Circuit Court for Montgomery County

Case No. C-15-CR-22-001348

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1444

September Term, 2023

FRANCISCO PINEDA-BARRIENTOS

v.

STATE OF MARYLAND

Graeff,
Kehoe, S.,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: September 2, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Montgomery County convicted Francisco Pineda-Barrientos, appellant, of second-degree rape. The court sentenced appellant to 20 years' imprisonment, all but 15 years suspended.

On appeal, appellant presents four questions for this Court's review:

1. Did the circuit court err and/or abuse its discretion by refusing to give an introductory instruction on the presumption of innocence and the requirement of proof beyond a reasonable doubt?

2. Did the circuit court infringe on appellant's rights to testify and to a fair trial before an impartial jury?

3. Did the circuit court err and/or abuse its discretion by refusing to allow appellant's prior consistent statements for rehabilitation?

4. Did the circuit court err by refusing to ask a proposed voir dire question to the venire?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was arrested and charged with second-degree rape of his niece, A.[1] A. who was 20 years old at the time of trial, testified that appellant began sexually abusing her when she was 10 years old. Between 2012 and 2014, appellant sexually abused A. multiple times at the home of her grandparents. In the summer of 2013, appellant sexually abused A. "more than 10 times."

A. testified that the first instance of abuse occurred while she was looking for a pair of sandals in the basement of her grandparents' home. Appellant, who was living in the

[1] We use the victim's initial in this case to protect the victim, who was a minor child at the time of the crime. *See* Md. Rule 8-125.

home with his wife and daughter, came out of the downstairs restroom, grabbed her by the shoulders, put her on the bed, took off her pants, and got on top of her. A. remembered feeling pain and "something warm" on her vaginal area.

Several weeks later, appellant asked A. for help. Appellant put A. in the downstairs bathroom and tried to put his penis in her anus, but he was unable to do so, and he then "made [her] give him oral sex." Appellant then told A. that he would hurt her or her family if she said anything.

Another time, appellant showed A. pornographic images on his phone of a woman performing oral sex on a man and said: "do that for me." A. told him that she did not "know how to do that." Appellant removed A.'s pants and got on top of her. A. testified that she "kind of just blacked out," but she remembered feeling "pain in [her] vagina." A. testified that appellant abused her three or four other times, and on two of those occasions, appellant made her perform oral sex.

Appellant testified in his own defense. Appellant denied all of A.'s allegations.

DISCUSSION

I.

Jury Instructions

A.

Parties Contentions

Appellant contends that the circuit court erred or abused its discretion in refusing to give a preliminary instruction at the outset of the trial regarding the presumption of

innocence and the requirement that the State prove the defendant's guilt beyond a reasonable doubt. He asserts that these "fundamental rights are simply too important . . . not to explain until the end of trial."

The State contends that the court properly exercised its discretion in denying appellant's request for preliminary instructions. It notes that appellant failed "to cite a single case from any jurisdiction finding error for failing to give such an instruction."

B.

Proceedings Below

On the first day of trial, prior to jury selection, appellant asked the court to "read the pattern introductory instruction," MJPI-Criminal 1:00, to the jury. That instruction, which can be found in MPJI-Cr 1:00 "Pretrial Introductory Instructions," reads as follows:

> Members of the Jury, as you heard during jury selection, this is a criminal case in which the State of Maryland has charged (defendant's name) with (crime(s)). At this time, I would like to give you an overview of how this case is going to proceed so that you will be better able to perform your important duty of deciding the facts diligently and conscientiously.
>
> The prosecutor and the defense attorney may choose to make an opening statement. Opening statements are not evidence. They are an opportunity for the lawyers to give you an overview of what the case is about and what they expect the evidence will be at trial.
>
> After the openings, the evidence portion of the trial begins. Evidence may come to you from two sources. Evidence comes to you primarily through the sworn testimony of witnesses. When witnesses are called to the stand, they are first examined by the side that calls them, and then the opposing side is permitted to cross examine them.
>
> During the course of testimony, the lawyers may object from time to time. It is the duty of a lawyer to make objections that the lawyer believes are proper. You should not be influenced by the fact that a lawyer has made objections

or by the number of objections that a lawyer may make. You should not draw conclusions from my rulings, either as to the merits of the case, or as to my views regarding any witness. My responsibility during the evidence portion of the trial is to decide what you, as the jury, should consider in deciding this case. If the evidence is something you should consider, I will overrule the objection. However, if the matter is not something that should be considered, I will sustain the objection, and you should not consider the question or speculate about any possible answer. You must not guess or speculate about evidence that is not before you, and you must decide this case based only upon evidence properly admitted in this courtroom.

In addition to the testimony of witnesses, there may be documents, photographs, or other forms of physical evidence that are admitted at trial. Items that are marked as an exhibit and admitted into evidence at trial will generally be available to you to examine in more detail, if you wish to do so, during your deliberations at the end of the case.

