UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1611

September Term, 2014

VICTOR STEVEN HARPER

v.

STATE OF MARYLAND

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 2, 2016

Following a trial in the Circuit Court for Anne Arundel County, a jury convicted appellant, Victor Steven Harper, of second-degree murder and the use of a firearm in the commission of a crime of violence.[1] The trial court sentenced appellant to a total prison term of 30 years, after which he timely noted this appeal.[2]

Appellant presents the following questions for our consideration:

> 1. Was the evidence sufficient to sustain [a]ppellant's conviction for murder in the second degree?
>
> 2. Did the trial court err in prohibiting [a]ppellant from introducing evidence of the victim's recent hospitalization for suspected drug use?
>
> 3. Did the prosecutor's improper comment deprive [a]ppellant of his right to a fair trial?
>
> 4. Did the trial court err when it allowed the State to introduce hearsay statements?
>
> 5. Did the trial court improperly permit the State to introduce evidence of the victim's state of mind prior to the shooting?
>
> 6. Did the trial court err when it prohibited the defense from introducing a statement of a party opponent?

For the reasons that follow, we shall affirm the judgments of the trial court.

[1] During the trial, the State *nolle prossed* a charge of the use of a handgun in the commission of a felony.

[2] The court imposed a term of 25 years for the second-degree murder conviction, along with a consecutive five years without the possibility of parole for the firearm conviction.

FACTUAL AND PROCEDURAL HISTORY

The shooting victim, Ray Collignon, and Carol Jane Collignon[3] purchased a home at 1505 Furnace Avenue in Glen Burnie, Anne Arundel County, in 1984 and married in 1990. In 2005, they initiated divorce proceedings, which became acrimonious. Jane took out a protective order against Ray in 2005 after he threatened her, and she later had nightmares of him attempting to kill her.

The Collignons' divorce was not finalized until 2010, and, thereafter, both Ray and Jane remained the title owners of the Furnace Avenue house. According to Jane, the couple's relationship improved significantly after the divorce, and when the house that Ray had been living in with one of their sons, Thomas, was sold in 2011, Jane invited Ray to move back into the garage of the Furnace Avenue house in an attempt to "help him out." She said that her decision was facilitated by her observation that after serving time in prison, Ray was "trying to get his life back together," looking for a job, and imploring their two sons not to make the mistakes he had made.

Jane said that Ray did not enter the house itself unless something was broken; performing household repairs was his contribution to the running of the household in lieu

[3]Because the victim and some of the trial witnesses share a surname, we will refer to them by their given names for clarity. Ms. Collignon commonly goes by the name "Jane."

of paying rent.[4] Ray told Jane that he did not wish to impose upon, or create problems for, her, and he understood that if he did cause problems, she would require him to move out.

Jane met appellant in approximately 2002, when they both worked for the Department of Defense, and they began dating about two years later. Appellant moved into the Furnace Avenue home in approximately 2006, after resigning from his job. Jane testified that her and appellant's relationship was "fine in the beginning" but later "just didn't work out." She asked him to move out of her house several times, and although he would leave for a few weeks at a time on ten to twelve separate occasions, he always returned.

Around Christmas 2011, Jane again asked appellant to move out. He left in February 2012, taking most of his belongings and leaving no forwarding address. With no communication from appellant for more than a month, Jane assumed the relationship was "done and over with," because he had never moved out for such a long period of time, and she had no expectation that he would return. Thomas, too, believed that appellant would not be returning to the house.

On April 5, 2012, Ray was in Jane's house, with her permission, attempting to fix her broken refrigerator. At approximately 1:00 p.m., Jane received a "matter of fact" phone call from Ray while she was at work; Ray, sounding "normal" and unemotional, told her that appellant was at the house and "sound[ed] angry," and he asked Jane what she wanted

[4] Thomas, who had moved back into the house when Ray moved into the garage, testified that Ray occasionally entered the house to ensure that Thomas was awake in time for appointments, to use the laundry room sinks, or to walk the family dog.

him to do. Surprised that appellant had returned, Jane asked Ray to tell appellant either to leave or stay until she returned home to "deal with it."

To Jane's knowledge, there had been no previous problem or disagreement between appellant and Ray, and appellant had never expressed any concern about Ray being in the house. Jane was aware, however, that appellant owned a legally registered handgun, which he kept in a black bag.[5]

Approximately one hour and 30 minutes after Ray called Jane, appellant dialed 911 from the Furnace Avenue house and told the operator that he had shot and killed a man after that man attacked him.[6] The 911 operator advised the responding police officers that the caller sounded as though he were in shock.

When the police arrived at the scene, appellant walked out the front door of the house and was immediately taken into custody without incident. As the officers entered the house, they could see the legs of a person on the floor behind the front door. A black plastic trash bag, which Jane testified had not been present when she left for work that morning, had been taped over the glass front door.

[5] Shortly after appellant moved in with Jane, she signed a document that expressly permitted him to keep the weapon in her house. Although she did not rescind that permission in writing, she said she later told appellant she no longer wanted the gun in her house. He did not respond. Ray had also discussed with Thomas the fact that Ray was concerned about the presence of guns in the house.

[6] Appellant disconnected from the operator on several occasions, necessitating calls back from the operator, and resulting in several calls between appellant and the 911 operator. The 911 recordings were played for the jury.

Telephone records revealed that before dialing 911, appellant engaged in several other phone calls, to Jane's next-door neighbor and to his parents in Pennsylvania.

A medic determined that the person on the floor, identified as Ray Collignon, was deceased. The responding police officers observed that someone had placed a bloody piece of clothing or towel over Ray's face and had attempted to wipe up some of the blood on the floor with towels.

The police recovered a .45 caliber semi-automatic weapon, with its magazine removed, from the floor by the victim's side. It appeared to the officers that one round had been fired from the gun. They also located a gunshot hole in the drywall of the front foyer.

