

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1623

September Term, 2014

NICCOLO MANZANERO

v.

STATE OF MARYLAND

Wright,
Graeff,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 24, 2015

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

Appellant, Niccolo Manzanero, was charged with attempted murder in the first-degree, attempted murder in the second-degree, and assault in the first-degree. Manzanero was tried before a jury in the Circuit Court for Montgomery County. On May 15, 2014, Manzanero was found guilty of attempted murder in the second-degree and assault in the first-degree. On August 11, 2014, the circuit court sentenced Manzanero to thirty years in prison, with five years suspended, and five years of supervised probation upon his release. His sentence for assault in the first-degree was merged with his sentence of attempted murder in the second-degree. This appeal followed.

QUESTIONS PRESENTED

Manzanero asks the following questions:

1. Did the trial court err in refusing to instruct the jury as to imperfect self-defense form of mitigation?
2. Did the trial court err instructing the jury it had made a legal determination that the affirmative defense of voluntary intoxication was inapplicable?
3. Did the trial court err in restricting defense counsel's closing argument?
4. Did the State's improper closing arguments preclude a fair trial?
5. Did the trial court err in its response to questions from the jury during deliberations?

FACTS

A friend of Manzanero, Jonathan Lima, testified that on or around 9:00 p.m. on April 25, 2013, Manzanero picked him up for a night of drinking to celebrate "Thirsty Thursday." On their way to pick up another friend, Michael Velasquez, Manzanero and

Lima shared a pint of vodka. After picking up Velasquez, the three friends shared a fifth of vodka during the drive to Bethesda. In Bethesda, they went to a bar known as BlackFinn, where Manzanero and Lima consumed mixed drinks and vodka shots, while Velasquez consumed beer.

While at BlackFinn, Velasquez met up with a female companion and spent time in conversation. At some point between 12:00 and 12:30 a.m., Manzanero, Lima, and Velasquez left BlackFinn Bar and were heading to another bar, Union Jack's, when they saw James Chronopoulos coming out of Union Jack's escorted by a bouncer and a group of people. As Chronopoulos was coming out of Union Jack's, he kept looking at Manzanero, Lima, and Velasquez and made physical gestures towards them to indicate that he wanted to fight. Lima testified that the female companion Velasquez was talking to at BlackFinn was seen talking to Chronopoulos. She then came back to talk to Velasquez, and that is when Chronopoulos began to make fighting gestures towards them. Lima also testified that he saw Chronopoulos arguing with another individual described as a black-haired caucasian but was never personally identified ("unidentified man"). Lima stated that Chronopoulos and the unidentified man looked like they were ready to fight each other.

As the unidentified man left Union Jack's to head to an adjacent parking garage, Chronopoulos followed him with the intention to fight. Manzanero, Lima, and Velasquez joined a crowd to watch the fight.¹ As Manzanero, Lima, and Velasquez entered the

¹ There were about twelve or thirteen other people in the parking garage who watched the fight.

parking garage, they saw Chronopoulos and the unidentified man swing at each other but make no contact. Chronopoulos and the unidentified man backed off but still exchanged words with one another.

At that point, Lima and Velasquez were getting ready to leave when Manzanero stepped between Chronopoulos and the unidentified man. Chronopoulos punched Manzanero in the mouth knocking Manzanero to the ground.² Lima and Velasquez then ran over to Chronopoulos and began to punch him. As Lima and Velasquez were attacking Chronopoulos, Manzanero got back up, picked up his glasses that had fallen off, and placed them on the trunk lid of a car. Manzanero then joined in the assault against Chronopoulos. Chronopoulos was hit several times by the three before finally falling to the ground. When Chronopoulos was on the ground and no longer moving, Lima and Velasquez stopped attacking him and backed off. Manzanero then began to kick and stomp on Chronopoulos's head as he laid unconscious. At that point, Lima and Velasquez had to pull Manzanero back from continuing to stomp on Chronopoulos.³ Genesis Rivera, a witness to the fight, testified that she heard Manzanero say immediately after the fight that "he's definitely not getting up now." Manzanero then

² In Manzanero's brief, he states that "for reasons not explained, Chronopoulos punched appellant [Manzanero] in the mouth and 'knocked him out.'" However, Lima testified that Manzanero walked between Chronopoulos and the person whom Chronopoulos originally tried to fight, before being punched by Chronopoulos.

