UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1696

September Term, 2015

RANDALL MARTIN, JR.

v.

STATE OF MARYLAND

Krauser, C.J.,
Wright,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 21, 2017

After a jury trial in the Circuit Court for Baltimore City, Randall Martin, Jr., appellant, was acquitted of two counts of attempted first-degree murder, and convicted of first-degree arson, malicious burning of personal property, malicious destruction of property having a value of more than $500.00, and seven counts of reckless endangerment. He was sentenced to incarceration for a total aggregate term of fifty years. This timely appeal followed.

QUESTIONS PRESENTED

Martin presents the following three questions for our consideration:

> I. Did the trial court err in permitting the jury to hear instances of prior bad acts when such evidence had no special relevance to Martin's prosecution and was thus barred from admission by Maryland Rule 5-404(b)?
>
> II. Did the trial court abuse its discretion by neither declaring a mistrial nor striking testimony after a State's witness related a statement made by Martin that was not disclosed to the defense in discovery?
>
> III. Did the trial court err in permitting hearsay testimony under the guise of the excited utterance exception?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

This case arises out of an arson that occurred in the early morning hours of June 29, 2010, at 4309 Norfolk Avenue in Baltimore City. Kimberly Backhaus and her young son, Joseph Smith, lived on the first floor of that home and two women lived in an apartment on the second floor. Baltimore City Fire Captain Bruce Shiloh, who testified at trial as an expert in the determination of cause and origin of fires, opined that the fire

originated on the right side of a couch that was on the front porch of the home and that it was intentionally set.

For several years prior to the arson, Backhaus was involved in a romantic relationship with Martin. The two met sometime in 2003 or 2004, when Martin pulled his car up to Backhaus, who was sitting on some steps near a gas station, and asked if she wanted to do some filing work at his office. Backhaus agreed and went with Martin to his office. After completing the filing work, Martin paid Backhaus $150.00. That same day, the two began a consensual sexual relationship.

On weekends, Martin regularly took Backhaus, who had at times experienced homelessness, to a hotel. He also took her shopping and bought her food, clothing, and jewelry. In about 2005, Martin arranged for Backhaus to obtain permanent housing through Prisoner's Aid Association, an organization for which Martin served as a board member. Backhaus lived in various locations but, around July 2008, she moved to the home on Norfolk Avenue. She saw Martin every day. He frequently arrived at her house in a black Lexus convertible sports car with gold lettering, although he also drove his wife's Volkswagen and various rental cars.

On occasion, people associated with the Prisoner's Aid Association asked Backhaus if she was in a romantic relationship with Martin, but she denied that she was because Martin was married and had told Backhaus not to tell anyone about their relationship. The relationship was stormy. In 2005 or 2006, Backhaus obtained a restraining order against Martin, but the two later resumed their relationship. On several occasions thereafter, Backhaus and Martin broke up, but later got back together again.

Backhaus explained that she did so because Martin was "very controlling" and "persuasive," "and he's going to have his way no matter what you say." According to Backhaus, Martin choked her, hit her on the arm and chest, and tightly squeezed her thigh. She described this abuse as "a continuous" occurrence. On one occasion, Backhaus's arm was broken and she had to go to the hospital. On another occasion, Martin asked Backhaus to have his name tattooed on her back, which she did.

Backhaus claimed that Martin did not want her to have any friends because he was afraid his wife would learn of their relationship. Martin did not allow her to have people in the house, and Backhaus's son could not have friends over or play with other children in the neighborhood. This caused tension in Backhaus and Martin's relationship, but Backhaus did not leave Martin because she had no family and nowhere to go. At one point, Martin told Backhaus that if she left him, ruined his reputation, or ever did anything wrong to him, he would "fire bomb" her house.

In mid-June 2010, Backhaus and Martin broke up. Backhaus refused to answer Martin's calls and, at some point, threw her cell phone in the trash. On June 28, 2010, Martin drove down Norfolk Avenue in his Lexus with the convertible top down. He stopped and spoke to Backhaus about getting back together again. Backhaus declined to resume the relationship, screamed at Martin that she no longer wanted anything to do with him, and asked him to leave her alone. As Martin drove off, Backhaus threw a rock at his car.

