UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 175

September Term, 2016

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MOHAMMAD MOADDAB

v.

STATE OF MARYLAND

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Wright,
Arthur,
Shaw Geter,

JJ.

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Opinion by Arthur, J.

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Filed: March 22, 2017

Within seconds after a contractor knocked on Dr. Mohammad Moaddab's door to request his signature on a check, Dr. Moaddab pointed a shotgun at his chest and threatened to shoot him if he did not leave. The State charged Dr. Moaddab with first-degree assault and use of a firearm in a felony or crime of violence. In his defense, Dr. Moaddab claimed that he had acted to defend his home from an apparent intruder. After a bench trial, the Circuit Court for Montgomery County found that Dr. Moaddab had committed a second-degree assault. The court sentenced him to 10 years of incarceration, with all but six days of that sentence suspended, followed by two years of probation.

In this appeal, Dr. Moaddab contends that the trial court erred by excluding a statement that the contractor made to Dr. Moaddab's son several months before the incident and that the court made various other factual and legal errors in evaluating his defense-of-property claim. Seeing no such error, we affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. The Contract Dispute Between Dr. Moaddab and Matthew Nichols

Although this case centers on an alleged assault at a residence, it began with an ordinary dispute over a contract to repair a business office. As defense counsel aptly noted at trial, the entire contract dispute is "of rather marginal relevance" in the criminal case "other than to say that there [was] a good faith dispute" between Dr. Moaddab and the contractor, Mr. Matthew Nichols. Nevertheless, some prologue is necessary, to establish the context of the conduct at issue.

Dr. Moaddab is a retired dentist and orthodontist. He practiced for over three

decades in Maryland and in Washington, D.C. His son, Arta Moaddab, eventually took over the dental practice, while Dr. Moaddab continued to manage the business.[1]

In 2013, Dr. Moaddab's District of Columbia office sustained extensive water damage. His insurance carrier referred him to Nichols Brothers Construction, LLC.

In January 2014, Dr. Moaddab and Mr. Nichols signed a contract in which Nichols Brothers agreed to make some of the repairs in accordance with the insurance company's estimate. The contract price was slightly over $75,000, with a one-third deposit due at signing, another third due after certain preliminary work, and the final third due upon completion.

The repairs did not proceed as scheduled. Mr. Nichols determined that additional work was needed. At his request, the insurance company increased the repair estimate to around $130,000. Dr. Moaddab, however, did not sign off on the additional work. In mid-2014, Mr. Nichols began billing Dr. Moaddab for about $60,000, claiming that Dr. Moaddab owed two-thirds of the increased repair estimate. Dr. Moaddab refused to pay because he believed he had no obligation to do so.

Unsuccessful in his attempts to collect from the Moaddabs, Mr. Nichols sought payment from Dr. Moaddab's insurer. The insurance company issued a check for about $22,000, co-payable to Dr. Moaddab and Nichols Brothers. Mr. Nichols repeatedly tried to communicate with Dr. Moaddab, in the hope of convincing him to sign the check and

[1] Arta Moaddab, like his father, is a licensed dentist. As the parties do in their briefs, we refer to him as Arta Moaddab, without his professional title, only to differentiate him from his father, the appellant.

pay the amounts that Mr. Nichols had been billing.

Sometime around January 2015, Mr. Nichols visited Dr. Moaddab's home in Bethesda. He found Dr. Moaddab sitting in his car in his driveway, and stopped him just as he was about to leave. Mr. Nichols asked Dr. Moaddab to sign the check from the insurance company, but the doctor refused to sign anything at that time. Dr. Moaddab said that he would be traveling for about a month for a vacation. By all accounts, their conversation was cordial, and the two men shook hands before parting company.

After a month passed, Mr. Nichols resumed trying to communicate with Dr. Moaddab about the payment dispute. When he received no response by phone, Mr. Nichols began making regular visits to Dr. Moaddab's house. On one occasion, Mr. Nichols tried knocking on the back door after he noticed footprints leading behind the house, which had a separate entrance for a dental office on the lower level. Dr. Moaddab later recalled a similar occurrence: on February 27, 2015, he saw a white man in a winter hat knocking on his front and back doors. Dr. Moaddab said that he felt apprehensive, and so he waited inside for about 15 minutes until the man decided to leave.