If at any time you are unable to hear a witness or see an exhibit being displayed, please let me know. In addition, if you need a break or a recess for some reason, please let me know.

Following the evidence portion of the case, I will instruct you on the law that applies to the case. You must apply the law as I explain it to you in arriving at your verdict.

Following my instructions, the lawyers are permitted to give closing arguments. These arguments are not evidence. They are an opportunity for the lawyers to summarize and to comment on the evidence that you have heard, and to argue to you how to decide the charges in this case. The State proceeds first with its closing, followed by the defense, and then the State is permitted to make a final rebuttal argument.

The State proceeds first in the trial process because the State has the burden of proving its case against the defendant beyond a reasonable doubt.

Presumption of Innocence and Reasonable Doubt

The defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This means that the State has the burden of proving, beyond a reasonable doubt, each and every element of the (crime(s)) charged. The elements of a crime are the component parts of the crime about which I will instruct you later. This burden remains on the State throughout the trial. The defendant is not required to prove (pronoun) innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.

A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs. If you are not satisfied of the defendant's guilt to that extent for each and every element of [a] [the] crime charged, then reasonable doubt exists and the defendant must be found not guilty of [that] [the] crime.

After closing arguments, you will begin your deliberations. You must decide this case based upon the evidence produced at trial. Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

During any break or recess, including any overnight break, you must not conduct any research or investigation about the case or any of the individuals involved in it. You may not consult with any dictionaries, reference materials, search the internet, websites or blogs, or consult any other source for information about the case. You must not visit any place mentioned in this case. You must decide this case fairly and impartially based only upon information presented together to you and your fellow jurors in this courtroom.

Until you retire to deliberate and decide this case, you may not discuss this case with anyone else. You should not even discuss the case with your fellow jurors. I know that request seems odd, as this case is the only reason you all are together. The reason I am asking you not to discuss this case until you begin your deliberations is that evidence comes to you in little bits and pieces throughout a trial. If you start to talk about the case too soon, you may start to form opinions before you have heard all of the evidence, the instructions on the law, and the arguments of counsel. In order to remain fair and impartial, you should not discuss and decide this case until you begin your deliberations.

> Many of you use cell phones and other electronic devices to communicate with family, friends, co-workers, and others. During this trial, you must not communicate any information or opinions about this case, or about the individuals involved in it, by any method to anyone, including by sending text or electronic messages. You also must not communicate in any way about the case on any social media platform or networking site.
>
> You should also not allow anyone to talk to you or communicate with you about the case. Outside the courtroom, avoid the people involved in the case, including the lawyers and any witnesses. Do not read, watch or listen to any media reports about the case, including newspaper, television, radio, or internet reports. Do not visit any internet sites where there may be reports or discussions about the case.
>
> Relying on information from any other source outside the courtroom, including social media sources, is unfair because the parties do not have the opportunity to refute, explain, or correct the information, and the information may be inaccurate or misleading. You must base your decision only on the evidence presented in this courtroom.
>
> If anyone tries to communicate with you about the case, or if you inadvertently overhear or receive any information from any outside source about this trial that is not part of the evidence presented in this courtroom, or that violates the rules that I have just explained, please immediately write me a note and give it to [person responsible for handling jury] as soon as possible, and do not discuss the matter with anyone else.

MPJI-Cr 1:00.

After appellant requested that instruction, the following colloquy ensued:

> THE COURT: Okay. I usually do my own version. One, it tells the jurors about not looking up, researching anything when they're about to start listening to evidence. That's better for in a break. It talks about partially the reasonable doubt instruction, which I found encourages attorneys to start arguing the law. And it's long and unwieldy, so I'll do – try to cover a lot of the areas. And if there's some other area you need me to cover, you can approach the bench.
>
> [DEFENSE COUNSEL]: Thank you.

The court then began jury selection. The court informed prospective jurors during voir dire that appellant was "presumed innocent of the charges" and the State was "required to prove a defendant's guilt beyond a reasonable doubt." The court then asked if the prospective jurors disagreed with those statements of the law. None of the prospective jurors responded in the affirmative.

After the jury was selected, the court gave several preliminary instructions addressing some of the items contained in MPJI-Cr 1:00, but it did not again address the presumption of innocence and the State's burden of proving a defendant's guilt beyond a reasonable doubt. At the conclusion of its preliminary instructions, the court asked if counsel had any comments before he dismissed the jury for a break, and defense counsel and the State responded: "No, Your Honor. Thank you."