In the early morning hours of June 29, 2010, Backhaus's son screamed for her to wake up because their house was on fire. Backhaus jumped up and went to the hallway,

where she saw flames shooting through the windows and heard the glass on the dining room table "popping." Backhaus grabbed some pants, ran to the basement, and went out the back door with her son. Backhaus heard her neighbor, Jennifer Briscoe say, "go out the back door, go out the back door, he did it." Once outside, Backhaus saw a car that looked like Martin's Lexus on the corner, but she could not see if it had gold lettering. She told her neighbor, Kevin Burrell, about the car and he tried to approach the vehicle, but it sped off. Backhaus gave the police Martin's home address and told them that he kept guns there.

Jennifer Briscoe lived with her daughter on the second floor of the house next door to Backhaus. Briscoe's mother lived on the first floor of that home. Briscoe was friends with Backhaus and, in the year before the fire, visited with her about four or five times per week. Briscoe was aware that Backhaus was in a relationship with Martin and, two to three times per week, she saw him arrive at Backhaus's home in a black two-door Lexus with gold lettering. On different occasions, Briscoe observed that Backhaus had bruises on her arms, a cast on one of her wrists, and bruises around her neck. When Martin was present, Backhaus would ignore or avoid Briscoe and "even make fun of [her] to make [Martin] laugh." On one occasion, after Martin told Backhaus that Briscoe was trying to sleep with him, Backhaus started banging on the doors to Briscoe's home and the home of her mother. Backhause also threatened to flatten the tires on Briscoe's car and kill her dog, prompting Briscoe to obtain a protective order against her.

About a month before the fire, Backhaus told Briscoe that she was breaking up with Martin because "she was tired of being treated the way that Mr. Martin was treating

her, that she felt like she was being held prisoner in her house and that she couldn't take it anymore." In the month leading up to the fire, Briscoe saw Martin driving on Norfolk Avenue at least once a day. On one occasion, she saw Backhaus throw a rock at Martin's car and yell at him.

On the night of the fire, Briscoe was awake, packing for a trip, when she heard a bang and saw a glow from her kitchen window. When she looked out the window, she saw Backhaus's porch door on fire and Martin standing on the sidewalk in front of Backhaus's house holding a gas can with a yellow top. Briscoe screamed at Martin and then called 911. Briscoe's home sustained damage from the fire and smoke and her cat was killed.

Other people who lived near Backhaus also witnessed the fire. John Falcon heard Briscoe make statements in a "scared" and "angry" tone. He got out of bed, looked out the window, and saw Briscoe talking to Martin, whom he knew was Backhaus's friend. He then heard glass crack and saw a fire. Falcon saw Martin run away from Backhaus's property. Falcon ran outside, grabbed his garden hose, and attempted to put out the fire. When firefighters arrived, Falcon got out of their way. He then heard Backhaus and another neighbor, Kevin Burrell, hollering. In response to the hollering, Falcon ran towards Loudon Avenue where he observed a black Lexus make a u-turn and then speed away. Falcon had seen the Lexus many times before picking up and dropping off Backhaus at her home. According to Falcon, the Lexus had tinted windows and, on the night of the fire, he could not see the driver.

Burrell, another neighbor, also observed a black two-door Lexus with tinted windows and orange and yellow tags driving away. He had seen the Lexus in the neighborhood before and, on several occasions had placed notes on it asking the driver to park elsewhere. He identified Martin as the owner of the Lexus he had seen in the neighborhood prior to the fire.

Baltimore City Police Officer James Howard responded to 4309 Norfolk Avenue while the fire was still blazing and two engine companies were on the scene. He spoke with Briscoe, whom he described as "panicked" and "a bit fearful." She told him that she was awake in her home when she heard a noise outside her neighbor's house. When she opened her door to investigate, she heard a loud explosion and saw Martin, who was wearing a burgundy shirt and carrying a red gas can with a yellow spout cap, running away from the house. Briscoe knew Martin because he was Backhaus's boyfriend and she had seen him previously at Backhaus's house.

While the house was still in flames, Officer Howard interviewed Backhaus, whom he described as being "in a state of shock" and "kind of guarded." She told him that everyone had made it out of the house, that she had broken up with Martin, who was her ex-boyfriend, that Martin said he would kill her if she ever tried to leave him, that he had been stalking her since their breakup, and that he had been driving on her street the previous day.