### B. The Incident at Dr. Moaddab's Residence on March 1, 2015

Mr. Nichols returned to the house on March 1, 2015. Again, he sought to ask Dr. Moaddab to co-endorse the $22,000 check from the insurance company. A brief encounter occurred near the front door. Although the two men would give conflicting accounts about many details, some basic outlines of the incident are undisputed.

Primarily as a result of health problems, Dr. Moaddab had moved his bed to the first floor of his home, a few feet to the immediate right of the front door. He placed two

bedside tables between the door and the bed. Across from the foot of the bed stood another table with a television. Dr. Moaddab kept a shotgun leaning against the wall in the corner to the right of the bed and about 10 feet to the right of the door. His son, Arta Moaddab, had encouraged him to keep the gun for protection, but Dr. Moaddab had little firearms training and often felt uncomfortable using guns.

Dr. Moaddab was on the first floor of his home at around noon on March 1, 2015. He had closed the front door, but he had forgotten to turn the deadbolt. The latch on the door was faulty, and so whenever the deadbolt was not secured, the door would open easily with a firm knock. Mr. Nichols approached the door and knocked on it. The door came open as he knocked, which surprised both men.

Mr. Nichols promptly told Dr. Moaddab that he was there because he wanted Dr. Moaddab to sign the insurance check. Dr. Moaddab responded by yelling at Mr. Nichols, telling him to go away and to leave him alone. Dr. Moaddab quickly retrieved the shotgun from the corner of the room and threatened to shoot Mr. Nichols if he did not leave. Mr. Nichols left, and Dr. Moaddab closed the door and locked it. He called his son Arta, who later came to the house to check on him.

Meanwhile, Mr. Nichols called 911 from his truck and reported the incident.[2]

[2] Mr. Nichols told the emergency dispatcher: "I'm a contractor, I'm trying to get a check signed, and a homeowner just pointed a shotgun at me." He continued: "I was only there for 10 seconds. I'm like, sir, I'm here to get the check endorsed. I have a copayable check from an insurance company, work that we've done, work that's been done for months, and I'm just trying to get it endorsed. And he's like, if you don't leave me alone, I'm going to shoot you. And he went and grabbed a shotgun out of the corner of his living room."

Montgomery County Police officers took Mr. Nichols's statement and used it to obtain a warrant to search Dr. Moaddab's home. At around 5:00 P.M., a SWAT team entered the home and arrested Dr. Moaddab in his bed. Officers seized the shotgun from the corner next to the bed, as well as a nearby bag that contained ammunition.

A few hours later, Dr. Moaddab gave a statement to a detective. Dr. Moaddab reported that he did not recognize the man who came to his door that day, but he believed that the same man had knocked on his door two days earlier. Dr. Moaddab claimed that the man started to come into his house, which made him afraid, and so he grabbed the shotgun from near his bed and threatened to shoot the man if he did not leave.

A few weeks later, the State filed an indictment in the Circuit Court for Montgomery County. The State charged Dr. Moaddab with first-degree assault, second-degree assault, and use of a firearm in the commission of a felony or crime of violence.

### C. Bench Trial in the Circuit Court

After waiving his right to a jury on February 23, 2016, Dr. Moaddab was tried over the course of three days. From the beginning, two theories of the case were well-defined. The State argued that the case "ultimately boil[ed] down to an overreaction" by Dr. Moaddab "to an everyday interaction." The main premise of Dr. Moaddab's defense was that he had used an "appropriate . . . threat of force, against a hostile adversary who [was] entering [his] home."

Mr. Nichols testified that he knocked on Dr. Moaddab's door on March 1, 2015, in the belief that Dr. Moaddab might still agree to sign the check from the insurance company. Mr. Nichols recalled that the front door was "closed, but it wasn't latched,"

and so it opened a few inches when he knocked. Mr. Nichols testified that Dr. Moaddab was "right there" on the other side of the door and "immediately" opened the door as if he had been "getting ready to leave." When Mr. Nichols announced that he was "just [there] to get the check endorsed," Dr. Moaddab responded by yelling, "Get out of here, you're bothering me, you're harassing me."

