make a specific commitment, or address sentencing considerations[.]" *Washington*, 425 Md. at 315 (citing *Curtin v. State*, 393 Md. 593, 602 (2006); *Grogg v. State*, 231 Md. 530, 532 (1963)).

As a general matter, "the manner of conducting voir dire and the scope of inquiry in determining the eligibility of jurors is left to the sound discretion of the judge." *Washington*, 425 Md. at 314 (citing *Curtin*, 393 Md. at 603). That being said, the "'parties to an action triable before a jury have a *right* to have questions propounded to prospective jurors on their *voir dire*, which are directed to a specific cause for disqualification, and failure to allow such questions is an abuse of discretion[.]'" *Washington*, 425 Md. at 317 (quoting *Langley v. State*, 281 Md. 337, 341-42 (1977)) (emphasis in *Washington*).

"There are two categories of specific causes for [juror] disqualification: (1) a statute disqualifies a prospective juror; or (2) a 'collateral matter [is] reasonably liable to have

undue influence over' a prospective juror." *Pearson*, 437 Md. at 357 (quoting *Washington*, 425 Md. at 313). The latter category consists of "biases directly related to the crime, the witnesses, or the defendant[.]" *Washington*, 425 Md. at 313 (citation and quotation marks omitted). Maryland courts have established a number of accepted areas of inquiry, which, if directly related to the case before the court, a trial judge must ask the venire. *See Curtin*, 393 Md. at 609-10 n.8 (collecting cases); *see also Stewart*, 399 Md. at 161-62 n.5. The list of bases expounded in *Curtin*, the Court of Appeals has made clear, is not exhaustive. *Moore*, 412 Md. at 661 (asserting, "[w]e reject the premise . . . that any *voir dire* question not expressly mentioned in . . . *Curtin* is not mandatory").

With this framework in mind, we review for abuse of discretion a trial court's decision as to whether to ask a voir dire question. *Pearson*, 437 Md. at 356; *accord Washington*, 425 Md. at 314 ("We review the trial judge's rulings on the record of the voir dire process as a whole for an abuse of discretion, that is, questioning that is not reasonably sufficient to test the jury for bias, partiality, or prejudice") (citation omitted).

B. Question 8

Satterfield argues that the court's decision not to read his requested question 8 amounted to reversible error. Ordinarily, Satterfield would be correct. Under Maryland law, if one or more police officers or other official witnesses will be called to testify, the trial court, upon request, must ask a voir dire question addressing whether prospective jurors would attach more or less weight to the testimony of a police officer simply because of his or her occupation. *See Moore*, 412 Md. at 655 ("[I]f the case is one in which one or

more police or official witnesses will be called to testify, the occupational witness question(s) must be asked, if requested"); *accord Langley*, 281 Md. at 349.

We do not reach the merits of this issue, however, as Satterfield has not properly preserved it and has thus waived it for the purpose of appellate review.

Maryland Rule 8-131(a) states, in pertinent part that: "Ordinarily, the appellate court will not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Rule 8-131(a) requires an appellant contesting a court's ruling to have made a timely objection at trial. With infrequent exceptions,[5] the failure to do so bars the appellant from obtaining review of any error. *Id.*

Rule 4-323(c) specifically governs the required manner of objections during the jury selection process. *See*, *e.g.*, *Marquardt v. State*, 164 Md. App. 95, 142, *cert. denied*, 390 Md. 91 (2005). The rule provides that:

> For purposes of review . . . on appeal . . . , it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs.

See Marquardt, 164 Md. App. at 143 ("it is sufficient to preserve an objection during the *voir dire* stage of trial simply by making known to the circuit court 'what [is] wanted done'") (quoting *Baker v. State*, 157 Md. App. 600, 610 (2004)).

[5] *See* Rule 8-131(a) ("[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, *but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal*") (emphasis added). Under the facts of this case we see no need to exercise this grant of discretion.