After swearing in the jury, before opening statements, the court told the jury that it would give them instructions "at the end of the case," including that "[o]pening statements are not evidence." At that point, the following colloquy ensued:

> [DEFENSE COUNSEL]: Your Honor, I hate to interrupt. I just -- I was under the impression that Your Honor would say that you do give some version of beyond a reasonable doubt and some version of presumption of innocence as an introductory instruction.
>
> THE COURT: Well, I mean, we already told them a couple of times the defendant is presumed innocent during voir dire; but I'm not going to read them jury instruction[s] now. No, I will not do that myself.
>
> [DEFENSE COUNSEL]: Okay. So may I just make the record?
>
> THE COURT: You should, yes.

[DEFENSE COUNSEL]: Okay. I don't think that the jury has been told that the presumption of innocence applies to every stage of the case. Every stage of the case, to my recollection, has not been mentioned in voir dire or extemporaneously at any other time.

Also, the concept of beyond a reasonable doubt is something that is so foreign to the average layperson that just a little bit of --

THE COURT: That's a level of certainty, but they're not told a certainty of what.

[DEFENSE COUNSEL]: Right. My request is to give the entire introductory pattern instruction. In the alternative, I think it is critical to mention that the presumption of innocence applies throughout every stage of the case. I also think that it is critical to give at least one of the definitions of reasonable doubt that is, I'll call it, on the pro-defendant's side; and I would even consent to the two sentences right in the pattern jury instructions that are pro-State, which is not to a mathematical certainty and the other sentence.

* * *

THE COURT: Okay. Well, they have already been told the defendant is presumed innocent. They have been told the State has to prove its case beyond a reasonable doubt. And they have been told that their job is to listen to the elements with an open mind, and they should be doing that.

Now, as to the jury instruction at the beginning of the case, I haven't given it since it was created. Having been in the room where that was created is probably the worst instruction by the pattern jury committee. It's unwieldy, lengthy, and it's just encouraging a fast answer. So as far beyond a reasonable doubt when (unintelligible) so in opening statements. So I think the jury will follow the law and the jury instructions that I give them. And so I will deny that request.

At the conclusion of the evidence, the court instructed the jury on the presumption of innocence and the State's burden of proving a defendant's guilt beyond a reasonable doubt. Those instructions tracked the pattern jury instructions on the presumption of innocence and reasonable doubt, as set forth in MPJI-Criminal 2:02.

C.

Analysis

Jury instructions are governed by Maryland Rule 4-325, which states, in pertinent part: "The court shall give instructions to the jury **at the conclusion** of all the evidence and before closing arguments and may supplement them at a later time when appropriate." Md. Rule 4-325(a) (emphasis added). The rule further states that, "[i]n its discretion the court may also give opening and interim instructions." *Id.*

"A court interprets a Maryland Rule by using the same canons of construction that the court uses to interpret a statute." *Fuster v. State*, 437 Md. 653, 664 (2014). We begin with the rule's plain language, which we examine in light of the rule's scheme and purpose. *Satterfield v. State*, 483 Md. 452, 475 (2023). "If the text is not ambiguous, we may stop our analysis there and simply apply its ordinary meaning." *State v. Thomas*, 488 Md. 456, 465 (2024).

Rule 4-325(a) unambiguously states that a court "may" give a preliminary instruction "[i]n its discretion." Unlike instructions at the conclusion of the evidence, which the court "shall" give, *id.*, the Rule makes clear that, whether to give preliminary instructions is a matter for the court's discretion.[2]

[2] We also note that the comments to MPJI-Cr 1:00 reflect that it is within the discretion of trial judges to determine whether to give preliminary instructions. The comment specifically says: "the court, in its discretion, may give opening and interim instructions." It further states that "[i]f this instruction is given, it is further recommended that the proof-beyond-a-reasonable-doubt portion be read in its entirety."

To be sure, the concepts of the presumption of innocence and the State's burden of proof beyond a reasonable doubt are fundamental rights. *Kazadi v. State*, 467 Md. 1, 7 (2020). Accordingly, the court, on request, must ask on voir dire whether the prospective jurors are unwilling to comply with these principles, and it must instruct the jury on these principles at the conclusion of the evidence. *Id.* at 8; *Ruffin v. State*, 394 Md. 355, 372-73 (2006). The trial court complied with these cases. Neither case, however, supports a conclusion that a court is *required* to give preliminary instructions. We reject appellant's argument that such preliminary instructions should be mandatory on request.

We also conclude that appellant's claim that the court failed to exercise its discretion in refusing to give the requested instruction is without merit. When appellant initially asked for MPJI-Criminal 1:00 to be read in its entirety, the court considered the request and stated that it usually gave its own version of the instruction, but it would "try to cover a lot of the areas" outlined in the pattern instruction. After the court gave its preliminary instructions and appellant asked the court to specifically instruct the jury as to the presumption of innocence and the State's burden of proof, the court again considered the request, but it decided not to give the instruction, noting that the jurors had already been informed about those principles during voir dire. Although the court did state that it did not like the instruction and had never given it, the court did not say that it would *never* read the instruction. *See Adkins v. State*, 258 Md. App. 18, 35 (2023) ("[A] 'general rule' is not in and of itself a failure to exercise discretion, but rather 'one of the myriad ways in which discretion may be exercised.'") (quoting *Cagle v. State*, 462 Md. 67, 75 (2018)).