Mr. Nichols testified that he remained outside while Dr. Moaddab walked over to what appeared to be "the corner of the living room." Mr. Nichols recalled seeing living room furniture, but he made no mention of a bed. Mr. Nichols later explained that, from his perspective, he could not see all the way "over into the corner" and so he was "not sure what [Dr. Moaddab] was doing" as he walked to that area. According to Mr. Nichols, Dr. Moaddab returned carrying a shotgun and, standing "maybe five feet away," pointed the gun at Mr. Nichols's chest as he said, "if you don't get out of here, I'm going to shoot you." Mr. Nichols estimated that the entire encounter lasted about ten seconds.

In addition to Mr. Nichols's testimony, the State called the police officer who had responded to his 911 call, the detective who investigated the incident, and a representative from the insurance company. The State also introduced a recording of the 911 call, photographs of the house, the shotgun seized by police, and a recording of the interrogation of Dr. Moaddab.

Arta Moaddab testified as a defense witness, regarding some events that had occurred before and after the incident. Among other things, Arta mentioned a phone call that he received from Mr. Nichols sometime around September 2014. The State objected to questions about the content of that conversation. Defense counsel proffered that Mr.

Nichols told Arta: "you're avoiding me, we need to get this check signed and you're a coward." The court sustained the State's objection, but admitted the testimony that Mr. Nichols had called Arta Moaddab to request a signature on the check.

Dr. Moaddab took the stand in his own defense. He testified that, around noon on the day in question, he was reading his mail at the foot of his bed when he heard a loud bang on the door. Dr. Moaddab explained that the door opened as the man knocked because the latch for the front door did not work properly. According to Dr. Moaddab, the door swung open about three feet, and the man reached inside and said, "You are going to sign this check." Dr. Moaddab asserted that the man crossed the threshold and stood "probably three feet" inside the door. Dr. Moaddab claimed that he did not recognize the man as Mr. Nichols, but he believed that the man might have been hired by Mr. Nichols.[3]

Dr. Moaddab testified that he felt "really scared," and so he backed up against the wall to the right of the bed. Dr. Moaddab recalled that he shouted "leave me alone or something in that fashion, stop bothering me," while he tried unsuccessfully to dial 911 on his phone. He told the man, "If you don't leave my house, I will shoot you," as he picked up the shotgun from the corner of the room. Dr. Moaddab could not remember whether he was pointing the gun at the man or at the television on the other side of the room. He said that he remained standing in the corner and never approached the door

[3] Dr. Moaddab further testified that he had never been fearful of Mr. Nichols, but that he liked Mr. Nichols and "always treated him like [his] son" in the course of their business.

until after the man left. Finally, he testified that he tried to call 911 a second time, but that the call did not go through. He did succeed, however, in calling his son Arta.

Dr. Moaddab twice moved for a judgment of acquittal on all charges. Defense counsel argued that the evidence conclusively showed that he had acted justifiably in defense of his home. The State argued, among other things, that Dr. Moaddab had used excessive force by pointing the gun at Mr. Nichols. The court denied the motions and proceeded to judge the case on the facts.

### D. Judgment of the Circuit Court

In a thorough oral ruling, the circuit court found that Dr. Moaddab had committed second-degree assault and that his conduct was not legally justified. Essentially, the court believed Mr. Nichols's testimony on the key details that were in dispute.

The court credited Dr. Moaddab's testimony that he was sitting on his bed when Mr. Nichols knocked on the door, causing it to open. Consistent with Mr. Nichols's account, however, the court found that Dr. Moaddab promptly went to the door and opened it fully. Contrary to Dr. Moaddab's testimony, the court found that Dr. Moaddab recognized Mr. Nichols, as he yelled "stop harassing me" and "leave my property." The court specifically found that Mr. Nichols never entered the house, but instead remained outside as he announced, "I'm only here to get the check signed." The court also found that Dr. Moaddab left the front door area and returned within seconds carrying what appeared to be a shotgun. Finally, the court found that Dr. Moaddab pointed the object at Mr. Nichols's chest and said, "If you don't leave, I'm going to shoot you."