In *Marquardt*, 164 Md. App. at 143, the defendant preserved his objection because when the court asked if there were any problems with voir dire, he told "the circuit court that he objected to his proposed questions 11, 12, 14, and 15 not being asked." Where, however, a defendant does not specifically object to the court's decision not to read a proposed question, he or she cannot "complain about the court's refusal to ask the exact question he requested." *Gilmer v. State*, 161 Md. App. 21, 33, *vacated in part on other grounds*, 389 Md. 656 (2005).

Here, if the trial court committed any error, we cannot review it, because Satterfield has failed to preserve the issue for appeal. When the trial court read its questions to the venire, it gave both parties a clear opportunity to raise objections to the court's chosen questions, asking whether "there are any other questions that counsel wish me to ask[.]" The prosecutor stated that she had no objections. Defense counsel, on the other hand, mentioned a number of questions the court had declined to read: (1) question 16 (which we discuss below); question 19 (addressing any religious or philosophical biases against someone facing criminal charges); question 20 (addressing any prejudices based on race, religion, nationality, and other enumerated classes); and question 18 (addressing whether anyone would be inclined to give more weight to the arguments of the State's Attorney "merely because he is employed as a State's Attorney"). At no point, however, did defense counsel even obliquely raise the issue of question 8, concerning police officers as witnesses. Indeed, when counsel had finished raising his objections, the trial court asked both parties, "Any more?" to which both replied, "no."

We are not persuaded to the contrary by Satterfield's reference to an exchange that took place on March 28, 2014, the originally scheduled trial date.[6] Then, the trial court addressed Satterfield's question "whether any prospective jurors have been a victim of a crime," as well as his question "regarding law enforcement." The Court declined to read both, citing the Court of Appeals' recent opinion of *Pearson v. State*, 437 Md. 350 (2014).[7] With respect to the "law enforcement" question, the court noted that *Pearson*'s required condition – "where all of the State's witnesses are members of law enforcement agencies and/or where the basis for conviction is reasonably likely to be the testimony of law enforcement agencies" – was missing from the State's case against Satterfield.

Satterfield attempts to argue from this exchange that not only did the trial court refuse to ask his question 8, but that the court's reason for doing so was improper. Our response is that it makes little difference what the court and defense counsel discussed on March 28, 2014, because, under Rule 4-323(c), successful preservation of a challenge to the refusal to ask a voir dire question requires that the party, "*at the time the ruling or order*

[6] The trial court, after waiting for some time, eventually excused the venire panel on that day and postponed the start of trial, because Satterfield was in the hospital on short notice and unable to attend.

[7] The holdings from *Pearson*, 437 Md. at 354, were: "(I) a trial court need not ask during *voir dire* whether any prospective juror has ever been the victim of a crime, but, on request, a trial court must ask during *voir dire*: 'Do any of you have strong feelings about [the crime with which the defendant is charged]?'; and (II) where all of the State's witnesses are members of law enforcement agencies and/or where the basis for a conviction is reasonably likely to be the testimony of members of law enforcement agencies, on request, a trial court must ask during *voir dire*: 'Have any of you ever been a member of a law enforcement agency?'"

is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court[.]" (Emphasis added.) Satterfield failed to do so on May 15, 2014, the date when the voir dire questions were in fact read. What Satterfield and the court addressed several weeks before that time is immaterial to the question of preservation.[8]

We therefore decline to hear the merits of this challenge.

C. Question 16

Satterfield's counsel requested that the trial court read his question 16, which asked: "Does any prospective juror have any objection to or reservation about these principles or believe that the fact that a person has been charged is evidence that the person is guilty?"

As it had done with Satterfield's question 8, the trial court declined to include question 16 in its list of questions for the venire. Satterfield argues that the court abused its discretion because question 16 was "reasonably likely to expose potentially disqualifying bias." He contends that the question specifically would address "a juror's bias against Mr. Satterfield simply because he had been charged with crimes," and also a juror's "inability or unwillingness to apply the presumption of innocence."