After the fire, Backhaus received assistance from the Office of the State's Attorney. She was put up in hotels and received food vouchers, bus tokens, and eventually the first month's rent and security deposit on a rental unit. Later, however,

Backhaus resumed her relationship with Martin. Martin pulled up to her on the side of the road, asked her to come over, and offered to provide her with six months' rent and to supply her needs on the condition that she not speak to the prosecutor. Backhaus accepted Martin's offer because she believed "that's what he owed" her, and she was not able to provide for herself and her son. Backhaus moved into a home on Fleetwood Avenue in northeast Baltimore City, and Martin provided her with everything for the house, cell phones, and cash. Martin also arranged for Backhaus's son to attend a private school. For three or four months, Backhaus did not respond to calls from the prosecutor and did not speak with detectives who visited her home. She later got in touch with the prosecutor and explained that she had accepted Martin's offer because she "needed housing for [her] son."

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Martin contends that the circuit court erred in admitting evidence of prior bad acts, specifically testimony that he struck or otherwise caused injury to Backhaus in the weeks and months leading up to the arson. At a pre-trial hearing on Martin's motion *in limine*, defense counsel argued that the instances of abuse were not tied to specific dates and times and, therefore, were irrelevant with respect to the events of June 29, 2010. Defense counsel also argued that the prejudicial nature of the evidence outweighed any probative value it might have. The State countered that evidence of a pattern of controlling and

abusive behavior by Martin toward Backhaus leading up to the arson was relevant to establishing motive, opportunity, and intent because it showed that Martin intended to kill Backhaus, as opposed to trying to scare or intimidate her. The suppression court determined that the evidence would be allowed to show Martin's motive and intent.

On two occasions during trial, Martin again objected to the admission of testimony about instances of abusive and controlling behavior. The circuit court overruled defense counsel's objection to Briscoe's testimony about specific instances where she observed physical injuries on Backhaus's body. The court also granted defense counsel a continuing objection to Backhaus's testimony about instances of domestic violence.

On appeal, Martin argues that although Md. Rule 5-404(b)[1] permits the admission of prior bad acts evidence for the limited purpose of proving intent, that exception is "necessarily narrowly circumscribed," and the circuit court erred in permitting such testimony in this case. He maintains that there was no "real connection" between the instances of domestic abuse and the issue of intent to commit murder by arson. In addition, Martin asserts that intent was not a genuinely controverted issue in the case, particularly when he denied participation in the crime. He argues that "[d]iscreet,

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[1] Md. Rule 5-404(b) provides:

> **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, § 3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

unsubstantiated instances of physical assault do not equate with lighting a home on fire in order to kill its inhabitant." We disagree and explain.

Prior bad acts evidence "refers to activity or conduct which although not necessarily criminal, after taking into consideration the facts of the particular case, is evidence that tends to reflect adversely on or impugns a person's character." *Snyder v. State*, 210 Md. App. 370, 393 (2013) (citation omitted). The primary concern underlying Md. Rule 5-404(b) is a "'fear that jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking.'" *Hurst v. State*, 400 Md. 397, 407 (2007) (quoting *Harris v. State*, 324 Md. 490, 496 (1991)). The rule "plays a role similar to the prohibition against unfairly prejudicial evidence, *i.e.*, to prevent the jury from 'developing a predisposition of guilt' based on unrelated conduct of the defendant." *Smith v. State*, 218 Md. App. 689, 709-10 (2014) (quoting *Sinclair v. State*, 214 Md. App. 309, 334 (2013) (in turn quoting *State v. Faulkner*, 314 Md. 630, 633 (1989))).

Although evidence of prior bad acts is inadmissible to prove a defendant's criminal character, Md. Rule 5-404(b) does allow "bad act" evidence that has "special relevance – that it 'is substantially relevant to some contested issue.'" *Wynn v. State*, 351 Md. 307, 316 (1998) (quoting *State v. Taylor*, 347 Md. 363, 368 (1997)). Although not an exhaustive list, the Court of Appeals has recognized that bad act evidence has "special relevance if it shows notice, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." *Id.*