Despite the abundant evidence that Dr. Moaddab had used a shotgun, the court

generously concluded that the State had failed to prove beyond a reasonable doubt that the object used by Dr. Moaddab was a "firearm." For that reason, the court found Dr. Moaddab not guilty on the charges of first-degree assault and use of a firearm in the commission of a felony or crime of violence.[4]

The court nevertheless concluded that "[b]y pointing what appeared to be a shotgun at the chest of the victim, the defendant committed an assault . . . of the intent to frighten variety." The court found that Dr. Moaddab intended to place Mr. Nichols in fear of immediate physical harm, that Dr. Moaddab had the apparent ability to bring about that harm, and that as a result Mr. Nichols was reasonably fearful.

The court proceeded to consider potential legal justifications for Dr. Moaddab's actions, emphasizing its finding that Mr. Nichols had never even attempted to enter the house. Addressing the issue of self-defense,[5] the court reasoned that it was "completely unreasonable" for Dr. Moaddab to fear that Mr. Nichols was about to inflict harm upon him. Addressing defense of habitation, the court concluded: "Nothing under the circumstances of this case could have possibly indicated that the victim standing at the door holding a check out for endorsement would have led anyone to believe that he was there to enter the home and commit a violent crime against the defendant."

[4] Although the court did not find that the object was a "firearm" within the meaning of the Criminal Law Article, the court frequently referred to it as a "shotgun." The appellate briefs proceed on the premise that the object was in fact a shotgun.

[5] Defense counsel did not specifically raise the issue of self-defense, but the court addressed the issue because Dr. Moaddab had testified that he was fearful that the man who knocked on his door might harm him.

Turning to defense of property, the court determined that at least two elements of that defense were absent. The court stated that "defense of property requires that the defendant actually believe that the victim was unlawfully interfering with his or her property." The court expressly found that "that aspect of the defense of property did not exist." The court reiterated its finding that Mr. Nichols had never entered the home, and commented that none of Mr. Nichols's actual conduct would amount to an interference with property.[6]

As to the final element of that defense (concerning the use of reasonable force), the court concluded that "the pointing of the gun at the victim under th[e] circumstances of this case was, in fact, way more force than was reasonably necessary at the time." The court emphasized that, at the time that Dr. Moaddab went to retrieve the shotgun, Mr. Nichols had simply asked for a signature on a check. The court commented that "[t]here were at least a dozen things [Dr. Moaddab] could have done, rather than going over and getting his shotgun." The court added that "the time that had elapsed was so short, . . . that it was unreasonable for the defendant to conclude . . . that the victim was not going to leave the property, or that he wasn't going to follow his command."

On March 1, 2016, the court sentenced Dr. Moaddab to 10 years of imprisonment, but suspended all but six days of that sentence and gave him credit for the six days he had already served. The court also imposed a two-year period of probation. Afterwards, Dr.

[6] The trial court did not expressly address the second aspect of the defense of property – whether Dr. Moaddab was reasonable in his belief that Mr. Nichols was interfering with his property. Evidently, the court did not discuss whether Dr. Moaddab's belief was reasonable because the court concluded that the belief did not exist.

Moaddab noted a timely appeal.

## QUESTIONS PRESENTED

Dr. Moaddab now raises three questions for our review, which we quote:

I. Did the trial court commit reversible error by ruling that statements made by the complaining witness calling Appellant's son "a coward" were inadmissible hearsay?

II. For purposes of a claim by Appellant that he acted in defense of his property, did the trial court errantly require an actual intrusion into appellant's home rather than a reasonable belief of an intrusion or attempted intrusion?

III. Was the evidence insufficient to find appellant guilty of second degree assault and that he did not lawfully act in defense of his property?

For the reasons discussed below, we answer all questions in the negative. We affirm the judgment.

## DISCUSSION

### I. Exclusion of Victim's Statement Calling Defendant's Son a "Coward"

In his first challenge, Dr. Moaddab contends that the trial court erred in refusing to admit Arta Moaddab's testimony that Mr. Nichols called him a "coward" during a phone conversation several months before the alleged assault. We see no abuse of discretion in that ruling.

As a defense witness, Arta Moaddab testified about his interactions with Mr. Nichols during the dispute over the contract to repair the District of Columbia office. Arta recalled that he received a phone call from Mr. Nichols sometime around the summer of 2014. The State objected when defense counsel asked about what Mr.