Having been injured, appellant was transported to the Baltimore Washington Medical Center. He was observed and photographed at the emergency room with an injury to his jaw and one side of his face, and a small abrasion on his chin. The emergency room physician did not find appellant to be in acute distress, but jaw pain prevented him from opening his mouth fully. Appellant was ultimately diagnosed with a fractured mandible.[7] When Anne Arundel County Police Detective Jason McNemar[8] arrived at the hospital to interview appellant, the detective observed appellant to have a swollen jaw but no black eyes or other apparent injuries.

[7] The broken jaw was treated by the same oral and maxillofacial surgeon who had performed reconstructive surgery, necessitated by a developmental deformity, on appellant's upper and lower jaws 20 to 25 years earlier. The prior surgery required that metal plates be placed into appellant's jaw, and those "strong plates" provided significant additional strength to the natural jaw. Without the plates, it was the oral surgeon's opinion that the blow appellant sustained on April 5, 2012 would have likely broken both sides of his jaw.

[8] The detective's name is occasionally spelled as "McNamara" in the trial transcripts.

Autopsy revealed that Ray Collignon had been shot in the nose, with the bullet passing through his brainstem and brain before exiting the back of his head; death would have been nearly instantaneous. Due to the stippling on the victim's face, the assistant medical examiner estimated that the gun had been fired at a distance of approximately two feet. Ray had also sustained minor contusions on both elbows, presumably from falling backwards when he was shot, and hands. The gunshot was the cause of death; the manner of death, a homicide.

A toxicology report indicated that Ray had no alcohol or illegal drugs in his blood, but he did have a level of 2.4 milligrams per liter of heart blood of diphenhydramine, an antihistamine commonly known as Benadryl. The forensic toxicologist for the Office of the Chief Medical Examiner testified that that level of diphenhydramine would be potentially toxic, likely causing increased drowsiness and mental confusion. It may have also caused hallucinations or seizures. Had Ray not been shot, the forensic toxicologist opined that the concentration of diphenhydramine in his system could have led to his death.[9]

There was nothing apparent to the assistant medical examiner on Ray's body to indicate an allergic reaction, which might have necessitated the use of Benadryl. Thomas

[9] Appellant's pharmacology and toxicology expert testified that the therapeutic level of diphenhydramine is "usually about .1 to .2 milligrams per liter" and that one could "[a]bsolutely not" reach Ray Collignon's post-mortem level of 2.4 milligrams per liter through therapeutic use of Benadryl. At Ray's level, confusion, agitation, hallucinations and "paradoxical excitement" might occur, although the expert agreed that the drug affects different people in different ways.

Collignon testified, however, that Ray suffered from bad teeth and had "a big bump on the side of his face," likely caused by an abscessed tooth.

Appellant was arrested and charged with the murder of Ray Collignon and related charges in August 2012.

At the close of the State's case-in-chief, appellant moved for judgment of acquittal, arguing that the State had not proved, beyond a reasonable doubt, that he had not acted in self-defense in the shooting of Ray Collignon, given the fact that Ray had broken appellant's jaw. The State countered that the evidence showed that any injuries sustained by appellant were relatively minor and that the killing was without mitigation or justification. The court denied the motion.

Appellant chose to testify. He stated that he did not have much interaction with Ray in the year prior to Ray's death, and had never had a cross word with him, but he was aware that Ray had been arrested in the past, and Jane had told him of nightmares she had of her ex-husband stabbing her and throwing her body down a well. When he asked her about the nightmares, she said that is what Ray had told her he would do to her.

Appellant testified that in February 2012 he received a phone call from his parents in Pennsylvania about his father's failing health and left Maryland for a family visit. Even though he did not speak to Jane for weeks while he was gone, as was their "usual relationship," it was his intention to return to the Furnace Avenue house, where he still considered himself to live. He did, in fact, return on April 5, 2012.

On that date, as he was putting his things away in his and Jane's bedroom, Ray appeared in the doorway and told appellant he had to leave until Jane came home.

Appellant, thinking that Ray should not be in the house, said he would call Jane. Ray then entered the room, "agitated" and "aggressive," and began to punch appellant in the head. As appellant was being hit, the bag containing his gun remained in his left hand. Appellant put up his right hand in an attempt to block the blows, while Ray kept himself between appellant and the bedroom door and hit appellant each time he tried to leave the room. Appellant denied throwing any punches at Ray.

Eventually, appellant was able to make it to the front foyer. As he attempted to exit the house, Ray delivered the blow that broke his jaw. His head "explod[ing] in pain," appellant told Ray he had broken his jaw, to which Ray responded, "I'm going to do more than that. I'm going to kill you." "Dazed, confused" and "panicked," appellant believed him because he knew Ray to have a violent past, which included a conviction for armed robbery. By that point, appellant said, Ray was in a rage and looked like he was "crazy or high."

Appellant then pulled his gun out of the bag he had in his hand, thinking that would stop Ray's attack. Instead, Ray said he was "going to really enjoy this" and continued to move toward appellant, closer to the exit door than appellant. Believing he had no other options, but with no intent to kill Ray, appellant pulled the trigger without saying anything. The noise was deafening, and appellant believed he may have blacked out for a moment.

The next thing appellant remembered was seeing blood everywhere and trying to check Ray for vital signs to determine if he were still alive. He also tried to wrap towels around Ray's head to stop the bleeding but could not recall from where he got the towels. He remembered speaking with the next-door neighbor and his father, but he stated his

memory of those events was "foggy."[10] He remembered dialing 911 but could not recall how long it was after he shot Ray. When he heard that he had been charged with offenses related to Ray's death, he returned to Maryland from Pennsylvania and turned himself in.

At the close of all the evidence, appellant renewed his motion for judgment of acquittal, incorporating his previous argument that the State had not met its burden of proving that he had not acted in self-defense. The State argued that in cross-examining appellant, it had called into question whether his claim of self-defense was objectively reasonable or whether he had an honest subjective belief he was in imminent danger of death or serious bodily injury. The court again denied the motion as to all counts.

DISCUSSION

I.