³ At Manzanero's trial, two cell phone videos from bystanders were also presented depicting the latter stages of the fight showing Manzanero stomping on the unconscious Chronopoulos.

retrieved his glasses and fled the parking garage with Lima and Velasquez. At Manzanero's trial, Mark Manzanero, Niccolo Manzanero's brother, testified that he was picked up by Manzanero, Lima, and Velasquez shortly after 1 a.m. on April 26, 2013, at the Silver Spring Metro Station. Mark Manzanero testified that he observed that his brother, Manzanero, had a lump on his face, had slurred speech, and appeared intoxicated.

Responding officers found Chronopoulos lying on the ground bleeding from his head and unresponsive. Chronopoulos was transported by ambulance to Suburban Hospital for emergency medical treatment. Chronopoulos suffered numerous injuries, including fractures of his cheek bone, nerve damage to the right side of his face and mouth, a severe laceration above his right eye, a severe laceration on his left ear lobe, bruises and contusions to his forehead, around his eyes and to his back and chest. Chronopoulos underwent surgery which required the insertion of a plate and screws in his face, as well as eight stitches to close the laceration around his right eye and twelve stitches to close the laceration to his ear lobe. While at the hospital, Chronopoulos's blood was drawn showing that he had a blood alcohol content of .306.⁴ Chronopoulos was discharged from the hospital on April 27, 2013.

At Manzanero's trial, the circuit court ruled that Manzanero had not generated enough evidence to warrant an instruction to the jury on imperfect self-defense. The

⁴ In Maryland, if "a person has an alcohol concentration of 0.08 or more . . . the person shall be considered under the influence of alcohol." Md. Code (1973, 2013 Repl. Vol.), § 10-307(g) of the Courts & Judicial Proceedings Article ("CJP").

court also ruled that Manzanero had not generated enough evidence to warrant an instruction to the jury on the affirmative defense of voluntary intoxication. During closing arguments, Manzanero's counsel objected when the State asked the jury to find that Manzanero had the intent to kill:

[PROSECUTOR]: Again, we can infer someone's intent to kill. Repeatedly stomping the back of someone's head when they're lying face down on concrete. It's not one stomp, it's not two stomps, it's more than three stomps to the back of this man's head. The case law and the courts are clear that the brutality of the act itself - -

[DEFENSE COUNSEL]: Objection.

[THE COURT]: Overruled.

During his closing argument to the jury, Manzanero's defense counsel displayed a slide to the jury that said "specific intent" and "intoxication." Upon objection from the State, the trial judge ordered the slide to be taken down and for the jury to disregard it. As defense counsel continued with closing arguments, he presented two more slides that stated "specific intent" and "drunk" right next to it. The State objected and requested that a curative instruction be issued to the jury. The circuit court ordered that the two slides be taken down and issued the following instruction to the jury:

Ladies and gentlemen, Maryland law recognizes an affirmative defense of voluntary intoxication. However, as the presiding Judge I have made a legal determination that this affirmative defense does not apply in this case. You are instructed that you are not to consider whether Mr. Manzanero was intoxicated to such a degree as to make him incapable of forming the specific intent required to commit the crimes of attempted first-degree murder, attempted second-degree murder, or first-degree assault.

In the State's rebuttal, the prosecutor noted to the jury that the defense of voluntary intoxication was not generated in this case. Manzanero objected:

[DEFENSE COUNSEL]: The second one was just, 25 minutes of him being drunk is not important to the case. The first time he said specific intent. But this time he said, is not important to the case. That is not fair. And it is important to the case.