Nichols said during that conversation. The court sustained the objection, and a bench conference ensued:

> THE COURT: Go ahead, I mean it's hearsay, so what's –
>
> [DEFENSE COUNSEL:] I'm not offering it for the truth of the matters asserted because it's just a request, it's a conversation at his request, to meet and get this check signed. It's not asserting anything. I'm not describing any of the –
>
> THE COURT: All right. So, so then what's the proffer of what, what is said?
>
> [DEFENSE COUNSEL:] That you're avoiding me, we need to get this check signed and you're a coward. I'm at your office and I know you're a coward. I'm at the door.
>
> THE COURT: Well, you're avoiding me and you're a coward are assertions, but I'm calling to get my check signed I would say is probably not. So I'll allow that portion of the statement.

The court instructed defense counsel to rephrase the earlier questions. Defense counsel asked Arta whether Mr. Nichols had said anything during the phone conversation that Arta "found to be alarming or insulting." Arta began to say, "He called me a coward," but the State objected once more. The court struck the testimony.

At a second bench conference, the court restated its ruling that Arta could testify only about Mr. Nichols's request regarding the check. The court opined that defense counsel was attempting to elicit what appeared to be hearsay without an exception. The discussion soon shifted from the issue of hearsay to the issue of general relevance:

> [DEFENSE COUNSEL:] It's not offered, I'm not offering it for the truth of the matter asserted, just the fact it was uttered that he was conveying this hostile tone, like calling him, like you son-of-a-bitch.

> THE COURT: Okay. So why would that be relevant to, why would that be relevant?
>
> [DEFENSE COUNSEL:] Because it shows the hostility and the desperation or Mr. –
>
> THE COURT: Yeah, but this fellow is not involved in the case. He wasn't there. He wasn't –
>
> [DEFENSE COUNSEL:] All right, but Mr. Nichols wants to portray to you that he's just calmly trying to get this check signed from this person who is the agent, Mr. [Arta] Moaddab, who has injected himself into this. He's now being insulted and getting essentially threats at –
>
> THE COURT: What's the threat?
>
> [DEFENSE COUNSEL:] That you're a coward and not willing to come out and deal with me.
>
> THE COURT: Okay. That's not a threat. . . . So I'll sustain the objection, but I'll let you elicit the part about the check.

Later, during redirect examination, the court also struck Arta Moaddab's testimony that Mr. Nichols had threatened him "in the phone conversation" by saying "in a threatening manner" that he was "going to get paid."

On appeal, Dr. Moaddab contends that the court erred by excluding the testimony that Mr. Nichols called Arta Moaddab a coward. Much of Dr. Moaddab's argument concerns whether the statement was inadmissible under the hearsay rule. He maintains that he did not offer the statement to prove that his son was a coward.

The State concedes that the statement was not hearsay. The State asserts, however, that although the trial court initially excluded the testimony on hearsay grounds, it ultimately ruled that the testimony was either irrelevant or insufficiently probative to justify its admission. On review of the transcript, we agree with that characterization of

the ruling: as soon as it became clear that defense counsel was not offering Mr. Nichols's statement to prove the truth of the matter asserted, the court directed counsel to explain the relevance of the statement.

This Court uses a two-pronged analysis to review a trial court's ruling as to relevance. *See, e.g.*, *Washington Metro. Area Transit Auth. v. Washington*, 210 Md. App. 439, 451 (2013). The issue of legal relevance is a question of law subject to de novo review. *See, e.g.*, *State v. Simms*, 420 Md. 705, 725 (2011). Evidence is relevant if it has "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." Md. Rule 5-401.

The trial court also has discretion to exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. This balancing inquiry "is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003). In this context, "[a]n abuse of discretion occurs where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Webster v. State*, 221 Md. App. 100, 112 (2015) (citations and quotation marks omitted). Thus, as long as the trial court's ruling is reasonable, the appellate court should not disturb that ruling on appeal. *Peterson v. State*, 196 Md. App. 563, 585 (2010).

Dr. Moaddab theorizes that the evidence that Mr. Nichols called Dr. Moaddab's son a coward during the summer of 2014 enhances the likelihood that Mr. Nichols forcefully entered Dr. Moaddab's house in March 2015. Dr. Moaddab asserts that the utterance was "laced with threatening overtones" and that it "demonstrates a level of hostility on the part of Nichols and suggests a willingness to resort to physical intimidation to get the check signed."