Appellant first contends that the evidence presented at trial was insufficient to sustain a conviction for second-degree murder because no rational jury could have found that his shooting of Ray Collignon was not either (a) justified by perfect self-defense or (b) mitigated by imperfect self-defense.[11] The State, while conceding that the evidence at least entitled appellant to a jury instruction on perfect and imperfect self-defense, counters that

[10] The conversation between appellant and the neighbor was accidentally recorded on appellant's cell phone and played for the jury. Therein, he told the neighbor that Ray had attacked him and he thought Ray was dead. The neighbor reacted by saying that appellant looked okay to him and that he should call the authorities. Instead, appellant returned to Jane's house and made several phone calls to his parents.

[11] Appellant makes no specific argument regarding the sufficiency of the evidence to support a conviction for the use of a firearm in a crime of violence.

the jury, which heard appellant's version of events, reasonably determined that the State had met its burden of proving that he did not kill Ray in self-defense.

We recently set forth the applicable standard for reviewing challenges to the sufficiency of the evidence:

> In reviewing the sufficiency of the evidence, an appellate court determines "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979); *see also Derr v. State*, 434 Md. 88, 129, 73 A.3d 254 (2013); *Painter v. State*, 157 Md. App. 1, 11, 848 A.2d 692 (2004) ("[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder'") (citations omitted) (emphasis in original).
>
> The appellate court thus must defer to the factfinder's "opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]" *Pinkney v. State*, 151 Md. App. 311, 329, 827 A.2d 124 (2003); *see also State v. Mayers*, 417 Md. 449, 466, 10 A.3d 782 (2010) ("[w]e defer to any possible reasonable inference the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence") (citations omitted). Circumstantial evidence, moreover, is entirely sufficient to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused. *See, e.g.*, *State v. Manion*, 442 Md. 419, 431–32, 112 A.3d 506 (2015); *Painter*, 157 Md. App. at 11, 848 A.2d 692.

Benton v. State, 224 Md. App. 612, 629-30 (2015) (alterations in original).

Appellant contends that his actions were justified as either perfect or imperfect self-defense and that the jury could not have reasonably convicted him of second-degree murder as a result. We disagree.

Maryland recognizes two forms of self-defense: perfect (or complete) self-defense and imperfect (or partial) self-defense. *State v. Peterson*, 158 Md. App. 558, 585 (2004). Perfect self-defense is "a complete defense to a charge of criminal homicide—murder or manslaughter—and, if credited by the trier of fact, results in an acquittal." *State v. Marr*, 362 Md. 467, 472-73 (2001). The elements of perfect self-defense are:

> (1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
> (2) The accused must have in fact believed himself in this danger;
> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
> (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

State v. Faulkner, 301 Md. 482, 485-86 (1984).

Imperfect self-defense does not result in an acquittal. It merely negates the element of malice in the crime of murder, reducing the offense to manslaughter. *Marr*, 362 Md. at 474.

Imperfect self-defense "consists of the same elements [as perfect self-defense], except that the defendant need not have had an *objectively reasonable* belief that he was in apparent imminent danger of death or serious bodily harm from the assailant, requiring the use of deadly force." *Peterson*, 158 Md. App. at 586 (emphasis in original). Even if objectively unreasonable, if a defendant has an honest, subjectively reasonable belief that he was in imminent danger of death or serious bodily harm and that the use of deadly force was necessary—thus negating the element of malice—imperfect self-defense may mitigate his crime. *Id.* In other words, "'[p]erfect self-defense requires not only that the killer

subjectively believed that his actions were necessary for his safety but, objectively, that a reasonable man would so consider them. Imperfect self-defense, however, requires no more than a subjective honest belief on the part of the killer that his actions were necessary for his safety, even though, on an objective appraisal by a reasonable man, they would not be found to be so.'" *Marr*, 362 Md. at 473 (quoting *Faulkner*, 301 Md. at 500).

The State concedes that appellant may have raised a colorable claim of self-defense sufficient to warrant a jury instruction. That does not mean, however, that the jury was required to credit such evidence. As we explained in *Hennessy v. State*, 37 Md. App. 559, 561-62 (1977),

> [a]ppellant concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but argues that because the State did not affirmatively negate this self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. *Gilbert v. State*, 36 Md. App. 196, 373 A.2d 311. The factfinder may simply choose not to believe the facts as described in that, or any other, regard, *Jacobs v. State*, 6 Md. App. 238, 242, 251 A.2d 33, and the very fact that a large knife was used, causing the death of an unarmed man, raises in itself the issue of excessive force even if appellant's account had been believed. "The law is clear that although a person may defend himself, even to the extent of taking life to repel the attack of an aggressor, it is equally well settled that he cannot use more force than is necessary." *Ware v. State*, 3 Md. App. 62, 65, 237 A.2d 526, 528.

The evidence presented at trial tended to show that Jane and her son Thomas, who lived with her and appellant in the Furnace Avenue house, both believed that appellant had moved out for good at the end of February 2012. When he returned unexpectedly six weeks later, he encountered Ray Collignon, who was in the house with Jane's permission. Ray then called Jane at work, and, in a "matter of fact" and unemotional voice, told her appellant was at the house and angry, and asked Jane what she wanted him to do. A short time later,

appellant shot Ray in the head from a distance of two feet. Given Ray's apparent lack of animosity toward appellant when he spoke to Jane, his assertion that appellant was angry, and appellant's own testimony that he did not believe Ray belonged in the house, the jury reasonably could have dismissed appellant's claim that Ray came after him in a homicidal rage only moments after the phone call and instead believed that appellant in some way provoked the conflict.

Alternatively, the jury could have found that, in firing a gun at Ray's head from a distance of two feet, appellant acted with more force that the situation required. Notwithstanding the fact that Ray did hit appellant hard enough in the face to break his jaw, Ray was unarmed and in his stocking feet during the altercation. Moreover, the State adduced evidence that there were other, non-deadly, items at hand that appellant could have used to defend himself, and suggested that appellant could have fired the gun at another part of Ray's body than his head, which might have injured, rather than killed, him. Additionally, the shooting occurred in the tiny foyer of Jane's house, and the photographic and forensic evidence showed that, notwithstanding appellant's claim that Ray stood between him and the front door, appellant was actually closer to the door. As such, he could have simply walked out of the house and away from the conflict instead of firing his gun.