"Before evidence of prior bad acts or crimes may be admitted, the trial court must engage in a three-step analysis." *Hurst*, 400 Md. at 408 (citing *Faulkner*, 314 Md. at 634-35). "First, the court must decide whether the evidence falls within an exception to [Md.] Rule 5-404(b)." *Id*. (citing *Faulkner*, 314 Md. at 634). "Second, the court must decide 'whether the accused's involvement in the other crimes is established by clear and convincing evidence.'" *Id.* (quoting *Faulkner*, 314 Md. at 634). "Finally, the court must balance the necessity for, and the probative value of, the other crimes evidence against any undue prejudice likely to result from its admission." *Id.* (citing *Faulkner*, 314 Md. at 635). We review a court's legal determination that the evidence fits into one of the special relevance exceptions *de novo*. *Wynn*, 351 Md. at 316 (relying on *Faulkner*, 314 Md. at 634). We review for sufficiency of the evidence whether the accused's involvement in the other crimes or acts was established by clear and convincing evidence. *Faulkner*, 314 Md. at 634-35. Finally, we review for an abuse of discretion the trial court's determination that the necessity for and probative value of the evidence outweighs its potential for unfair prejudice, and thus that the prior bad acts evidence is admissible under Md. Rule 5-404(b). *Faulkner*, 314 Md. at 634.

The Court of Appeals has defined "motive" as "'the catalyst that provides the reason for a person to engage in criminal activity.'" *Ayala v. State*, 174 Md. App. 647, 658 (2007) (quoting *Snyder v. State*, 361 Md. 580, 604-05 (2000)). "Motive is not an element of the crime of murder, but, in addition to supporting the introduction of other crimes evidence, it may also be relevant to the proof of two of the other exceptions to [Md.] Rule 5-404, intent or identity." *Snyder*, 361 Md. at 604 (citations omitted). "To be

admissible as evidence of motive, however, the prior conduct must be committed within such time, or show such relationship to the main charge, as to make connection obvious, . . . that is to say they are so linked in point of time or circumstances as to show intent or motive." *Id.* at 605 (ellipses in original) (citation and internal quotation marks omitted).

The record before us makes clear that Martin's history of abusive and controlling behavior toward Backhaus had a particular relevance, not to prove his propensity to commit the crimes with which he was charged, which included arson and attempted murder, but to show the specific circumstances motivating him to commit those crimes and his intent to engage in that behavior--specifically, the intent to murder the occupants of the home to which he set fire. The Court of Appeals has noted that "[e]vidence of previous quarrels and difficulties between a victim and a defendant is generally admissible to show motive." *Snyder*, 361 Md. at 605 (citation omitted). In *Snyder*, evidence was admitted to show that there had been a physical dispute between the defendant and his wife, the victim, and that the two had a "stormy" relationship. *Id.* at 608-09. In addition, a friend of the victim's testified that during a fight on the night before the murder, the defendant stated that the victim was "a dead woman." *Id.* The Court of Appeals concluded that "the jury heard testimony indicating that there was disharmony in the household. That evidence was probative of a continuing hostility and animosity, on the part of [Mr. Snyder], toward the victim and, therefore, of a motive to murder, not simply the propensity to commit murder." *Id.*

Similarly, in *Stevenson v. State*, 222 Md. App. 118, 148-50, *cert. denied*, 443 Md. 737 (2015), we held that evidence that a witness observed Stevenson argue with his wife

a week before her death, that the wife told a witness that Stevenson tried to force her to have sex, and that the wife had a slap mark and bruises on her face two weeks before her death were admissible to show motive.

As in *Snyder* and *Stevenson*, the testimony in the instant case was probative of a pattern of abusive and controlling behavior on the part of Martin toward Backhaus and, therefore, of a motive to murder and commit arson, not simply the propensity to commit those crimes. The circuit court did not err in determining that the prior bad acts evidence had special relevance to motive and intent and did not abuse its discretion in admitting that evidence.

II.

Next, Martin argues that the circuit court abused its discretion in denying his request for a mistrial and failing to strike Backhaus's testimony about having Martin's first name tattooed on her back. At trial, during direct examination, Backhaus gave the following testimony:

> [PROSECUTOR]: Let me step back for a moment, Ms. Backhaus, during your time at Norfolk Avenue, you had indicated that he [Martin] had set some rules about what you could and could not do. Did he ask you to do anything with respect to your body during that period of time?
>
> [BACKHAUS]: Yes, he asked me to place his name on my body as a tattoo.
>
> Q. Why did he ask you to do that?
>
> A. Become his property.
>
> Q. How did he communicate that to you, did he say it?

A. He said if you love me, you will have my name tattooed on your back and I did.

[DEFENSE COUNSEL]: Your Honor, I have an objection, may I approach?

THE COURT: You may.