Assuming that the statement has some bare relevance, we conclude that the court acted within its discretion when it excluded the statement. As the trial judge noted, Arta Moaddab had no direct involvement in the incident at Dr. Moaddab's home in March 2015. In fact, the phone conversation between Arta Moaddab and Mr. Nichols occurred about six months before the incident. It was also well established that, months after that phone call, Mr. Nichols and Dr. Moaddab had a peaceful conversation about the check outside Dr. Moaddab's home, after which they shook hands. We agree with the State that the court could have properly concluded that the phone conversation was "so remote" to the incident that its probative value was minimal.

Moreover, the court reasonably concluded that the evidence did not support the specific inference suggested by defense counsel. Defense counsel had argued to the trial court that Mr. Nichols's statement was not merely an "insult[]," but "essentially" a "threat." We see no abuse of discretion in the decision to exclude the statement for the stated purpose of showing that Mr. Nichols had threatened Dr. Moaddab's son.

As a final afterthought, Dr. Moaddab asserts that the fact that Mr. Nichols called Arta Moaddab a coward is "highly relevant to [Dr. Moaddab's] fear of Nichols during the

incident." Because Dr. Moaddab did not offer the statement for that purpose at trial, he has failed to preserve any contention on appeal that the court should have admitted the statement on that ground. *See In re Adoption/Guardianship Nos. CAA92-10852 & CAA92-10853*, 103 Md. App. 1, 33 (1994). When the court ruled, the defense had not even proffered that Dr. Moaddab knew of Mr. Nichols's statement. In fact, Dr. Moaddab went on to testify that he was "never scared of" Mr. Nichols at any time before the incident on March 1, 2015.

In sum, the court did not abuse its discretion in excluding the statement where the potential probative value of the statement was substantially outweighed by countervailing concerns that it might obscure the issues or simply waste the court's time. *See Smith v. State*, 371 Md. 496, 505-06 (2002) (holding that trial court did not abuse its discretion in excluding evidence where the proponent's theory of relevance was "tenuous" and any relevance was "marginal at best"); *Malik*, 152 Md. App. at 324-26 (holding that trial court did not abuse its discretion in precluding evidence that was "remote to the facts of the case," that could have confused the issues, and that "would not have assisted it in deciding [the defendant's] guilt or innocence"). The court here properly limited the scope of testimony to the part of the statement regarding the insurance check, which the court considered to be more helpful in deciding what happened when Mr. Nichols knocked on Dr. Moaddab's door six months later.

## II. Other Factual and Legal Challenges to the Court's Verdict

Beyond his challenge to the exclusion of evidence, the remainder of Dr. Moaddab's brief includes an assortment of interrelated arguments about the ultimate

verdict. Overall, Dr. Moaddab contends that the evidence was insufficient to support the conviction for assault. Dr. Moaddab disputes many of the court's factual findings and argues that, even under the facts found by the trial judge, the court was required to conclude that he had acted lawfully.

The standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), governs review of the sufficiency of the evidence to support a conviction. That standard requires this Court first to "'view[ ] the evidence, and all inferences fairly deducible from the evidence, in a light most favorable to the State.'" *Buck v. State*, 181 Md. App. 585, 641 (2008) (quoting *Rivers v. State*, 393 Md. 569, 580 (2006)) (quotation marks omitted). In doing so, the appellate court does not "'re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.'" *Walker v. State*, 432 Md. 587, 614 (2013) (quoting *State v. Mayers*, 417 Md. 449, 466 (2010)) (quotation marks omitted). Then, the appellate court must "determine 'whether . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Walker*, 432 Md. at 614 (quoting *Rivers*, 393 Md. at 580).

As the Court of Appeals has often emphasized, the role of the appellate court is narrowly limited in this context:

> [W]e are mindful of the respective roles of the [appellate] court and the [trier of fact]; it is the [trier of fact's] task . . . to measure the weight of the evidence and to judge the credibility of witnesses. The appellate court gives deference to a trial judge's . . . ability to choose among differing inferences that might possibly be made from a factual situation[.] We do not second-guess the [trier of fact's] determination where there are competing rational inferences available. It is simply not the province of the appellate court to determine whether the [trier of fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether

> we would have drawn different inferences from the evidence. Such deference is accorded, in part, because it is the trier of fact, and not the appellate court, that possesses a better opportunity to view the evidence presented first-hand, including the demeanor-based evidence of the witnesses, which weighs on their credibility.