Given appellant's choice to testify and present his version of events, the jury could have accepted appellant's claim of self-defense, but it also reasonably could have accepted the State's argument that appellant "brought a gun to a fistfight." There is nothing to suggest it was unreasonable for the jury to infer that either appellant provoked the conflict

or that appellant used more force than reasonably necessary to defend himself in light of the perceived threat by Ray Collignon.

Absent clear abuse of discretion, which we do not find, it is not up to a reviewing court to second-guess the weighing of the credibility of the witnesses and the resolving of evidentiary conflicts by the jury. *State v. Smith*, 374 Md. 527, 533-34 (2003). Based on the evidence presented, the jury rejected appellant's claims of self-defense, and there is nothing in that evidence that persuades us that the jury erred in its ultimate decision.

II.

Appellant next argues that the trial court erred when it did not permit him to introduce evidence, through the cross-examination of Thomas Collignon, of Ray's 2011 hospitalization resulting from what his sons suspected was a drug overdose. In his view, the court's ruling, which precluded the cross-examination on the ground of irrelevancy, was erroneous, because the outcome of the trial "turned on whether the jury believed that Mr. Collignon was an aggressive man who was acting as if he was crazy or high while attacking [a]ppellant and threatening his life," and evidence that Ray had been hospitalized for drug use lent credibility to appellant's theory that Ray was high and the aggressor on the day in question.

Whether a trial court admits or declines to admit evidence is a decision that is given great deference by appellate courts, and such a decision is reversed only if the lower court abused its discretion. *Kelly v. State*, 392 Md. 511, 530 (2006) (citing *Hopkins v. State*, 352 Md. 146, 158 (1998)). A ruling reviewed under the abuse of discretion standard will not be reversed unless the decision was "'well removed from any center mark imagined by the

reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *DeLeon v. State*, 407 Md. 16, 21 (2008) (quoting *Evans v. State*, 396 Md. 256, 277 (2006)). We see no such abuse of discretion here.

A criminal defendant's right to confront the witnesses against him includes the opportunity to cross-examine witnesses about their biases, interests, or motives to testify. *Martinez v. State*, 416 Md. 418, 428 (2010). However, his ability to cross-examine witnesses is not unrestricted. *Id*. A trial court "may impose reasonable limits on cross-examination when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant." *Id*.[12]

Given Ray's prior history of armed robbery and drug use, the State presented evidence, through Jane, that Ray had turned his life around and was trying to be a better person after their 2010 divorce. To rebut that assertion, appellant sought to introduce evidence that Ray had passed out in front of the Furnace Avenue house in 2011, and his sons, believing he had overdosed on drugs, had him taken to the hospital. Appellant was, however, unable to produce any medical evidence that the cause of Ray's loss of consciousness was actually the result of drug use, so the court refused to allow the testimony on the ground that it was irrelevant.

[12] "Relevant evidence" is defined by Maryland Rule 5-401 as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." In general, irrelevant evidence is not admissible. Md. Rule 5-402.

With not one shred of evidence that the cause of Ray's loss of consciousness almost a year before the shooting actually resulted from drug use, the court properly exercised its considerable discretion in precluding the cross-examination. In the absence of such evidence, the mere fact that Ray lost consciousness and was hospitalized in 2011 did not tend to make it more probable than not that Ray was acting aggressive and as though he were high on drugs on April 5, 2012. As such, the evidence appellant sought to introduce was irrelevant, and the court did not abuse its discretion in excluding it.

III.

As his next claim of error, appellant avers that the State exceeded the bounds of permissible closing argument when it made a "Golden Rule" argument, asking the jurors to place themselves in the position of the victim. In his view, the prosecutor's comment improperly directed the jury to abandon their neutral role and base their verdict on subjective considerations rather than on the evidence adduced at trial. The improper argument and the court's subsequent denial of his motion for a mistrial on that ground, appellant concludes, deprived him of a fair trial.

During closing argument, the prosecutor made the following comment:

> And when you think about Mr. Collignon with a gun that we know is two feet away according to the Medical Examiner, within a two feet distance, *what would you do, ladies and gentlemen, if someone stuck a gun in your face, what would you do?* Turn and run, but you could get shot. Bat the gun away and punch. Defend yourself from deadly force, from someone pointing a Colt .45 at your face. That all they have to do is pull the trigger and you're dead.

(Emphasis added).

Once the prosecutor had completed her closing argument, defense counsel asked to approach the bench, objecting that the portion of the argument emphasized above comprised "a blatant Golden Rule violation, placing the jury in the victim's shoes," submitting on the argument, and moving for a mistrial.

The court offered to give a curative instruction to the jury but did not believe a mistrial was necessary. Without waiving his motion for mistrial, defense counsel agreed that a curative instruction would be appropriate.

Immediately following the bench conference and before appellant's closing argument, the court issued the following curative instruction to the jury:

> Ladies and gentlemen, one additional instruction. You are not to place yourselves in the position of the victim. You are to consider and decide this case fairly and impartially. You are to perform this duty without bias or prejudice, as to any party. You should not be swayed by sympathy, prejudice or public opinion.

In general, attorneys are afforded great leeway in presenting closing arguments to the jury. *Lee v. State*, 405 Md. 148, 163 (2008). Despite this wide latitude, however, there are limits on what a prosecutor may say in closing arguments so that a defendant's right to a fair trial is protected. *Degren v. State*, 352 Md. 400, 430 (1999). Although a prosecutor is entitled to "'strike hard blows, he is not at liberty to strike foul ones.'" *Sivells v. State*, 196 Md. App. 254, 270-71 (2010) (quoting *United States v. Young*, 470 U.S. 1, 7 (1985)).

A "Golden Rule" argument is one in which a party asks the jurors to place themselves in the shoes of the victim or in which an attorney appeals to the jury's own interests. *Lee*, 405 Md. at 171. We have stated repeatedly that prosecutors should not ask jurors to abandon their neutral fact-finding role and consider their own interests in violation

of the prohibition against the "Golden Rule" argument. *Id*. Such arguments are improper and presumptively prejudicial. *Hill v. State,* 355 Md. 206, 225 (1999).