Appellant's claim that the court applied "a hard and fast rule" without exercising the necessary discretion is not supported by the record.

The record reflects that the court exercised its discretion in deciding to give the requested instruction. It noted that the jury was told about the principles regarding the presumption of innocence and proof beyond a reasonable doubt in voir dire, and that it would give instructions on the principles at the end of the case.

Under the circumstances of this case, we cannot say that the court abused its discretion in refusing to give the requested instruction. "[A]n abuse of discretion occurs when the court acts without reference to any guiding rules or principles, where no reasonable person would take the view adopted by the court, or where the ruling is clearly against the logic and effect of facts and inferences before the court." *Brown v. State*, 470 Md. 503, 553 (2020) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)) (internal quotations omitted). As noted, the court considered the request and decided to give a version of the instruction that covered many of the areas outlined in MPJI-Criminal 1:00. When defense counsel specifically requested a preliminary instruction on the presumption of innocence and the State's burden of proof, the court again considered the request, but it ultimately declined, finding that such an instruction was unnecessary given that the jurors had already been informed of those principles during voir dire. We perceive no abuse of discretion in that regard.

II.

Right to Testify and Fair Trial

Appellant contends that the circuit court's "repeated criticism and interruptions" of appellant during his direct testimony infringed upon his right to testify and his right to a fair trial. He asserts that the court's "interruption of perfectly responsive and appropriate testimony unfairly prevented [him] from effectively presenting his defense to the jury." Appellant argues that "it is very likely that the jurors understood the [court's] reaction as a sign of the [court's] irritation, and disrespect for, the defense," and the court's actions and attitude "so infected his right to a fair trial that his motion for a mistrial should have been granted."

The State contends that the court properly exercised its discretion in its response to appellant's actions during his direct testimony. It argues that the court's limited interruptions did not infringe on appellant's rights, as he was permitted multiple opportunities to express his innocence, and the court's comments "went to the form of his testimony – the volume, addressing the jurors directly, and repetitiveness– rather than to the substance."

A.

Proceedings Below

A. testified that appellant sexually abused her when she was 10 years old. When appellant subsequently testified, defense counsel asked about A.'s allegations:

> Q You had heard that [A.] told this jury that you put your penis in her vagina. I want you to tell this jury, sir, did you do that to that young girl?

A Absolutely not. I didn't do it. You guys got to believe me.

THE COURT: Hey. (Unintelligible), sir. Next question. He can't tell the jury what they have to do. Next question. Question and then answer.

[STATE]: I would move to strike that response.

THE COURT: Disregard.

BY [DEFENSE COUNSEL]:

Q Did you put your penis in her vagina, sir?

A Absolutely not. I didn't do –

[STATE]: Objection.

THE COURT: All right. Sir, will you follow the Court's rules?

THE WITNESS: Oh.

THE COURT: Just answer the question.

THE WITNESS: Oh.

THE COURT: You can't yell at the jury --

THE WITNESS: Oh, okay. I'm sorry.

[DEFENSE COUNSEL]: May we approach, Your Honor?

THE COURT: -- and make arguments.

[DEFENSE COUNSEL]: May we approach?

THE COURT: No. Next question.

BY [DEFENSE COUNSEL]:

Q I'll ask the same question again.

THE COURT: No. He said, no, he did not. That answer is accepted.

BY [DEFENSE COUNSEL]:

Q Did you, sir, put your penis, as [A.] said, between her butt cheeks? Please tell the jury.

A Not -- I didn't do it. I did not do it.

[STATE]: Objection.

THE COURT: Overruled. Next question.

BY [DEFENSE COUNSEL]:

Q Sir, did you force [A.] to give you oral sex? Please tell the jury.

A No. I didn't force her anything. I didn't do it.

[STATE]: Objection.

THE COURT: Next question.

[STATE]: May we approach?

THE COURT: No. Overruled.

[DEFENSE COUNSEL]: If it's overruled, may I ask the same question again?

THE COURT: He answered it.

[DEFENSE COUNSEL]: But he –

BY [DEFENSE COUNSEL]:

Q Sir, did you, as [A.] said, put your fingers in any part of her private parts? Please tell the jury.

A No. I didn't touch her.

Q Sir, you heard evidence from [A.] that you showed her porn. Did you do that? Please tell the jury.

A No. I never showed her anything.

Q Sir, I want you -- in summing it all up, did you in any way touch [A.] or do anything with her in any sexual manner? Please tell the jury.

A No, I never touched her.