[8] At any rate, even if the content of this pre-trial discussion had any relevance to the issue of preservation, it appears clear from the exchange that the trial court's "law enforcement question" was not a reference to Satterfield's question 8 – which asked whether jurors would place more weight on the testimony of a law enforcement witness "simply because of his or her profession" – but rather to Satterfield's *separate* question 10, which mirrored one of the questions at issue in *Pearson*, and which asked whether any prospective juror, "or member of your family" had "ever been employed or are currently employed by any law enforcement organization . . ., the Office of the State's Attorney or another prosecutorial agency[.]"

We hold that the court has committed no error. To conclude otherwise we would contradict a line of binding Maryland precedent on this question.

Maryland courts have long held that a trial court is within its discretion to refuse to ask potential jurors whether they would give the defendant the benefit of the presumption of innocence or whether they were willing and able to recognize and apply the State's burden of proof. The Court of Appeals, in *Twining v. State*, 234 Md. 97 (1964), stated: "It is generally recognized that it is inappropriate to instruct on the law at the [voir dire] stage of the case, or to question the jury as to whether or not they would be disposed to follow or apply stated rules of law." *Id.* at 100.

This principle has been reaffirmed in numerous reported Maryland opinions in the decades since *Twining* was decided. *See Logan*, 394 Md. at 399-400 ("As we made clear in *Twining*, . . . voir dire is not the appropriate time for the trial judge to instruct the jury on the law applicable to the case") (internal citation omitted); *Marquardt*, 164 Md. App. at 144 ("[T]his Court has not, nor could it, retreat from *Twining*"); *Baker*, 157 Md. App. at 615-18 (rejecting suggestion that *Twining* is "now outmoded," and holding that questions relating only to defendant's right not to testify and burden of proof need not be asked unless court exercises discretion to do so); *Wilson v. State*, 148 Md. App. 601, 660 (2002) (citing *Twining*) (holding that trial court did not abuse discretion by refusing to ask questions that "more closely resemble[d] jury instructions rather than *voir dire* questions"); *Carter v. State*, 66 Md. App. 567, 576-77 (1986) (no abuse of discretion where trial court refused to ask venire whether they "had any problem with the proposition that the mere fact that a person has been charged with a crime is not evidence of guilt").

In short, our precedent clearly forecloses Satterfield's argument, no matter that it has carried the day in a handful of other jurisdictions to which Satterfield cites for authority. We therefore affirm the trial court's ruling as a proper use of its discretion.

II. "Other Wrongs" Ruling

A. The Recorded Telephone Call

After K. reported her allegations to the police, Sgt. Smith, with K.'s consent, recorded a telephone call between K. and her father. Satterfield moved *in limine* to exclude a certain portion of that call on the ground that it included prejudicial evidence of "other wrongs." *See* Md. Rule 5-404(b). During the pre-trial proceedings on March 28, 2014, the trial court addressed Satterfield's motion.

At the court's request, the prosecutor read from the transcript of the call:

> I can tell you exactly what he says. I'm going to just go a couple lines above. He says: So if I did anything I'm sorry, that's all I can do is apologize, I really am sorry. I don't remember any fucking thing. Like I said, it's not just you. When everybody comes to me and says, hey, do you remember doing this last night, because last night when I was over at Pasadena with Steve and them, I woke up in dress clothes in the back of a greasy oily fucking truck laying in grease and motor oil in the back of Steve's truck and I don't member [*sic*] nothing that whole fucking weekend. Victim says: Right.
>
> He continues: We went to somebody's house, don't remember that, I woke up and don't know where the fuck I was. I didn't know nothing and I decided I didn't want to drink no more because it's dangerous, you know, I had no idea. I could have fucking killed somebody and wouldn't even know it. Victim says: Right.
>
> Defendant says: I had no fucking idea. They said I put my hands on some chick, you know, was rubbing her tits and shit and everything or whatever. She tried to fucking hit me and everything. I don't remember nothing. Then she [K.] says: But you don't remember anything at all from

> when we were living at the trailer? He says, no, sweetheart, I don't remember nothing at all.