Here, there is no question that the prosecutor's comment comprised an impermissible "Golden Rule" argument, as it asked the jurors to place themselves in the position of the victim. That fact, however, does not end our inquiry. We must address whether the error was harmless. *See Carrero-Vasquez,* 210 Md. App. 504, 511 (2013) (prosecutorial impropriety in closing argument is harmless if we can say that it did not contribute to the verdict beyond a reasonable doubt). When determining whether overruling defense objections to improper statements during closing argument constitutes reversible, or harmless, error, we consider several factors, including the severity of the remarks, the weight of the evidence against the accused, and the measures taken to cure any potential prejudice. *Lawson v. State,* 389 Md. 570, 592 (2005).

The prosecutor's single impermissible remark occurred during a closing argument that lasted more than one hour. Although improper, the remark was not severe, as it was an isolated comment, and defense counsel had an opportunity in his closing argument to bring additional pertinent facts to the jury's attention. *See Shelton v. State*, 207 Md. App. 363, 388 (2012).

Moreover, the court immediately issued a curative instruction to the jurors, advising that they should not place themselves in the position of the victim and that they should "consider and decide this case fairly and impartially," without bias or prejudice to any party. In *Wilhelm v. State,* 272 Md. 404, 423–24 (1974), the Court of Appeals noted that "a significant factor in determining whether the jury were actually misled or were likely to

have been misled or influenced to the prejudice of the accused is whether or not the trial court took any appropriate action . . . such as informing the jury that the remark was improper, striking the remark and admonishing the jury to disregard it." *See also Brooks v. State*, 85 Md. App. 355, 360 (1991) (quoting *Brooks v. State,* 68 Md. App. 604, 613 (1986)) ("'[W]hen curative instructions are given, it is presumed that the jury can and will follow them.'"). Additionally, the court instructed the jury before closing arguments that closing arguments were not evidence in the case. In our view, any prejudice generated by the prosecutor's comment was likely diminished as a result of the trial court's contemporaneous reminder that the jury was not to place itself in the position of the victim, along with the pertinent instructions that the trial court gave to the jury before sending it to deliberate.

Finally, the weight of the evidence against appellant was strong. There was no dispute that he shot and killed Ray Collignon. The only real issue was whether self-defense negated or mitigated a murder charge, which decision rested on the jury's determination of the credibility of the witnesses, including appellant. The jury's consideration of the testimonial and physical evidence concluded with its determination that appellant had committed second-degree murder, unmitigated by a claim of self-defense. Given the weight of that evidence, the jury was not likely to have been swayed by the single improper remark by the prosecutor. *See Jones-Harris v. State*, 179 Md. App. 72, 108 (2008) ("The difficulty in persuading a jury to acquit under such circumstances was unlikely to have been caused by the isolated remark by the prosecutor.").

Because we find that any error related to the State's Golden Rule argument harmless, we further conclude that the trial court did not err in declining to grant appellant a mistrial on that ground.

IV.

Appellant also claims that the trial court erred in permitting the State to introduce the inadmissible hearsay statement Ray made to Jane—"Vic's here, he seems angry, what do you want me to do?"—through Jane as Ray's present sense impression and through Detective Jacqueline Davis as Jane's prior consistent statement to the police.

The State first raises a preservation argument regarding Jane's testimony, as defense counsel did not object to the prosecutor's question to Jane until after she had answered the question, thereby rendering the objection untimely. And, because the allegedly objectionable testimony was admitted without timely objection through Jane, the State argues that the evidence was also properly admitted through Detective Davis. Even if considered, the State contends that appellant is not entitled to relief because the statements were properly admitted for the reasons set forth by the court.

The admissibility of Ray's statement to Jane, made via a telephone call shortly before his death, was the subject of a pre-trial motion *in limine* raised by appellant. Therein, appellant argued that the statement comprised inadmissible hearsay, which did not fall under any recognized exception to the hearsay rule. The State countered that Ray's statement was "very relevant because it's the reason why a conflict is set up between the two men."

Initially, the trial court ruled it would permit Jane to testify regarding Ray's *demeanor* during the phone call but would not admit the *specific words* that Ray said to her during the call because they were hearsay that did not fit into any recognized exception to the rule prohibiting the admission of hearsay evidence. The State moved for reconsideration of the court's ruling, and, more than a year after its initial ruling, and several weeks prior to trial, the court heard argument on the State's motion.

The State argued that Ray's statement was "highly probative" and should be admitted through Jane's testimony because it comprised Ray's present sense impression of appellant's anger at the time it was made. Appellant disagreed, stating that there was no way of knowing how close in time Ray's statement to Jane occurred in relation to his observation of appellant, and, lacking evidence of the required contemporaneity, the statement could not be considered a present sense impression.

The court determined that the present-tense diction of Ray's statement indicated that he made the statement as he was observing, or shortly after he observed, appellant, thus providing the requisite spontaneity of the statement. The court therefore reversed its earlier ruling and determined that the statement would be admissible under the present sense exception to the hearsay rule.

During trial, the State questioned Jane, in accordance with the trial court's ruling:

> Q. Okay. Now, on April 5th, 2012, you indicated you had a short phone call with—with—with Ray.
>
> A. Um-hum.
>
> Q. What was your—what did Ray tell you when he—when he called you?

A. He said Vic's here, he seems angry, what do you want me to do?

Q. Okay.

[DEFENSE COUNSEL]: Your Honor, just for the record, we object. We recognize the Court's previous ruling, but just so the record is clear. Thank you.

THE COURT: Overruled.

On cross-examination, Jane admitted that she had not told the detective who interviewed her at the police station that Ray had told her, during their last phone call, that appellant was at the house and angry. In an attempt to rehabilitate Jane's testimony, the State called as a witness Detective Jacqueline Davis, the first officer to question Jane, just after Jane arrived home the day of the shooting.

When the prosecutor asked the detective if Jane had relayed information to her, defense counsel objected. The prosecutor argued that Jane's statement to Detective Davis was a permissible prior consistent statement under Md. Rule 5-616(c). Because another detective had said that Jane did not relay information to him that Ray had said, "Vic is here and he seems angry," the prosecutor continued, the State should be permitted to alert the jury that Jane did relay that information to Detective Davis, the first officer who spoke with her after the shooting. As such, the State concluded, Detective Davis's testimony was not offered as substantive evidence but as a prior consistent statement based on the cross-examination of Jane.