[DEFENSE COUNSEL]: May we approach now?

(Bench conference begins.)

[DEFENSE COUNSEL]: Most respectfully, Your Honor, respectfully, I mean, with all due respect, I move -- I --

THE COURT: That your client should be able to say you believe me and start arguing to the jury about anything? You're entitled to your opinion.

[DEFENSE COUNSEL]: I'd move for a mistrial.

THE COURT: Denied.

[DEFENSE COUNSEL]: Okay. May I just -- it goes beyond the first statement about you guys need to believe me. Okay? It goes beyond that.

THE COURT: You asked him a yes-no question, and he starts trying to argue to the jury in a loud voice, and maybe you can -- I wouldn't allow the victim to do that, nor would I allow the defendant to do that. That's --

[DEFENSE COUNSEL]: Okay. If I --

THE COURT: -- inappropriate, and you know that.

[DEFENSE COUNSEL]: Well, I do -- honestly, Your Honor, I do, with the last part that you said, taking away the you got to believe me, taking away that, I do disagree with you on that, respectfully.

THE COURT: What do you disagree on?

[DEFENSE COUNSEL]: What -- so here's my point, right? So I still think that he should not have interrupted on the first one, but in addition to the first one, where he said you got to believe me, then the second one he didn't say that and he was interrupted again, right, and I think -- he did not say you guys got to believe me, but Your Honor interrupted him in the middle of his denial.

THE COURT: Well, he said, no, I didn't do it, and then kept going.

[STATE]: It's just nonresponsive, is the point.

THE COURT: Okay.

[DEFENSE COUNSEL]: Number three, I just want to make the record, and I'm not --

THE COURT: Go ahead. Go ahead.

[DEFENSE COUNSEL]: -- I'm not delaying --

THE COURT: Yes.

[DEFENSE COUNSEL]: -- right? Number three, then the third statement he was interrupted again from expressing his denial in his way. Right? Everybody has a different way of denying. Right?

THE COURT: So is there a different law on answering questions for defendants?

[DEFENSE COUNSEL]: Well, what if his answer is I swear I didn't do it, I'm telling you it didn't happen, it never -- whatever he's going to say? If somebody accused me of something, I bet you I would have eight statements, one after another --

THE COURT: Then that --

[DEFENSE COUNSEL]: -- that even if -- okay, because that would be my way. Any human being has a different way -- granted, if an appellate court thinks that he should not have said you got to believe me, that's a separate issue, and the issue now is interrupting him in his way of giving a stream of statements, explaining to the jury in his unique vernacular, in his unique indignation, his unique feelings, his unique way of expressing things.

THE COURT: Are there separate rules defendants can do differently than other witness? So the victim can start expressing different ways and in her own way and --

[DEFENSE COUNSEL]: Well, I think --

THE COURT: -- not answering questions directly?

[DEFENSE COUNSEL]: I think the analogy is inappropriate because victims are not asked that type of question, where normal, indignant human beings are going to express a denial in many different ways, one after the other --

THE COURT: Okay.

[DEFENSE COUNSEL]: -- and you know, even the point is, he was just interrupted at the beginning. What if Your Honor is right and he's not allowed to say eight different ways I didn't do it --

THE COURT: All right. We'll talk about -- you can put -- you've finished your record for a mistrial. I denied it, but you can put more on the record now. We're going to keep going.

(Bench conference concluded.)

At that point, appellant's direct examination concluded, and the State began cross-examination. At the conclusion of the State's cross-examination, defense counsel requested another bench conference, and the following colloquy ensued:

[DEFENSE COUNSEL]: So just very -- thank you for allowing me to finish, Your Honor. This is what I was going to continue to say, is that there was, I think, a fourth time that he was interrupted, whether through objection. There was even one time where you overruled the objection. So I just want to loop in, it's all four or five times that he was interrupted, and I don't mean interrupted in a disrespectful way. I'm just -- that's my vernacular.

Number two, the reason I asked to approach, Your Honor, is that I felt that Your Honor's voice was -- of course, if it was inappropriate, it would have been appropriately stern, your voice. I feel that the jury -- it was very

stern rebuke. I'm not saying an inappropriate rebuke, right? I'm just saying the --

THE COURT: No, I'm not offended.

[DEFENSE COUNSEL]: That's why I approached, is that the volume was very loud and it was -- the facial expression was also, like, very critical toward him, and I just want to point that out for the record for whatever that means. It was certainly -- I'll just let that speak for itself, and I would just compare that, Your Honor, to the way you dealt with the young lady in the back row. It was incredibly, you know, restrained when she didn't stand. Remember that?

THE COURT: I thought I was pretty tough with her too.

[STATE]: I thought that she -- that was also --

[DEFENSE COUNSEL]: No, but it --

[STATE]: -- outside the presence of the jury.