Defense counsel objected to this portion of the phone call, asserting that "there's wholly separate admissions [sic] that I think would be prejudicial if heard by a jury . . . . I think it would be – I think the damage would be done, at that point, and past any curative instruction . . . ."

The exchange continued as follows:

> [DEFENSE]: I think it's going to be wholly prejudicial if the jury hears that. I mean, it's a separate incident. It's a separate act from what we're on trial for. We're on two separate acts, but one victim.
>
> THE COURT: He doesn't admit doing it. It's not like we're bringing in some other victim to testify that he fondled my breasts. That might be a whole different issue then, but I don't see that as being overly prejudicial to begin with, so, consequently, I will deny the motion as to that.

The trial court later allowed the State to play the recording and admitted it into evidence "[o]ver the prior objections."

Satterfield argues that the trial court committed reversible error "in allowing the State to play that portion of the phone call that referred to another groping incident, because it contained highly prejudicial, prior bad acts evidence." He contends that such evidence "was precisely the type of other bad acts evidence that Rule 5-404(b) aims to prohibit."

B. Analysis

Under Rule 5-404(b), "Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith." "Propensity evidence, or evidence suggesting that because the defendant is a

person of criminal character it is more probable that he committed the crime for which he is on trial, is not admissible into evidence." *Hurst*, 400 Md. at 407; *Page v. State*, 222 Md. App. 648, 660 (2015) (quoting *Ross v. State*, 276 Md. 664, 669 (1976)) ("an accused should only be convicted 'by evidence which shows he is guilty of the offense charged, and not by evidence which indicates his guilt of entirely unrelated crimes'"). "The primary concern underlying the rule is a "fear that jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking." *Hurst*, 400 Md. at 407 (quoting *Harris v. State*, 324 Md. 490, 496 (1991)). In addition, the rule "plays a role similar to the prohibition against unfairly prejudicial evidence, *i.e.,* to prevent the jury from 'developing a predisposition of guilt' based on unrelated conduct of the defendant." *Smith v. State*, 218 Md. App. 689, 709 (2014) (quoting *Sinclair v. State,* 214 Md. App. 309, 334 (2013) (in turn quoting *Faulkner,* 314 Md. at 633) (quotation marks omitted).

Rule 5-404(b) does, however, recognize several exceptions. Specifically, a court may admit evidence of other crimes, wrongs, or acts "for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Id.*

Other wrongs evidence "does not have to fall neatly into one particular exception and be admitted for one purpose." *Page*, 222 Md. App. at 663. Moreover, because of the rule's use of the phrase "such as," it is clear that the list of exceptions "is not exhaustive." *Wynn v. State*, 351 Md. 307, 317 (1998); *accord Harris v. State*, 324 Md. 490, 501 (1991)

(the list of exceptions is "not exclusive"); *see also Solomon v. State*, 101 Md. App. 331, 353-55 (1994) (enumerating other exceptions). The precise label is "'not that important,'" as long the other acts evidence has a "'special or heightened relevance and has the inculpatory potential to prove something other than that the defendant was a "bad [person].'" *Page*, 222 Md. App. at 663 (quoting *Oesby v. State*, 142 Md. App. 144, 162 (2002)).

"Before evidence of prior bad acts or crimes may be admitted, the trial court must engage in a three-step analysis." *Hurst*, 400 Md. at 408 (citing *Faulkner,* 314 Md. at 634–35). "First, the court must decide whether the evidence falls within an exception to Rule 5–404(b). *Id.* (citing *Faulkner*, 314 Md. at 634). "Second, the court must decide 'whether the accused's involvement in the other crimes is established by clear and convincing evidence.'" *Id.* (quoting *Faulkner*, 314 Md. at 634). "Finally, the court must balance the necessity for, and the probative value of, the other crimes evidence against any undue prejudice likely to result from its admission." *Id.* (citing *Faulkner*, 314 Md. at 635).