The court ruled:

THE COURT: All right. I think that the implication of asking her if she—about that statement—is that she fabricated something after she gave the statement. Because it was inconsistent. The argument is—the defense

> argument would be—that what she said on the stand was inconsistent with what she gave to the police—the statement that she gave to the police at that time. So I think that the implication, certainly, is that subsequent to that and as recent as yesterday when she testified she was fabricating her statement.
>
> So I think if there is a statement before that time that rebuts the claim that she fabricated that since she made the statement, that is within 5[-]616(c). I am going to allow it.

Initially, we agree with the State that appellant has not preserved the issue, insofar as it relates to Jane's testimony, for appellate review. As a general rule, "when a court rules in an *in limine* proceeding that evidence is admissible, Rule 4–323(a) requires that the party opposed to admission object at the time the evidence is actually offered in order to preserve the issue for appellant review." *Washington v. State*, 191 Md. App. 48, 89, *cert. denied*, 415 Md. 43 (2010).

Appellant failed to object after the prosecutor asked the question of Jane. It was only after Jane answered the question that appellant objected, "just for the record," and he never moved to have Jane's answer stricken. As we stated in *Williams v. State*, 99 Md. App. 711, 717 (1994), *aff'd,* 344 Md. 358 (1996), "the preservation requirements for this sort of objection are very strict. The Court of Appeals [has] pointed out that, if the objectionable nature of the question is clear, the objection must be immediately forthcoming before the answer is given." Pursuant to Md. Rule 4-323(a), "'[i]f opposing counsel's question is formed improperly or calls for an inadmissible answer, *counsel must object immediately. Counsel cannot wait to see whether the answer is favorable before deciding whether to object.*'" *Id*. (quoting *Bruce v. State,* 328 Md. 594, 628 (1992)) (emphasis in original).

It is only when an objectionable answer is given unexpectedly in response to an unobjectionable question that the objecting party may not have to object before the answer is given, but even then, that party must move immediately to strike the objectionable answer. *Id*. Here, appellant did not object before Jane answered the question, nor did he move to strike the answer once she gave it. Moreover, it cannot be said that Jane unexpectedly gave an objectionable answer to an unobjectionable question because the issue had been argued at length during the hearings on the motion *in limine*, and appellant cannot plausibly argue that he was unaware how Jane would answer the question he vigorously sought to preclude. As such, the failure to make an immediate objection is deemed to be a waiver of the objection, and the issue is not preserved for appellate review. *Id*. at 718.

Because we rule that Jane's answer to the question regarding Ray's statement was introduced into evidence without a timely objection, neither can appellant now object to the admission of the words of the statement provided through the testimony of Detective Davis. As the Court of Appeals explained in *Yates v. State*, 429 Md. 112, 120 (2012) (quoting *Jones v. State*, 310 Md. 569, 588-89 (1987)), when "'competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received.'"

Even had appellant properly preserved the issue for our review, he would not prevail. In *Bernadyn v. State*, 390 Md. 1, 7-8 (2005), the Court of Appeals reiterated the standard of review for appeals challenging a trial court's ruling on the admissibility of hearsay evidence:

> We review rulings on the admissibility of evidence ordinarily on an abuse of discretion standard. *See Hopkins v. State*, 352 Md. 146, 158, 721 A.2d 231, 237 (1998). Review of the admissibility of evidence which is hearsay is different. Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is 'permitted by applicable constitutional provisions or statutes.' Md. Rule 5–802. Thus, a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo*.

(emphasis in original). Because appellant challenges the trial court's ruling that Ray's statement falls within the present sense impression exception to the hearsay rule, we review the trial court's ruling for legal error. *Shelton v. State*, 207 Md. App. 363, 375 (2012).

There is no question or dispute that Ray's statement, introduced through the testimony of Jane, comprised hearsay. *See* Md. Rule 5-801(c) (hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Unless his statement fell under an exception to the hearsay rule, or was otherwise permitted by constitutional provision or statute, it should have been excluded. *Bernadyn*, 390 Md. at 8. Exceptions to the hearsay rule may render a hearsay statement admissible "because circumstances provide the 'requisite indicia of trustworthiness concerning the truthfulness of the statement.'" *Coates v. State*, 175 Md. App. 588, 615 (2007) (quoting *State v. Harrell,* 348 Md. 69, 76, (1997)), *aff'd*, 405 Md. 131 (2008).

Md. Rule 5-803(b)(1) permits the introduction of a declarant's present sense impression, which is "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter." As the Court of Appeals explained in *Booth v. State,* 306 Md. 313, 324 (1986), the rationale

of the present sense impression exception to the hearsay rule is that it preserves "the benefit of spontaneity in the narrow span of time before a declarant has an opportunity to reflect and fabricate" and "rests upon a firm foundation of trustworthiness[.]"

For the present sense exception to be applicable, the statement offered must be made at the time the event is being perceived, although our courts recognize that "'precise contemporaneity is not always possible, and at times there may be a slight delay in converting observations into speech. However, because the presumed reliability of a statement of present sense impression flows from the fact of spontaneity, the time interval between observation and utterance must be very short. The appropriate inquiry is whether, considering the surrounding circumstances, sufficient time elapsed to have permitted reflective thought.'" *Washington*, 191 Md. App. at 92-93 (quoting *Booth*, 306 Md. at 324).

We agree with the trial court that Ray's statement was properly admitted, through Jane's testimony, as his present sense impression. Although appellant argues that the testimony lacks the requisite indicia of contemporaneity of the statement with the condition being viewed by Ray, we are persuaded by the trial court's reasoning that the words spoken by Ray to Jane, in the present tense, indicated that he was perceiving, or had just perceived, the situation when he made the statement to Jane. The court found that the statement, "Vic is here," indicated that appellant was present when Ray made the statement, and the statement, "he seems angry means, to this Court, he seems angry now, not he seemed angry an hour ago." In the absence of any evidence to the contrary—of which appellant presents none—we find no clear error in the court's ruling.