[DEFENSE COUNSEL]: Oh, I know, but it was -- but it was -- you -- your voice was restrained, right, and this was different. So the problem with that is that the jury, when Your Honor, as the judge, does that, they blame me and/or the defendant. So I would weave that into the motion for a mistrial.

And finally, I asked permission to ask the same question again about the vaginal intercourse because that was the first two interruptions. So I just want to tell you that I think, you know, since that's the one charge left, right, that has greater importance, and I wanted to ask it again so that he could express it in his way.

Your Honor had already told him, don't tell them, you know, you got to believe me. So he understood that, and I can just -- I need to proffer that in, you know, going over his testimony with him, his way of speaking is the way I personally would do it, which is to express one's indignation at feeling like there's a false charge against you by saying three, four, five ways of -- or more. Sometimes -- whatever comes out. It might be two. The next time it might six, and they might be repetitive, but it's his way of saying to the jury, believe me, without saying the words believe me. Right?

So he has a, respectfully, a due process right to put on a defense. He has a Fifth Amendment right to testify. So I would weave in the constitutional implications as well. That's it.

THE COURT: Okay. After the first -- or answer, question and answer where he, in a loud, pleading voice, started shouting at the jury that you must believe me, [] going way beyond the question, but I did have to sternly tell him that is inappropriate and stop, and then as he's been in this trial all week, he knows we're supposed to have question and answer, be responsive to the questions and answers.

I think [defense counsel] is right, normally a defendant does say something, I didn't do it, I did not do it, but he cannot plead. He was on a short leash after that first answer because he seemed to be going well beyond until -- I don't know what facial expression I had and stuff but probably very disappointed because it did seem very much like a tactical maneuver on his part in order to, as [defense counsel] says, say believe me, which [defense counsel] from his argument seems to suggest he can do that without saying these words. I'm not so sure that is the law, and so I had to make sure that he was not trying to get an unfair tactical advantage, because a fair trial is the right of both sides, and so I did let him know that he had to just answer the questions, and it was a yes-or-no-answer question for that and then for all the other ones.

Normally, if he had not done that initially, he might have had (unintelligible). I don't believe that people have a right to say three, four, five, six times to the jury, repeat themselves, but that will be for the appellate court. So I will deny the request for a mistrial.

B.

Analysis

A criminal defendant has a constitutional right to testify in his own defense. *Burnside v. State*, 459 Md. 657, 669 (2018). In addition, a defendant has a due process right to a fair trial. *Sewell v. Norris*, 148 Md. App. 122, 136 (2002). "It is well settled in Maryland that fundamental to a defendant's right to a fair trial is an impartial and disinterested judge." *State v. Payton*, 461 Md. 540, 559 (2018) (quoting *Jefferson-El v.*

State, 330 Md. 99, 105 (1993)). "Therefore, '[i]f a judge's comments during [the proceedings] could cause a reasonable person to question the impartiality of the judge, then the defendant has been deprived of due process and the judge has abused his or her discretion.'" *Furda v. State*, 194 Md. App. 1, 62-63 (2010) (quoting *Diggs v. State*, 409 Md. 260, 289 (2009)), *aff'd*, 421 Md. 332 (2011).

The conduct of a criminal trial, however, "is committed to the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse." *Choate v. State*, 214 Md. App. 118, 151 (quoting *Bruce v. State*, 351 Md. 387, 393 (1998)), *cert. denied*, 436 Md. 328 (2013). "Consistent with the trial court's authority concerning the conduct of trial, 'the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is a clear abuse of discretion.'" *Thomas v. State*, 143 Md. App. 97, 109-10 (quoting *Oken v. State*, 327 Md. 628, 669 (1992)), *cert. denied*, 369 Md. 573 (2002).

Here, we are not persuaded by appellant's argument that the circuit court infringed on appellant's rights to testify and to a fair trial. We explain.

Initially, appellant's claim that the court prevented him from presenting an effective defense by "repeatedly" interrupting "perfectly responsive and appropriate testimony" is not supported by the record. To be sure, at the outset of the relevant colloquy, the court did *sua sponte* interrupt appellant's response to defense counsel's question as to whether appellant had put his penis in A.'s vagina. The court explained, however, that it interrupted appellant because appellant, "in a loud, pleading voice, started shouting at the jury that you

must believe me." The court chastised appellant and struck his answer, noting that appellant had been in trial all week and knew that answers needed to be responsive to the question asked. After that, it was the prosecutor, not the court, who interjected by lodging an objection. The court then advised appellant to "[j]ust answer the question" and not "yell at the jury." Nonetheless, the court accepted appellant's response. Defense counsel then asked several more yes-or-no questions about the allegations, and appellant was permitted to answer. When the State objected to those questions, the court overruled the objections and told defense counsel to continue with his line of questioning.