Here, one part of Satterfield's recorded statement concerns another reported wrong that bears some similarity to the crimes that he was accused of committing. Satterfield related an account of an incident in which he was said to have drunkenly groped a woman's breasts, and he told his daughter that he was so drunk at the time that he had no recollection of the event. The account parallels the State's allegations against him: in both incidents of sexual abuse, Satterfield is alleged to have touched his daughter's breasts; on the second, when his daughter was thirteen, she testified that they had been drinking alcohol together; and Satterfield told both his daughter and Sgt. Smith of the State Police that he remembered

nothing of the alleged events because he was too intoxicated at the time. In short, unless the statement fell within some exception to Rule 5-404(b), the jury might well infer that, just as Satterfield had reportedly groped the other woman at a time when he was too drunk to remember what he had done, so too had he drunkenly touched and abused his daughter, K., and lost the details to alcohol-induced amnesia.

Much of Satterfield's recorded statement does not even implicate Rule 5-404(b) and was unquestionably relevant and admissible. In the recording, Satterfield did not exactly deny his daughter's allegations, as he did at trial. Instead, he made a kind of non-denial denial, in which he apologized to his daughter for any wrongful acts that he might have committed, but attempted to persuade her that he had been so inebriated that he remembered nothing about what he had done. His conditional apology – "So if I did anything, I'm sorry, that's all I can do is apologize, I really am sorry. I don't remember any fucking thing" – may not qualify as a conventional admission of guilt. But it was recognizable as a concession that he may have abused his daughter and could not deny that he had, because he was simply too drunk to remember.

The circuit court, however, did not identify the special relevance of the specific portion of the statement in which Satterfield recounted the report that he had drunkenly groped another woman's breasts, but had no recollection that it had occurred. Nor did the court find by clear and convincing evidence that the other incident had occurred. Furthermore, while the court commented that Satterfield's statement about the incident was not "overly prejudicial," it did not clearly "balance the necessity for, and the probative

value of, the other crimes evidence against any undue prejudice likely to result from its admission." *Hurst*, 400 Md. at 408.

To the contrary, the court rejected the defense's reliance on Rule 5-404(b) because Satterfield did not "admit" to groping the other woman's breasts – indeed, he had no personal knowledge about whether the incident had even occurred. The court went on to distinguish this case from a more conventional case under Rule 5-404(b), in which the State would call the other woman to testify that the defendant had drunkenly groped her breasts.

The court was correct in recognizing that because Satterfield neither admitted nor even knew whether the other wrong had actually occurred, this was not a typical case under Rule 5-404(b). Nonetheless, we have found no case, in Maryland or elsewhere, in which a court was excused from conducting the requisite three-part analysis because the defendants did not know or could not remember whether they had actually committed the other wrongs that they recounted to the jury. "[B]ecause of the potential danger involved" with evidence of other wrongs (*Streater v. State*, 352 Md. 800, 807-08 (1999)), we cannot expect a lay jury to discount or disregard Satterfield's account of his involvement in another wrong, much like the wrong that he is accused of committing, merely because he is recounting what someone else told him and claims to have no recollection of what occurred. Consequently, as the State itself recognizes (Brief at 13), the court was required

to conduct the three-part analysis before admitting the portion of the statement to which Satterfield objected. The court erred in not doing so.[9]

In the context of this case, we cannot say that the error was harmless beyond a reasonable doubt. This case was largely a credibility contest between Satterfield and K. Almost anything that either bolstered K.'s case or impaired Satterfield's might well have influenced the jury's decision. Here, the jury heard that Satterfield may have drunkenly fondled another woman's breasts, just as he was alleged to have drunkenly touched his daughter's breasts, and that he is unable to remember any of these incidents. Because there is a reasonable possibility that that testimony may have contributed to the verdict, we must vacate the convictions. *Dorsey v. State*, 276 Md. 638, 659 (1976).[10]

III. Admissibility of Prior Consistent Statement

Satterfield argues that the trial court erred when it denied defense counsel's objection to the admission of a pre-trial, video-recorded interview between K. and Jody Simmons, a social worker. Satterfield contends that the interview contained a prior consistent statement by K. that was not admissible under the hearsay exception for prior consistent statements "offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive" (Md. Rule 5-802.1(b)) or as prior

[9] The State argues that Satterfield focuses only on the first part of the three-part test. The State fails to recognize that Satterfield could not possibly address the court's rulings on the second and third parts of the test, because the court did not make the required rulings.