[The COURT]: Overruled.

At deliberations, the jury sent a note to the court asking the following questions:

- 1) []
- 2) Why are we not able to consider alcohol?
- 3) Can we use common sense to come to the conclusion that people in a garage at 1:15 a.m. may have been drinking? All involved – not just the defendant.

Over defense counsel's objection, the court responded to both questions as follows:

- 1) []
- 2) As instructed, you as the jury, are to consider all of the evidence that has been presented during the trial. The Court has instructed you as to the law in the State of Maryland in this case. Please consult all of the Court's written instructions on the law for guidance.
- 3) See answer to number two above.

The jury convicted Manzanero of attempted murder in the second-degree and assault in the first-degree.

DISCUSSION

I. Denial of Imperfect Self-Defense Instruction

Manzanero argues that the circuit court erred in not instructing the jury to consider imperfect self-defense as a mitigator for convicting him of a lesser crime than attempted murder. Manzanero asserts that because he was inebriated at the time of the fight, and because Chronopoulos punched Manzanero in the mouth and "knocked him out . . . for

reasons not explained,” Manzanero acted in self-defense. Manzanero contends that the jury was precluded from “. . . resolving the issue of whether appellant [Manzanero] acted under an honest, though unreasonable, belief that he needed to defend himself. The error inappropriately influenced the jury’s ultimate determination of criminal culpability.” We disagree.

Whether there is sufficient evidence to generate an instruction for the jury is a question of law decided by the judge. *Roach v. State*, 358 Md. 418, 428 (2000). In evaluating whether competent evidence exists to generate a requested instruction, the appellate court will view the evidence in the light most favorable to the accused. *General v. State*, 367 Md. 475, 487 (2002). Before an instruction may be given, there must be evidentiary support for the issue. *Flores v. State*, 120 Md. App. 171, 193 (1998). An instruction is generated when there is “some evidence” meeting each element of the instruction. *See Dykes v. State*, 319 Md. 206, 215 (1990). “Some evidence” means “no more than what it says – ‘some,’ as that word is understood in common, everyday usage.” *Id.* at 216-17. The evidence need not rise to the level of “beyond a reasonable doubt” or “clear and convincing” or “preponderance,” and the source of the evidence is immaterial. *Id.* at 217. An instruction that constitutes a correct statement of law in the abstract should not be given where it is inapplicable under the facts and circumstances of the particular case. *Dishman v. State*, 352 Md. 279, 293 (1998).

Resultingly, a jury instruction regarding self-defense is necessary whenever there is “some evidence” supporting each of the elements of the defense. There are multiple

requirements that must be met to generate the defense. “Complete, or perfect, self-defense requires that:

- (1) the defendant actually believed that he or she was in immediate or imminent danger of bodily harm;
- (2) the defendant’s belief was reasonable;
- (3) the defendant must not have been the aggressor or provoked the conflict; and
- (4) the defendant used no more force than was reasonably necessary to defend himself or herself in the light of the threatened or actual harm.”

Jones v. State, 357 Md. 408, 422 (2000) (citations omitted). Furthermore, an “essential element of the defense” is “the duty of the defendant to retreat or avoid danger if such means were within his power and consistent with his safety.” *Sydnor v. State*, 365 Md. 205, 216 (2001) (citation omitted). In *Jones*, 357 Md. at 422-23, the Court of Appeals discussed the distinguishing features of perfect self-defense from imperfect self-defense, stating:

Imperfect self-defense differs from perfect self-defense in its effect in that the establishment of imperfect self-defense does not result in an acquittal. If established, imperfect self-defense negates the element of malice in a charge of murder and the defendant may be convicted of the lesser crime of voluntary manslaughter. Imperfect self-defense results when a fact-finder concludes that a defendant committed criminal homicide in an honest, but unreasonable belief that he or she was threatened with death or serious bodily harm. The doctrine of imperfect self-defense applies only to criminal homicide and its shadow forms, such as attempted murder.