Under the circumstances here, we are not persuaded by appellant's argument that the court prevented him from effectively presenting his defense. The court interrupted appellant only one time, and that was because appellant exceeded the scope of defense counsel's question and loudly pleaded with the jury to believe him. All other interruptions were objections from the State, which the court affirmatively overruled. Beyond that, there is nothing in the record to indicate that appellant's testimony was curtailed or inhibited in any way by the court. Appellant's right to testify and right to a fair trial were therefore not implicated by the court's "interruptions."

Moreover, the court's conduct did not give the appearance of partiality. The court's comments were directed, not at the substance of appellant's testimony, but rather at the volume of appellant's voice and the fact that appellant had pleaded with the jury to believe him. The court responded by stating that appellant could not "tell the jury what they have to do" and asking appellant if he could "follow the Court's rules" and "answer the question"

without "yell[ing] at the jury." Even accepting defense counsel's characterization that the court's voice was "loud" and its expression "critical," the record does not establish that the court's actions would cause a reasonable person to question the court's partiality.[3]

With respect to appellant's request for a mistrial, we note that "[t]he granting of a mistrial is an extraordinary remedy that should only be resorted to under the most compelling of circumstances." *Bynes v. State*, 237 Md. App. 439, 457 (2018) (quoting *Molter v. State*, 201 Md. App. 155, 178 (2011)). "We review the denial of a motion for mistrial for abuse of discretion and will reverse only where 'the prejudice to the defendant was so substantial that he was deprived a fair trial.'" *Choate*, 214 Md. App. at 133-34 (quoting *Cooley v. State*, 385 Md. 165, 173 (2005)). As discussed, the court's actions did not implicate appellant's right to a fair trial. Under the circumstances, the court did not abuse its discretion in denying appellant's motion for a mistrial.

III.

Prior Consistent Statements

Appellant contends that the circuit court erred and/or abused its discretion in refusing to admit his prior consistent statements for rehabilitation. He argues that, because the State attacked his credibility on cross-examination, and because the statements at issue

[3] The cases upon which appellant relies are distinguishable from the facts in this case. Here, we are not faced with a trial judge who improperly instructed the jury, *see Butler v. State*, 392 Md. 169, 192 (2006), questioned an attorney's integrity, *see Spencer v. State*, 76 Md. App. 71, 79 (1988), or bullied a witness into changing his testimony, *see Archer v. State*, 383 Md. 329, 359 (2004). Rather, the circuit court's actions here fell well short of the threshold at which a reasonable person would begin to question the court's impartiality.

were designed specifically to rehabilitate his credibility, the statements should have been admitted pursuant to Maryland Rule 5-616(c).

The State contends that the court properly declined to admit the prior consistent statements under Rule 5-616 because the statements did not "rebut logically" the impeachment. The State notes that appellant's statements were "flat denials" of the allegations made by A., which did not detract from any impeachment.

"Generally, statements made out of court that are offered for their truth are inadmissible as hearsay, absent circumstances bringing the statements within a recognized exception to the hearsay rule." *Thomas v. State*, 429 Md. 85, 96 (2012) (quoting *Su v. Weaver*, 313 Md. 370, 376 (1988)). One exception can be found in Maryland Rule 5-616, which provides, in pertinent part, that "[a] witness whose credibility has been attacked may be rehabilitated by . . . 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." Md. Rule 5-616(c)(2). That rule serves as an exception to the hearsay rule because the "witness's prior consistent statements are admissible, not as substantive evidence, but for nonhearsay purposes to rehabilitate the witness's credibility." *Thomas*, 429 Md. at 97. To be admissible, however, such prior statements "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." *Id.* at 107 (citations and quotations omitted). "[A] decision to admit or exclude hearsay is an issue of law that

we review *de novo*." *Quansah v. State*, 207 Md. App. 636, 657 (2012), *cert. denied*, 430 Md. 13 (2013).

Appellant claims that the prosecutor attacked his credibility during cross-examination by asking him whether he had watched the recorded interviews that some of the witnesses, including A., had with the police prior to trial, and by questioning him about when he had turned himself in to the police upon learning that there was a warrant for his arrest. Appellant contends that his denial of the allegations during a recorded phone call with A. in November 2022, several days before his arrest, was relevant to counter the attacks on his credibility, particularly given that, at the time of the call, he had not been charged and there was no indication that he was aware that he was being recorded.

We hold that the circuit court did not err in refusing to admit appellant's recorded statements pursuant to Rule 5-616. Appellant's recorded statements were, like his trial testimony, merely general denials of the allegations, and they did not detract from the State's cross-examination of appellant. *See Thomas*, 429 Md. at 108 ("The mere fact that [a witness] gave police the same information he testified to at trial . . . does not detract from the impeachment."). As previously stated, for a prior consistent statement to be admissible under Rule 5-616, the statement must have "some rebutting force *beyond the mere fact that the witness has repeated on a prior occasion a statement consistent with his trial testimony*." *Id.* at 107 (emphasis added) (citations and quotations omitted). Appellant's recorded statements did not meet that threshold, and the circuit court did not err in excluding the evidence.