[10] This decision does not foreclose the possibility that, after conducting the requisite three-part analysis on remand, the court might conclude that Satterfield's statement is admissible under Rule 5-404(b).

consistent statements that detract from impeachment and rehabilitate witness after her "credibility has been attacked[.]" Md. Rule 5-616(c)(2). In the alternative, Satterfield contends that the decision to admit the recorded interview constituted an abuse of discretion because "its prejudice outweighed any probative value."

The State, in turn, argues that Satterfield has failed to preserve all but the third of his arguments and that, in any event, the trial court properly admitted the prior consistent statement as rehabilitative evidence under Rule 5-616(c)(2).

A. Factual Background

While cross-examining K., defense counsel elicited her testimony that when she was twelve years old she falsely accused a classmate of raping her. The full exchange transpired as follows:

Q: That never happened, right?

A: Correct. I didn't know right from wrong.

Q: You made up those allegations, right?

A: It wasn't necessarily made up. I just didn't know exactly how to describe what had happened.

Q: So, basically, on that day you lied to your mother about the rape?

A: Not intentionally.

Q: Is that a yes?

A: No. Not intentionally.

* * * * *

Q: You told the police that you were raped, right?

A: I didn't know the difference.

* * * * *

Q: You told the police that your classmate pulled your pants down and put his penis in your vagina, is that right?

A: I can't recall.

Q: I have a copy of the police report. Would that refresh your recollection, if you took a look at that?

A: If you'd like it to.

Q: I'm asking you.

A: I was 12. I didn't know the difference. I know the difference now.

Q: So it's fair to say you unintentionally lied to police?

A: Unintentionally, yes.

Q: As a result of this lie, a rape examination was conducted at Chester River Hospital, right?

A: Yes, it was.

Q: The hospital concluded that you hadn't been raped?

A: Correct.

* * * * *

Q: When the police confronted you about the contradictions in your story —

A: I admitted to them that I didn't know right from wrong and I wasn't understanding what I had actually said.

Q: Yet you told them that he put his penis into your vagina?

A: No, I don't recall.

Later, the State offered a pre-trial, video-recorded interview between K. and Ms. Simmons, which occurred at some point after K. had reported her allegations of sexual

abuse to the police. Included in that interview was K.'s prior consistent statement alleging that her father had sexually abused her. Defense counsel took issue with the recording:

> [DEFENSE]: As far as the – basically, I assume she's there to lay a foundation for the entry of this video. Now, it may be able to overcome any hearsay objection as far as prior consistent statement, but I'm not really attacking any inconsistency with the victim statement. I think it's going to be cumulative and I think there won't be, really, any need to – from my standpoint, she says the same thing. I have not really – I haven't attacked her inconsistencies with what she's testified to now, as to what she's testified to when she came forward. So I don't think it would be necessarily grounds to have any kind of prior consistent statement in.
>
> [THE STATE]: Well, I think while you haven't attacked the consistency of her statement, you did, sure as heck, attack her credibility. This does come in as a prior consistent statement under the hearsay exception and while it might be a little cumulative —
>
> [THE COURT]: Yeah.
>
> [THE STATE]: I think it comes in.
>
> [THE COURT]: I mean, I think she's been called a liar. I mean, obviously, when you cross-examined her, it was about her credibility for coming forward at this time, so I think that while it may be cumulative, to some extent, that would be a prior consistent statement. I will allow it.

The trial court later allowed the State to play a portion of the video for the jury and admitted it into evidence, subject to Satterfield's prior objection.