(Internal citations omitted). To establish the incomplete defense of imperfect self-defense, an accused must establish the same factors of perfect self-defense, save that the

belief of imminent danger of harm need only be subjective. *Faulkner v. State*, 54 Md. App. 113, 115 (1983).

We find as a matter of law that Manzanero did not provide “some” evidence that would require an instruction of self-defense, perfect or imperfect. Manzanero asserts that because Chronopoulos punched and knocked him down that it should be enough evidence to infer he felt his life was threatened. First, there was no evidence presented from Manzanero as to his subjective belief that he felt he needed to protect himself from imminent harm. Manzanero did not testify as to his subjective state. *See Wilson v. State*, 195 Md. 533, 542 (2011) (reasoning that a defendant’s own testimony as to his subjective state of mind suffices as “some evidence” sufficient to generate imperfect self-defense instruction). Manzanero provides only circumstantial evidence to show self-defense, that because he was punched, he felt his life threatened. Although state of mind can be proven circumstantially, “intent and subjective belief of imminent peril are not identical.” *State v. Martin*, 329 Md. 351, 363 (1993). Circumstantial evidence of intent does not necessarily show subjective fear of harm. *Id.* Thus, the “defendant’s mental state at the time of the incident is critical.” *Id.* Because Manzanero gave us no evidence of his mental state, the element of subjective fear is not met.

Next, self-defense requires that the defendant use no more force than was reasonably necessary to defend himself or herself in the light of the threatened or actual harm. Video footage taken by two bystanders showed four men, including Manzanero, beating Chronopoulos until he was unconscious on the ground. As the three other men retreated when it was clear that Chronopoulos was no longer moving, Manzanero came

toward Chronopoulos and stomped on his head five times. Chronopoulos was no longer a threat at the time Manzanero stomped on him, and Manzanero had a duty to retreat. *See Sydnor*, 365 Md. at 216. For an instruction of self-defense to be made to the jury, all of the elements of self-defense must be met.

Here, Manzanero did not meet the elements of imperfect self-defense. Although it may be argued that the trial judge erred in instructing the jury as to perfect self-defense, his doing so would not entitle the defendant to an instruction of imperfect self-defense when there is insufficient evidence to support either. Manzanero may have been given more than he was entitled to, based on the evidence at trial.

II. Legal Determination to Deny Voluntary Intoxication Defense

Manzanero asserts that the circuit court erred when it denied his request for a jury instruction on voluntary intoxication. Manzanero contends that he was entitled to the instruction because he presented evidence from testimony of witnesses that he was inebriated during the fight. The court declined to give the jury a voluntary intoxication instruction on the basis that there was insufficient evidence that Manzanero was so intoxicated as to be unable to form a specific intent. We agree with the trial judge.

Generally, voluntary intoxication is not a defense to a criminal charge. *State v. Gover*, 267 Md. 602, 606 (1973). However, the Court of Appeals has recognized that voluntary intoxication may reduce murder, and its shadow forms, from first-degree murder to second-degree murder. *Hook v. State*, 315 Md. 25, 30 (1989). A jury instruction regarding voluntary intoxication is only warranted when a defendant, charged with a crime requiring specific intent, “is so drunk that he is unable to formulate that

mens rea.” *Gover*, 267 Md. at 606. The degree of intoxication required to negate specific intent, however, is substantial:

The accused must do more than simply raise the issue of drunkenness to establish a defense. He must persuade the triers of fact that, under the circumstances, he was so intoxicated as to be incapable of entertaining the specific mental intent or of possessing the mental state which is an essential element of the crime for which he is being prosecuted. To establish a valid defense, the appellant must show that he was so intoxicated that he was robbed of his mental faculties, and he will be considered criminally responsible as long as he retains control of his mental faculties sufficiently to appreciate what he is doing.

Michael v. State, 1 Md. App. 243, 248 (1967) (internal citations omitted).