Appellant's argument that Detective Davis's testimony that Jane had relayed to her the substance of Ray's message did not fall under the Rule 5-802.1(b)[13] prior consistent statement exception to the hearsay rule is equally unavailing. As the State points out in its brief, the trial court did not permit Detective Davis's testimony as substantive evidence of Jane's prior consistent statement under an exception to the hearsay rule; rather, it admitted the statement pursuant to Rule 5-616(c)(2), which provides, in pertinent part: "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." Instead, the court admitted the detective's testimony solely to assist the jury in determining whether Jane's testimony was believable. Consistent with that decision, the court instructed the jury, "You have heard testimony that some witnesses made a statement before trial. Testimony concerning the statement was permitted only to help you decide whether to believe this testimony that the witness gave during the trial."

[13] Rule 5-802.1(b) states:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> * * *
>
> (b) A statement that is consistent with the declarant's testimony, if the statement is offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive[.]

We perceive no error in the court's admission of the testimony on that basis, and, as we only review rulings actually asked for and made, *In re: Kaleb K.*, 390 Md. 502, 510 (2006), we do not consider appellant's argument that the statement should not have been admitted as an exception to the hearsay rule.

V.

Appellant's fifth claim of error centers on his assertion that the trial court improperly permitted the State to introduce evidence of Ray's state of mind regarding his concern over the presence of guns in Jane's house, where their sons lived, some months prior to the shooting. He argues that the unknown date of Ray's statement and the irrelevancy of the statement precluded its admission as a "state of mind" exception to the hearsay rule.

The State disagrees, averring that the statement was relevant to the issues at trial, and the court did not err in finding that Ray expressed his concern at a time close enough to the shooting on April 5, 2012 to reflect an existing state of mind. Even if the court erred, the State concludes, any error was harmless beyond a reasonable doubt.

During Thomas's testimony, the State sought to question him regarding a conversation he had had with his father about the presence of guns in the Furnace Avenue house some time before the April 2012 shooting. When the prosecutor asked Thomas to explain the discussion, defense counsel objected. The court sustained the objection. The State asked to approach, arguing that Ray's state of mind close in time to the shooting was relevant.

The court, determining that Ray's state of mind was indeed relevant because appellant had raised a claim of self-defense and Ray's actions on the day of the shooting

may have been influenced by the fact that he was aware that appellant carried a gun, cautioned the prosecutor that Ray's statement would have had to occur "close in timeframe" to the shooting, and, certainly not as early as 2011. If the State could link the statement "close in time" to the shooting, the court agreed to allow the testimony without requiring a specific date that the conversation took place. The State proffered to the court that the statement occurred approximately five months prior to the shooting, although Thomas could not point to a specific date.

The prosecutor then questioned Thomas:

> Q. Tommy, did you ever have a discussion with your father about handguns in the house?
>
> A. Yes.
>
> Q. When did this discussion occur?
>
> [DEFENSE COUNSEL]: Your Honor, just for the record note our continuing objection.
>
> THE COURT: Your continuing objection is noted.
>
> THE WITNESS: It occurred—I would say in 2012 is when it occurred. I couldn't give you a specific date, but—
>
> BY [PROSECUTOR]:
>
> Q. All right. And specifically, what did your dad say to you?
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> THE COURT: And your objection is noted and overruled.
>
> THE WITNESS: He was concerned, mostly worried. He didn't want—he just—he was concerned that they were around in the house or—around.

Md. Rule 5–803(b)(3) sets forth a hearsay exception for "then existing mental, emotional, or physical condition." The exception allows into evidence statements "of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action[.]" *Copeland v. State*, 196 Md. App. 309, 315 (2010). Here, the testimony was relevant to prove Ray's then existing state of mind (*i.e.,* concern over guns in the house), to prove the truth of the stated reason for the fear (*i.e.,* a threat by appellant with a gun), and to offer evidence that Ray may not have been the initial aggressor in the altercation that resulted in appellant's broken jaw and Ray's death. *See id.*

With regard to appellant's contention that the court clearly erred in ruling that the timing of Ray's statement was too remote from the date of the shooting to be considered his present state of mind, the Court of Appeals has made clear that the "remoteness of evidence, under Maryland Rule 5–803(b)(3), bearing on the deceased's state of mind, must be determined under all of the circumstances." *Smith v. State*, 423 Md. 573, 594 (2011). In considering all the evidence, we cannot say the trial court was clearly erroneous in ruling that the timing of Ray's statement was sufficiently contemporaneous with his observation so as to comprise an existing state of mind exception to the hearsay rule.

Thomas testified that he recalled having the conversation with his father sometime in 2012, although he could not provide a specific date. The shooting occurred on April 5, 2012, so the conversation could not possibly have taken place more than three months and five days before the shooting. In addition, appellant was out of the house from

approximately February 27, 2012 until the shooting on April 5, 2012, so, as the State points out, it is reasonable to infer that Ray's concern either continued or was rekindled upon appellant's return on that day.

Under all the circumstances, we conclude that the trial court did not err in admitting Ray's statement through the testimony of Thomas. And, for the reasons set forth in our discussion on harmless error in section III, above, even if it were error for the court to admit the statement, any such error would be harmless, given the weight of the evidence and the isolation of the statement over the course of an eight day trial.

VI.

Finally, appellant claims that the trial court erred when it declined to permit the defense to offer a statement made by a party opponent, an Assistant State's Attorney, during appellant's bail review hearing, to the effect that the State believed appellant may have a credible claim of self-defense.

At appellant's August 14, 2012 district court bail review hearing, the "fairly new prosecutor" handling bail reviews was not familiar with appellant's case, so the court recessed the matter to give the prosecutor an opportunity to research the facts. When the hearing resumed, Assistant State's Attorney Michelle Smith took over the representation of the State and advised the court that after consulting with State's Attorney Frank Weathersbee, "There is definitely an issue of self-defense that seems fairly credible." She was unable, however, to provide any information other than the fact that someone was shot at Jane's residence.