During the bench conference that followed, defense counsel argued that, pursuant to Md. Rule 4-263(d)[2], the State should have disclosed the statement allegedly made by Martin. The State responded that it was previously unaware that Martin had told Backhaus to get a tattoo on her body if she loved him. Defense counsel requested a mistrial, arguing that although the State made clear before trial that it was going to show that Martin was abusive and controlling towards Backhaus, it never disclosed that Martin "actually said I own you, you are mind [sic], put a tattoo on your body so that I own you or your daughter, if you love me, I think that pushes this over the top in terms of, you know, this controlling factor so I am asking for it based on the prejudicial nature of it."

After the circuit court denied the request for a mistrial, defense counsel asked the court to strike Backhaus's testimony and the following colloquy occurred:

[PROSECUTOR]: Just to make the record clear. She said in response to why, she said he wanted me to have – he wanted me as his property. That wasn't even a statement, that was just her state of mind. The statement was, the statement of Mr. Martin that she just said was if you love me, you will get a tattoo.

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[2] Md. Rule 4-263(d)(1) provides that "[w]ithout the necessity of a request, the State's Attorney shall provide to the defense: (1) . . . [a]ll written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements."

THE COURT: If you love me, right.

[PROSECUTOR]: If that statement wishes to be struck, the Court would submit that the failure to disclose that, doesn't render it irrelevant or inadmissible. But certainly the first answer is not even a statement, Your Honor, which you would strike.

[DEFENSE COUNSEL]: I believe he's the State not the Court though.

THE COURT: Well, thank you for clarifying that for the Court. But the statement was from her lips that the defendant indicated if he loved me, for lack of a better term, you will tat my name on your body.

[DEFENSE COUNSEL]: But before she said that, Your Honor, she said that he told her that she was his property and that that's what he wanted her to do.

THE COURT: Okay. Okay.

[DEFENSE COUNSEL]: My position is just this, Judge, if a witness, it's presumed that we all prep our witnesses and know what our witnesses are going to say, otherwise to avoid the rules of evidence, all I would ever have to do if I am a State is just not talk to my witnesses and then they can take the stand and say whatever the heck they wanted to and I can say well, the witness never told me that so I didn't have to disclose it. That's the whole purpose.

THE COURT: I understand. But that is her statement. That cart is out of the gate and although you are asking the Court [to] strike it, I find no necessity at this time to even strike that statement, that's her answer. You will be given latitude on your cross, but that's her answer.

Thereafter, over objection, Backhaus testified that she got a tattoo of the name "Randall" on her back.

On appeal, Martin contends that Backhaus's testimony communicated an oral statement by Martin that related to the offenses charged and, therefore, the State was

required to disclose that statement pursuant to Md. Rule 4-263(d). He maintains that the State's failure to disclose the statement was proper grounds for a mistrial and "absolute grounds to strike the testimony from the record." We disagree.

Disclosure of Martin's statement to Backhaus, "if you love me, you will have my name tattooed on your back," was not required under Md. Rule 4-263 because disclosure of statements made to non-State agents is not required. *See Holland v. State*, 154 Md. App. 351, 375 (2003) (and cases cited therein). Even assuming, however, that the State's failure to disclose the statement constituted a discovery violation, Martin would fare no better. "The remedy for a violation of the discovery rules 'is, in the first instance, within the sound discretion of the trial judge.'" *Raynor v. State*, 201 Md. App. 209, 227 (2011) (quoting *Williams v. State*, 364 Md. 160, 178 (2001)). It is well established that the court "'has the discretion to select an appropriate sanction, but also has the discretion to decide whether any sanction is at all necessary.'" *Francis v. State*, 208 Md. App. 1, 24 (2012) (quoting *Raynor*, 201 Md. App. at 227-28). In the case at hand, the circuit court exercised its discretion in crafting an appropriate sanction by granting the defense latitude in its cross-examination of Backhaus. Thus, the court did not abuse its discretion in denying Martin's request for a mistrial and motion to strike Backhaus's testimony.

III.

Lastly, Martin contends that the circuit court erred in permitting hearsay testimony pursuant to the excited utterance exception during the direct examination of Officer Howard. Specifically, Martin argues that, at the time Backhaus spoke with Officer Howard, she was no longer compulsively reporting the facts of an inciting event while

under its influence, but was relating prior information in response to the officer's questions. Martin maintains that "[w]here the nature of the declarant's communication is in response to directed questions, the excited utterance exception, by its rationale, should not be made to apply." We disagree and explain.