In the case before us, there was testimony from Lima that Manzanero consumed alcohol on the night of April 25, 2013, starting somewhere around 9:00 p.m. and drinking until about 12:30 a.m., when Manzanero and his friends left the bar. But, there was no testimony as to exactly how much alcohol Manzanero consumed that night. Lima’s testimony described Manzanero as sharing drinks with his friends throughout the night but did not specifically address how much he drank. There was also testimony from Mark Manzanero that he observed that his brother, Manzanero, had slurred speech and “appeared intoxicated.” However, Mark Manzanero was not with Manzanero before or during the fight. He only testified about Manzanero’s condition after the fight had occurred.

The amount of alcohol allegedly consumed, standing alone, does not establish that Manzanero was so intoxicated as to be incapable of forming the specific intent to kill Chronopoulos. To the contrary, evidence was presented that Manzanero had not lost control of his mental faculties to such an extent as to render him unable to appreciate the

consequences of his actions. It was shown that Manzanero decided to walk with his friend to a parking garage to watch a fight, that he carefully placed his glasses on a nearby car before stomping on Chronopoulos's head, that he had retrieved his glasses after the fight, that he was able to walk away from the scene of the fight without any apparent confusion or difficulty. He was also able to recall the next day what had transpired. The trial judge did not err in concluding that there was insufficient factual support to warrant an instruction of voluntary intoxication to the jury.

III. Restricting Defense Counsel's Closing Argument

Manzanero contends that the circuit court erred when it prohibited defense counsel's use of slides during closing arguments, which highlighted the specific intent requirement of attempted murder in the second-degree and assault in the first-degree as well as the factors present in the case that showed a lack of such requisite intent. As a result, Manzanero asserts that he was deprived of a constitutionally fair trial because he was denied the right to make a proper argument on the evidence and the applicable law in his favor. Furthermore, Manzanero claims that the curative instruction issued after the slides were presented "violated the mandate that instructions must be scrupulously neutral, and not have any tendency to convey an opinion to the jury concerning the court's views on the issues committed to the jury's determination." We disagree.

When reviewing a claim of error in closing arguments, the trial judge is in the best position to determine how to address an improper argument. *Henry v. State*, 324 Md. 204, 230-31 (1991). The Court of Appeals has held that during summation, "a trial judge has discretion to set appropriate boundaries." *Id.* at 230. "An appellate court should not

disturb the trial court's judgment absent a clear abuse of discretion by the trial court of a character likely to have injured the complaining party." *Grandison v. State*, 341 Md. 175, 225 (1995) (citations omitted). What constitutes improper closing remarks depends on the facts and circumstances of each case. *Smith v. State*, 388 Md. 468, 488 (2005). Counsel may not argue facts not in evidence, and may not make arguments which mislead or are likely to mislead the jury. *Wise v. State*, 132 Md. App. 127, 142 (2000). Closing arguments "must be grounded in the evidence or reasonable inferences drawn from the evidence." *Whack v. State*, 433 Md. 728, 748 (2013).

During closing arguments, defense counsel argued that Manzanero did not have the specific intent to kill Chronopoulos because he was drunk. While making this argument, defense counsel displayed a slide to the jury that said "specific intent" and "intoxication." Upon objection from the State, the trial judge ordered the slide to be taken down and for the jury to disregard it.

We hold that the circuit court did not abuse its discretion when it ordered that the slides be taken down and for the jury to disregard them. The court ruled that it would not give an instruction on involuntary intoxication to the jury. There is also no legally recognized intoxication defense whereupon Manzanero may ask the jury to find that he lacked specific intent due to his intoxication. The slides Manzanero presented to the jury during closing arguments were not a correct representation of the law on voluntary intoxication.