*State v. Manion*, 442 Md. 419, 431 (2015) (citations and quotation marks omitted).

Some of Dr. Moaddab's arguments relate to the court's factual findings, another relates to the court's application of the correct legal standard, and others relate to the court's ultimate conclusion that his actions were not legally justified. The following discussion of those arguments is organized according to the sequence of the trial court's opinion, and so it does not necessarily correspond to the order of the arguments in Dr. Moaddab's brief.

### A. The Trial Court's Factual Findings

As a part of his challenge to the verdict, Dr. Moaddab disputes the trial judge's first-level findings about what actually occurred at his home on March 1, 2015. He contends that "the trial Court's version of events is clearly erroneous as it includes facts that do not exist in the record, and ignores facts that Nichols and Moaddab agree on."

Rule 8-131(c) provides that, in cases tried without a jury, this Court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." As the fact-finder, the trial court "is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony." *Pryor v. State*, 195 Md. App. 311, 329 (2010). In evaluating a trial court's findings, this Court "must assume the truth of all evidence, and of all the

favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the [trial] court." *Walker v. State*, 125 Md. App. 48, 54 (1999) (quotation marks omitted). Generally, "[i]f there is any competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *Goff v. State*, 387 Md. 327, 338 (2005) (quotation marks omitted).

Even though Dr. Moaddab acknowledges this highly deferential standard of review, he takes issue with the court's resolution of the conflicts in the testimony. He asserts that the court was required to conclude that his trial testimony was "the only version that is consistent with the physical evidence and the unwitting admissions by Nichols." We agree with the State's assessment that Dr. Moaddab "is, in essence, asking this Court to make findings of fact and credibility determinations contrary to that of the trial court[.]"

Dr. Moaddab first contests the court's finding that, after the front door "opened slightly, as [Mr. Nichols] knocked," Dr. Moaddab "went to the front door and opened the door fully." Mr. Nichols had testified that the door "opened a little bit when he knocked[,]" and that "[a]s [he] knocked on the door, [Dr. Moaddab] opened the door." During cross-examination, Mr. Nichols added that Dr. Moaddab opened the door "immediately," as if he had been "getting ready to leave." For his part, Dr. Moaddab denied ever approaching or opening the door. Instead, he maintained that he was sitting at the foot of his bed when loud pounding on the door caused it to swing open three feet.

Faced with this conflict, the court credited Dr. Moaddab's testimony that he was sitting on his bed rather than standing at the door, but also credited Mr. Nichols's

testimony that Dr. Moaddab was the one who fully opened the door. The court implicitly rejected Mr. Nichols's testimony that the door opened "immediately." Instead, the court's finding suggests that Dr. Moaddab walked the short distance to the door, which, as Dr. Moaddab notes, would have taken "a few seconds." There is nothing irrational or unreasonable in this rather routine exercise of discretion to resolve conflicts in the evidence. *See, e.g.*, *Choi v. State*, 134 Md. App. 311, 326 (2000).

Dr. Moaddab argues, quite vigorously, that the court should have rejected Mr. Nichols's testimony that the doctor walked from the door to retrieve the shotgun from the corner of the room. Mr. Nichols had testified that he remained outside while Dr. Moaddab stepped away from the door. When the prosecutor asked, "Did you see where he went?", Mr. Nichols responded, "He walked over to the, I guess, the right front corner of the living room." Mr. Nichols then stated, "He picked up a shotgun and came back and pointed it at my chest[.]" During cross-examination, defense counsel asked Mr. Nichols how he could have seen Dr. Moaddab walking to the corner of the room. Mr. Nichols responded: "I couldn't see, you know, over into the corner, so I'm not sure what he was doing, but he was just walking over to the corner."