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." Md. Rule 5-801(c). Generally, it is not admissible unless it falls within an exception to the hearsay rule or is "permitted by applicable constitutional provisions or statutes." Md. Rule 5-802. A "trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review." *Gordon v.* State, 431 Md. 527, 538 (2013). Accordingly, we review a trial court's legal conclusions *de novo*, but the court's factual findings will not be disturbed absent clear error. *Id.*

The excited utterance exception to the hearsay rule is found in Md. Rule 5-803(b)(2), which provides that a "statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" may be admissible. "The rationale behind the excited utterance exception is that the startling event suspends the declarant's process of reflective thought, thus reducing the likelihood of fabrication." *State v. Harrell*, 348 Md. 69, 77 (1997) (citations omitted). A statement may be admitted under the excited utterance exception if "the declaration was made at such a time and under such circumstances that the exciting influence of the

occurrence clearly produced a spontaneous and instinctive reaction on the part of the declarant . . . [who was] still emotionally engulfed by the situation[.]" *Deloso v. State*, 37 Md. App. 101, 106 (1977) (internal quotations and citations omitted). For a statement to be admissible as an excited utterance, the trial court must "look[ ] into the declarant's subjective state of mind to determine whether under all the circumstances, [he is] still excited or upset to that degree." *Gordon*, 431 Md. at 536 (internal quotation marks and citation omitted). In making that determination, the trial court considers the totality of the circumstances, which may include "how much time has passed since the event, whether the statement was spontaneous or prompted, and the nature of the statement, such as whether it was self-serving." *Id.* (citation omitted). Ultimately, however, it is the "emotional state of the victim at the time of her response [that] governs admissibility." *Davis v. State*, 125 Md. App. 713, 716 (1999).

In the case before us, Backhaus spoke with Officer Howard while outside her home, which was still engulfed in flames, and while firefighters were fighting the blaze. Officer Howard described Backhaus as being "in a state of shock" and "kind of guarded." She told him that she had broken up with her boyfriend, Martin, that Martin said he would kill her if she ever tried to leave him, that he had been stalking her since the breakup, and that he had been driving on her street the previous day. Officer Howard's testimony, if believed, was sufficient to support the finding that Backhaus remained under the stress of excitement from the fire when she made her statements.

We reject Martin's contention that because Backhaus's communications with Officer Howard were in response to his direct questions, the excited utterance exception

should not apply. The fact that statements are made in response to direct questioning by a police officer "is relevant but hardly dispositive." *Billups v. State*, 135 Md. App. 345, 360 (2000) (and cases cited therein). Spontaneity and lapse in time are factors to be considered in the analysis, but neither is dispositive. *Harrell*, 348 Md. at 78 (statement that defendant "beat me up" in response to police inquiry was admissible as excited utterance where police questioning commenced minutes after assault and victim was still emotionally overwhelmed by situation); *Mouzone v. State*, 294 Md. 692, 698-99 (1982) (whether declarant's statement is exclaimed impulsively or is the result of inquiry is not dispositive, but is only one factor to be considered), *overruled on other grounds*, *Nance v. State*, 331 Md. 549 (1993). When viewed in the context of all the surrounding circumstances of this case, the fact that Backhaus's statement was made to Officer Howard does not alter the fact that there was sufficient evidence to support a finding that Backhaus's statement was made while she was still under the stress of excitement.

Similarly, the fact that Backhaus's statements included information about prior occurrences does not prevent them from being excited utterances. We have recognized that "comments about a prior happening may be admissible under the excited utterance/spontaneous declaration exception to the hearsay evidence rule if the subsequent startling event that generates the utterance relates directly or indirectly to that prior event, *i.e.*, is likely to produce an exclamation about the prior event." *Bayne v. State*, 98 Md. App. 149, 177 (1993). Backhaus's stormy and abusive relationship with Martin, who had threatened to kill her if she left him, and who had been stalking her up until the day before the fire, was directly related to the arson and attempted murder.

There is nothing about Backhaus's statement to Officer Howard, or the circumstances surrounding it, that suggests it was the product of reflection. There was sufficient evidence before the circuit court to support the finding that Backhaus's statement was made while she was still under the stress of excitement and, considering the totality of the circumstances, the circuit court did not err in admitting Backhaus's statement as an excited utterance.

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