A curative instruction is long recognized as a means by which trial judges may address improper closing arguments, short of declaring a mistrial. When reviewing a

claim of error in closing arguments, one of the factors considered by appellate courts is whether the court gave a curative instruction. *Spain v. State*, 386 Md. 145, 159 (2005). The court's instruction must be legally accurate and it must not improperly influence the jury. *Gore v. State*, 309 Md. 203, 212 (1987). "[T]o be sufficiently curative, the judge must instruct contemporaneously and specifically to address the issue such that the jury understands the remarks are improper and are not evidence to be considered in reaching a verdict." *Lee v. State*, 405 Md. 148, 177-78 (2008) (citation omitted).

The circuit court did not abuse its discretion when it issued a curative instruction after Manzanero's counsel was barred from arguing the affirmative defense of voluntary intoxication. Defense counsel had been warned three times. The court was merely making it plain that, as a matter of law, the mere fact that Manzanero had consumed alcohol was not sufficient to negate intent. The circuit court had previously ruled that there was no factual basis for negating intent on those grounds, and thus it did not act improperly in issuing the curative instruction.

IV. State's Closing Arguments

Manzanero asserts that the circuit court erred in allowing the State during closing and rebuttal arguments to misstate the law and present grossly misleading and prejudicial remarks based on facts not in evidence. During the State's closing argument, the prosecutor argued that the jury could infer an intent to kill from the fact that Manzanero:

was "repeatedly stomping the back of someone's head when they're lying face down on concrete. It's not one stomp, it's not two stomps, it's more than three stomps to the back of this man's head. The case law and the courts are clear that the brutality of the act itself [. . .] is sufficient evidence."

Manzanero argues that the last sentence should be interpreted to mean that the State was arguing to the jury that “brutality,” in the abstract, was proof of intent, thus misstating the law, and that the State was further arguing “facts not in evidence” by making a reference to Maryland law. Again, we disagree.

“Maryland law is clear that counsel have great latitude in the presentation of closing arguments, and any restriction of remarks is within the trial court’s sound discretion.” *Wise*, 132 Md. App. at 142 (citations omitted). “[I]t is fundamental to a fair trial that the prosecutor make no remarks calculated to unfairly prejudice the jury against the defendant.” *Reidy v. State*, 8 Md. App. 169, 172 (1969) (citations omitted). “An appellate court should not disturb the trial court’s judgment absent a clear abuse of discretion by the trial court of a character likely to have injured the complaining party.” *Grandison*, 341 Md. at 225 (citations omitted). Reversal is only warranted where the State’s arguments “actually misled or were likely to mislead the jury to the defendant’s prejudice,” or where the arguments “trespass[ed] upon a defendant’s Constitutional rights.” *Wise*, 132 Md. App. at 142.

We disagree with Manzanero that the State’s use of the phrase “brutality of the act” would mislead the jury to conclude mere evidence of “brutality” established proof of intent. It is our view that Manzanero takes out of context how the State used the phrase “brutality of the act.” In its broader context, the State used “brutality of the act” to describe that the requisite intent to kill can be inferred from the circumstances. The Court of Appeals has held that “the prosecuting attorney is free to comment legitimately

and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is accused's counsel to comment on the nature of the evidence and the character of witnesses which the prosecution produces." *Wilhelm v. State*, 272 Md. 404, 412 (1974) (citations omitted). Contrary to Manzanero's claims, there was sufficient evidence to support the State's argument that Manzanero had the requisite intent to kill based on the surrounding circumstances of the evidence admitted. The requisite intent to kill can be inferred from the circumstances, including directing deadly force at a vulnerable part of the body. *Smallwood v. State*, 343 Md. 97, 104 (1996). Here, there was testimonial evidence as well as two cell phone videos that Manzanero stomped on the head of Chronopoulos as he lay unconscious. We hold that the State's comments to the jury were proper based on facts in evidence.