Satterfield now argues that the prior consistent statement was not admissible either under the exception to the hearsay rule in Rule 5-802.1 or as rehabilitation after

impeachment under Rule 5-616(c)(2). Alternatively, Satterfield argues that because the statement was cumulative of K.'s testimony, its prejudice outweighed its probative value.

Before we move to the merits, we first address the State's contention that Satterfield failed to preserve the first two of his three arguments. The State argues that Satterfield specifically objected that the evidence was cumulative and prejudicial, but that he did not specifically object on the ground that the evidence did not satisfy the requirements of either Rule 5-802.1 or Rule 5-616(c). We disagree.

As we read the exchange, defense counsel objected on the ground that the prior consistent statement was inadmissible as substantive evidence. Citing one anticipated argument to the contrary, counsel argued that the State could not rely on Rule 5-802.1 as a basis to admit a prior consistent statement, because the defense had not attacked any inconsistencies in K.'s statements about what her father had done to her. Satterfield thereby preserved his argument concerning Rule 5-802.1.

On the other hand, defense counsel did not specifically argue at trial that the State could not rely on Rule 5-616(c)(2) for support, but the trial court relied on that theory as its basis for admitting the recording into evidence. The court observed that the defense had "called" K. "a liar[,]" and that the cross-examination "was about her credibility [in] coming forward." In light of defense counsel's broader objection to admitting otherwise inadmissible prior consistent statements (absent an applicable exception), and the court's decision to rule based on the specific theory of rehabilitative evidence under Rule 5-616(c), we conclude that Satterfield adequately preserved his objection to the admissibility of the prior consistent statement under Rule 5-616(c)(2).

B. Legal Standards

"Under Md. Rule 5-616(c)(2), a witness's prior consistent statements are admissible, not as substantive evidence, but for nonhearsay purposes to rehabilitate the witness's credibility." *See Thomas v. State*, 429 Md. 85, 97 (2012) (citing *Holmes v. State*, 350 Md. 412, 461-17 (1998)).

Rule 5-616(c)(2) provides as follows:

> (c) **Rehabilitation.** A witness whose credibility has been attacked may be rehabilitated by:
>
> * * * * *
>
> (2) Except as provided by statute, *evidence of the witness's prior statements that are consistent with the witness's present testimony, when their having been made detracts from the impeachment*[.]

(Emphasis added.)

Under Rule 5-616(c)(2):

> . . . a prior consistent statement is admissible to rehabilitate a witness as long as the fact that the witness has made a consistent statement detracts from the impeachment. Prior consistent statements used for rehabilitation of a witness whose credibility is attacked are relevant not for their truth since they are repetitions of the witness's trial testimony. They are relevant because the circumstances under which they are made rebut an attack on the witness's credibility. Thus, such statements by definition are not offered as hearsay and logically do not have to meet the same requirements as hearsay statements falling within an exception to the hearsay rule, *e.g.*, Md. Rule 5-802.1(b).

Holmes, 350 Md. at 427.

Thus, for an out-of-court statement to be admissible under this provision, it must precede and be "consistent with the witness's present testimony" (Rule 5-616(c)(2)), and

it "must meet at least the standard of having some rebutting force beyond the mere fact that the witness has repeated on a prior occasion a statement consistent with his trial testimony." *Thomas*, 429 Md. at 107-08 (quotation marks and citation omitted); *see also Hajireen v. State*, 203 Md. App. 537, 557 (2012) (stating that "a prior consistent statement must be more than a repetition of the trial testimony; the statement must, under the circumstances in which it was given, detract from the impeachment or rebut logically the impeachment") (quoting Rule 5-616(c)(2); *Holmes*, 350 Md. at 426 n.3) (quotation marks omitted).

As this Court recently put it: "A review of Rule 5-616(c)(2) indicates that there are three prerequisites to admission of a prior statement as rehabilitation: (1) the witness' credibility must have been attacked; (2) the prior statement is consistent with the trial testimony; and (3) the prior statement detracts from the impeachment." *Hajireen*, 203 Md. App. at 555.