Following the bail review hearing, defense counsel filed a notice of intent to introduce statements of party opponent, based on the prosecutor's statement. The State opposed the motion.

The court heard argument on the issue of the admissibility of the Assistant State's Attorney's statement on January 4, 2013. The court granted the State's motion to exclude the statement:

> In the case of [*Bellamy v. State*, 403 Md. 308 (2008)], a prosecutor is using information obtained from a witness in a statement of facts as part of a guilty plea. In other words, the prosecutor is adopting those facts as true. Here, we have words that are said at a bail review. I find them to be equivocal and consistent with making sure that a defendant is treated fairly at a bail review. The Defendant certainly has a constitutional right to a reasonable bond and the prosecutor was acting in accordance with that right in providing—or attempting to provide—information to the Court as part of the Court's—in response to the Court's inquiry.
>
> The statement made by the prosecutor is not, this is a case of self-defense. Even if the prosecutor hadn't made such a statement, as Ms. [PROSECUTOR] pointed out, what kind of self-defense would she have been referring to? Is it a perfect self-defense, imperfect self-defense?
>
> I find the statement that she did make to be equivocal—of equivocal nature—and that, coupled with the fact that the statement appears to have more than one layer of hearsay attached to it in that Ms.—there was one prosecutor in the courtroom who left the courtroom, went and talked to Ms. Smith, phone calls were made, Ms. Smith talked to Mr. Weathersbee, Ms. Smith—who wasn't in the courtroom originally—came back to the courtroom and made this one statement to the Judge. Or, made the statement that is at issue to the Judge.
>
> So, the Court is concerned that the coupling of those particular things—the equivocal nature of the statement and the layers of individuals that were involved—and the couching of the words that were used by Ms. Smith—I find . . . that this statement itself made by Ms. Smith is not relevant to this proceeding. It is not a factual statement—assertion. It would be confusing to a jury and it is, therefore, of little probative value and it would be unfairly prejudicial if I were to admit it.
>
> So, finding that it has little probative value and would be unfairly prejudicial, I am going to grant the—I guess it would be grant the State's motion to not allow the statement to be used.

Just prior to the start of appellant's case-in-chief, defense counsel raised the issue of the court's pre-trial ruling on appellant's desire to introduce the statement of a party opponent, stating, without expressly noting an objection, "I think I have to preserve that on the record during the trial too." Counsel continued:

> But, Your Honor, *and I respect your ruling and—and I'm not asking you to reconsider. I just wanted to put on the record that if Your Honor didn't rule that way, we would call Michelle Smith and Frank Weathersbee.* At the bail review meeting, Michelle Smith—the—the judge asked—the bail review judge asked Michelle—or one of the prosecutors there to find out about the facts of the case because they couldn't proffer the facts of the case to the judge.
>
> Michelle Smith came back and we resumed the hearing. And she said that she just spoken [sic] to Frank Weathersbee, there is a 100-page police report, but that there was a credible argument of self-defense. The State obviously, is now arguing that it is not a credible argument of self-defense.
>
> If Your Honor didn't rule that way, we would call Michelle Smith and/or Frank Weathersbee to testify to that. *And I'm, again, I respect your ruling, but that would just be the proffer that we'd make at this point*.

(Emphasis added).

In our view, this issue is not properly before us for appellate review. The trial court ruled, *in limine*, that the statement offered against a party opponent would not be admissible. Defense counsel accepted the court's ruling without objection. Then, at trial, counsel expressly stated that, in proffering what the Assistant State's Attorney's would have said had the court ruled otherwise, he was not asking the court to reconsider its earlier ruling. By failing to object to the court's ruling or to ask the court to reconsider its ruling, there was nothing for the court to consider, and its ruling during the pre-trial hearing on the admissibility of the statement remains unchallenged.

Even were we to consider the issue, we would find no error on the part of the trial court. Md. Rule 5–803(a)(2) provides a statement offered against a party that is a "statement of which the party has manifested an adoption or belief in its truth" is not excluded by the hearsay rule. Presumably, appellant's theory is that the State manifested its "adoption or belief in . . . [the] truth" of appellant's statement that he acted in self-defense in the shooting of Ray Collignon when the Assistant State's Attorney stated, at the bail review hearing, "There is definitely an issue of self-defense that seems fairly credible." Therefore, appellant continues, the Assistant State's Attorney's statement should have been admitted.

Indeed, the Court of Appeals has determined that statements by prosecutors are eligible admissions pursuant to Rule 5-803. *Bellamy v. State*, 403 Md. 308, 326 (2008). In *Bellamy*, however, the prosecutor "unequivocally manifested an adoption of or belief in" Bellamy's co-defendant's statement that it was he, not Bellamy, who had shot the victim. *Id*. The Court of Appeals suggested that "[w]ithout this express, in-court adoption of Saunders's statement, our view may have been different. " *Id.*

In addition, "[i]n many, if not most, circumstances, a trial court's decision about whether a person made an adoptive admission will be factual. This is certainly so when there are disputed facts about whether a question was asked, what was said, and what words or non-verbal conduct were involved in reply . . . Even if there is no dispute about *what* was said or done, the decision of whether there was an adoptive admission may still be factual when the circumstances allow different inferences depending on the trial court's

interpretation of those facts." *Gordon v. State*, 431 Md. 527, 539-40 (2013) (italics in original).

In this matter, the facts of what the Assistant State's Attorney said at the bail review hearing are not in dispute; she did state that there was "definitely an issue of self-defense that seems fairly credible." Whether the statement was, in fact, an adoptive admission or nothing more than a consideration for the district court in setting reasonable bail for appellant was a factual question open to different inferences.

And, the trial court resolved that factual question by determining that the statement was equivocal and that "the couching of the words that were used by [the prosecutor]" at the bail review hearing indicated that the comment was not a factual assertion. For that reason, and because of the several layers of hearsay apparent in the statement, the court concluded that the statement would confuse the jury and offered little probative value. The court therefore declined to admit the statement.

For the reasons asserted by the trial court, we agree with its finding. We therefore would find no clear error in the court's ruling to exclude the statement as hearsay not subject to a recognized exception.

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