We also conclude that the State did not "misstate the law" when directing the jury that they could draw a legal inference between an intent to kill from Manzanero's brutal act of repeatedly stomping on the victim's head. "[U]nder the 'natural and probable consequences' doctrine, a defendant is not presumed to have intended the natural and probable consequences of the defendant's actions; instead, a finder of fact may, but need not, infer that the defendant intended the natural and probable consequences of the defendant's actions." *Jones v. State*, 440 Md. 450, 457 (2014). Arguing the state of the law is permissible, assuming that it is relevant and not likely to confuse the jury. *Bonner v. State*, 43 Md. App. 518, 524 (1979) (citations and emphasis omitted). Here, acknowledging the existence of a legal principle upon which the jury was properly instructed is not "arguing facts not in evidence" or "misstating the law:"

[STATE]: In determining Mr. Manzanero's intent you may consider his acts and statements as well as the surrounding circumstances. Further you may, but are not required, to infer that a person ordinarily intend the natural and probable consequences of his acts.

The State was not confusing to the jury, and the jury was properly instructed.

Lastly, Manzanero asserts that during the State's rebuttal argument to defense counsel's closing argument, the State again pointedly misstated the law, telling the jury with the court's imprimatur, "you can't consider whether or not this person was drunk [] when determining whether he has the specific intent. Not important." In making this argument, Manzanero returns to the legally incorrect premise that he was entitled to raise the defense of voluntary intoxication notwithstanding the fact that it was not factually generated or legally sustainable. After Manzanero's attorney argued at great length that he should be acquitted because he was drunk when he stomped on Chronopoulos, the State correctly rebutted that argument by noting that the defense of voluntary intoxication was not generated and did not apply in this case. In rebuttal, the State is entitled to respond to issues raised by the defense during closing argument. *Degren v. State*, 352 Md. 400, 431 (1999).

V. Jury's Questions to the Court

Manzanero asserts that the circuit court erred in its response to questions sent by the jury during deliberations. The jury had asked two questions about how it should weigh and consider the evidence, asking why it could not "consider alcohol," and whether it could "use common sense to come to the conclusion that people in a garage at 1:15 a.m. may be drinking[.]" The court responded to the questions as follows:

1) []

2) As instructed, you as the jury, are to consider all of the evidence that has been presented during the trial. The Court has instructed you as to the law in the State of Maryland in this case. Please consult all of the Court's written instructions on the law for guidance.

3) See answer to number 2 above.

Manzanero contends the circuit court erred in not giving a clear answer to the juror's questions. We disagree.

When reviewing a trial court's decision to give a supplemental instruction in response to a jury question, an appellate court should not disturb the trial court's judgment absent a clear abuse of discretion. *Cruz v. State*, 407 Md. 202, 210 (2009). The Court of Appeals has indicated that "a trial court must respond to a question from a deliberating jury in a way that clarifies the confusion evidenced by the query when the question involves an issue central to the case." *State v. Baby*, 404 Md. 220, 263 (2008) (citation omitted). "When the jury's question seeks guidance on how to find the facts, however, the judge's response must be more circumscribed, so as not to invade the province of the jury." *Appracicio v. State*, 431 Md. 42, 53 (2013).

In answering the jury's questions, the circuit court acted properly in declining to give some irrelevant and confusing discussion on voluntary intoxication. As a matter of law, the defense of voluntary intoxication is not available to Manzanero in this case, because he failed to generate sufficient evidence of its applicability. Prior to deliberations, the court issued a curative instruction that the jury was to not consider Manzanero's level of intoxication to negate his intent to kill. The court did not err when

it responded to the question about “why it could not consider alcohol” by reminding the jury it had already been instructed on the affirmative defense of voluntary intoxication and to review the written instructions for guidance on the law.

The circuit court also did not err in its response to the jury’s second question on why they “could not use common sense” to infer that “people in a garage at 1:15 a.m. may be drinking.” The question was one concerning evidentiary inferences. The circuit court’s response to “consult . . . the court’s written instruction on the law for guidance was correct.”

For all the foregoing reasons, we affirm the circuit court’s judgments.

**JUDGMENTS OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**