C. Standard of Review

A ruling on the admissibility of evidence ordinarily is within the trial court's broad discretion. *Blair v. State*, 130 Md. App. 571, 592 (2000). We generally review such rulings for an abuse of that discretion. *State v. Simms*, 420 Md. 705, 724-25 (2011); *see also Nance v. State*, 331 Md. 549, 558 n.3 (1993) (stating that questions of admissibility are for trial court to determine, "including whether evidence is admissible generally and substantively or only for a limited purpose such as impeachment . . .") (citations omitted). Abuse of discretion occurs "'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Brass*

Metal Prods., Inc. v. E-J Enters., Inc., 189 Md. App. 310, 364-65 (2009) (quoting *King v. State*, 407 Md. 682, 697 (2009)).

This discretion is not unbounded. "[I]f prior consistent statements offered for rehabilitative purposes do not detract from the impeachment of a witness or rebut logically the impeachment undertaken, the statements are inadmissible under Rule 5-616(c)(2) and their admission may be reversible error." *Thomas*, 429 Md. at 98 (citing *Holmes*, 350 Md. at 427); *see also Hajireen*, 203 Md. App. at 552 ("Although the decision whether to admit a prior consistent statement falls within the discretion of the trial court, there are certain limits to when such evidence is admissible").

D. Analysis

Turning to the case at hand, we hold that the trial court properly admitted K.'s recorded interview with Ms. Simmons as rehabilitative evidence under Rule 5-616(c).[11]

We agree with the trial court's initial finding that Satterfield's counsel clearly attempted to impeach K.'s credibility by cross-examining her about the false rape accusations that she made when she was twelve years old. Defense counsel established that K. recanted the accusation when "the police confronted [her] about the contradictions in [her] story." The point of the impeachment was that K. had previously made false allegations of sexual assault and that the jury, therefore, should discount or disbelieve her current sexual abuse accusations against her father.

[11] As the trial court properly admitted the evidence under Rule 5-616(c), we need not discuss whether the recorded interview was properly admitted under Rule 5-802.1.

In light of that impeachment, we conclude that K.'s prior statement to Ms. Simmons – that her father sexually abused her on the two occasions described above – was both consistent with K.'s trial testimony and sufficiently detracted from defense counsel's attempt to impeach her credibility by introducing her prior false rape allegations.

The statement was the same in substance as the statement K. first gave to police upon reporting her allegations, and it was the same as her eventual trial testimony on the matter. But this was more than a mere repetition of the trial testimony, offered for its substantive truth. The prior consistent statement demonstrated that K.'s story remained unchanged from the time she first was interviewed by police, through her discussion with Ms. Simmons, and then to the actual trial. It was therefore useful to the State for the purpose of distinguishing the circumstances of the false rape allegations, wherein K. recanted her initial story as soon as it came under closer police and medical scrutiny. The prior statement sufficiently detracted from defense counsel's attack on K.'s credibility to be admissible.

We are unpersuaded by Satterfield's attempt to draw an analogy between this case and this Court's recent decision in *Hajireen*. In *Hajireen*, the defense attacked the victim's credibility by exposing inconsistencies between her trial testimony and her prior, out-of-court statements. In particular, the defense established that the witness's prior statements had not included the allegation, made at trial, that the defendant had digitally penetrated her. *Id.* at 556. The State responded by purporting to rehabilitate the witness by introducing a prior statement, in which she repeated many of her allegations, but not the allegation that the defendant had digitally penetrated her. On appeal, this Court held that

the circuit court abused its discretion in admitting that statement under Rule 5-616(b)(2), because "none of [the victim's] statements to the social worker were consistent with her trial testimony" that she had been digitally penetrated. *Id.* at 557.

Here, by contrast, K.'s prior statement to Ms. Simmons, as shown in the recorded interview, is perfectly consistent with what K. testified at trial. The prior consistent statement detracted from defense counsel's credibility impeachment of K. to meet the requirements of Rule 5-616(c)(2). Consequently, we see no abuse of discretion.

JUDGMENTS OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND QUEEN ANNE'S COUNTY.