IV.

Voir Dire

Appellant contends that the circuit court erred by refusing to ask during voir dire whether anyone would "believe the testimony of a family member of [appellant] more or less than any other witness simply because they're related to him." He argues that, in a child sexual abuse case, where several of his family members would testify about key facts, the proposed voir dire question was proper, as it was aimed at uncovering potential bias. Appellant contends that the proposed question was not covered by any other question, including the "defense witness" question, because none of those questions explored juror bias related to a witness's familial association with the accused.

The State contends that the court properly declined to ask the proposed question.[4] It argues that a question about "testimony of a family member" is not a mandatory question, and the court properly determined that it was fairly covered by other questions.

A.

Proceedings Below

Prior to jury selection, defense counsel submitted a list of proposed voir dire questions, which included the following question: "Would any of you believe the testimony

[4] The State also argues that appellant's claim was unpreserved because defense counsel did not dispute the circuit court's statement that the requested instruction was fairly covered by the "defense witness" question. We disagree. Defense counsel asked for the proposed question to be posed during voir dire, and the court declined. Defense counsel then renewed his request, and the court declined again. That was sufficient to preserve the issue. *See Smith v. State*, 218 Md. App. 689, 700-01 (2014) ("An appellant preserves the issue of omitted *voir dire* questions . . . by telling the trial court that he or she objects to his or her proposed questions not being asked.").

of a family member of [appellant] more or less than any other witness simply because they're related to him?" The court, in its voir dire, did not ask that question. The court did, however, ask prospective jurors if they would be more inclined to believe the testimony of a witness that was called by the Defense or by the State.

After the court finished asking its preliminary questions, defense counsel repeated his request to have the question regarding family members posed to prospective jurors. The court denied the request, stating that defense counsel's proposed question was "covered by [the question regarding] Defendant's witnesses." Shortly thereafter, defense counsel requested that the court ask prospective jurors if they were less inclined to believe the testimony of a witness because they were called by the Defense or by the State. The court agreed, and that question was asked of prospective jurors.

B.

Analysis

"Voir dire is the primary mechanism through which the constitutional right to a fair and impartial jury, guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, is protected." *Mitchell v. State*, 488 Md. 1, 16 (2024) (quoting *Curtin v. State*, 393 Md. 593, 600 (2006)). "[I]n Maryland, the sole purpose of *voir dire* 'is to ensure a fair and impartial jury by determining the existence of specific cause for disqualification.'" *Collins v. State*, 463 Md. 372, 376 (2019) (quoting *Pearson v. State*, 437 Md. 350, 356 (2014)). "Thus, a trial court need not ask a voir dire question that is 'not directed at a specific cause for disqualification or is merely fishing for

information to assist in the exercise of peremptory challenges.'" *Mitchell*, 488 Md. at 16 (quoting *Pearson*, 437 Md. at 357) (internal quotations omitted). Moreover, a court "need not ordinarily ask a particular requested question if the matter is fairly covered by the questions the court puts to the prospective jurors." *Id.* at 28.

"There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror." *Collins*, 463 Md. at 376 (quoting *Pearson*, 437 Md. at 357). "The latter category is comprised of biases [that are] directly related to the crime, the witnesses, or the defendant." *Id.* at 377 (quoting *Pearson*, 437 Md. at 357).

Regarding questions related to the status of a witness, the Supreme Court has held that a court must inquire into disqualifying biases about witnesses who are police officers, witnesses who are called by the State, witnesses who are called by the defense, and witnesses who are children. *Mitchell*, 488 Md. at 17-27. The Supreme Court has noted that, when a requested voir dire question is aimed at the status of a witness, there must be a "qualifying witness," *id.* at 22, i.e., a witness that possesses the particular status at issue, such that "it is reasonable to conclude that a potential juror might believe or disbelieve the [witness's] testimony based solely on [the witness's status]." *Id.* at 27. In addition, the witness must be "important" and "not a tangential witness with no other connection to the parties." *Id.* We review a court's decision whether to ask a voir dire question for abuse of discretion. *Lopez-Villa v. State*, 478 Md. 1, 10 (2022).

Here, we agree with the circuit court that the "family member" question was "fairly covered" by the court's questions whether prospective jurors were more or less inclined to believe the testimony of a witness called by the State or the Defense. Those questions probed whether a prospective juror might harbor a bias toward a witness based on that witness's relationship or association with the party calling the witness, including appellant. Under the circumstances of this case, the circuit court did not abuse its discretion in refusing to ask appellant's proposed "family member" question.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.