In another unremarkable instance of fact-finding, the court concluded that, "[w]hile still standing on the porch," Mr. Nichols "saw the defendant immediately leave the front door, and within [] seconds return[] holding what appeared to be a gun." The court, interpreting all of the testimony together, apparently concluded that Mr. Nichols did not directly see Dr. Moaddab grab the gun from corner of the room. Instead, the court suggested that Mr. Nichols could only see Dr. Moaddab walk towards the corner

and then quickly return carrying the gun. Elsewhere in its opinion, the court expressly noted that Mr. Nichols "could not see where [Dr. Moaddab] went." Those conclusions are reasonable and are by no means clearly erroneous.

By contrast, Dr. Moaddab's brief proposes some odd interpretations of the testimony, supported by an elaborate set of diagrams. Dr. Moaddab asserts that Mr. Nichols claimed to have seen the doctor walk "directly" from the front door to the corner of the room, which, he says, "would have required [Dr. Moaddab] to walk through his side tables and bed like a ghost to and from the corner of the room." In fact, Mr. Nichols never testified that Dr. Moaddab walked "directly" to the corner in a straight line through any intervening obstacles. In a similar fashion, Dr. Moaddab argues that Mr. Nichols "unwittingly admitted" that he entered the house by claiming that he "saw" Dr. Moaddab go to the corner and pick up the gun. Both arguments ignore Mr. Nichols's testimony (credited by the court) that he had no direct line of sight to the corner.

Dr. Moaddab further contests the court's finding that, after picking up the gun, he returned to the front door and pointed it at Mr. Nichols from a short distance away. This entire argument is based on a contradiction that appears in the transcript. On direct examination, the prosecutor asked Mr. Nichols, "[W]hen you say that he pointed [the gun] at your chest, how far away from you was he standing?" Mr. Nichols responded: "Maybe, maybe five feet." A moment later, the prosecutor asked Mr. Nichols to step down from the witness stand and to demonstrate the distance by standing the same distance away from the prosecutor. Afterwards, the prosecutor said, "Your Honor, if the record will reflect from at 25-feet distance."

Dr. Moaddab disputes the court's finding that he carried the gun to the front door, which is consistent with Mr. Nichols's statement that the distance was five feet but inconsistent with the comment about the "25-feet distance." Dr. Moaddab's argument ignores the testimony that Dr. Moaddab was standing "five feet away" and asserts only that Mr. Nichols said that the distance was 25 feet. At best, Dr. Moaddab has shown that Mr. Nichols gave contradictory testimony at two different points in time. "Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency" to support the court's findings. *Pryor*, 195 Md. App. at 329. Unlike this Court, the trial court had the opportunity to observe the testimony and demonstration first-hand. Notwithstanding the one reference to a 25-foot distance, the court was not clearly erroneous in crediting Mr. Nichols's other testimony that Dr. Moaddab "came back" to the front door before he pointed the gun at Mr. Nichols's chest.[7]

In sum, the evidence sufficiently supported the findings that Mr. Nichols's knock caused the door to open, that Dr. Moaddab opened the door fully, that Mr. Nichols remained standing outside the door, that Dr. Moaddab walked to the corner of the room to pick up the shotgun, that Dr. Moaddab returned the front door carrying the shotgun, and that Dr. Moaddab pointed the shotgun at Mr. Nichols's chest. Each finding was

[7] Dr. Moaddab incorrectly asserts that a 25-foot distance is "consistent" with his testimony that he was standing against the wall, with tables and a bed between the men. Dr. Moaddab actually testified that the distance between the two men was "about eight or 10 feet." In fact, defense counsel apparently anticipated that the evidence would show that Dr. Moaddab held the gun about five feet away from Mr. Nichols. During opening statements, defense counsel argued that Dr. Moaddab was justified in pointing the gun immediately instead of waiting "until Mr. Nichols traversed the five or six feet and was right on top of Dr. Moaddab potentially with his hand on his neck."

either directly supported by Mr. Nichols's testimony or reasonably inferred from his testimony in combination with the other evidence.

### B. Dr. Moaddab's Belief in an Unlawful Interference with His Property

After announcing its findings as to what happened near the front door of Dr. Moaddab's house, the trial court concluded that Dr. Moaddab's actions were not legally justified. Dr. Moaddab contends that the court applied the wrong legal test to evaluate whether he had acted in defense of his property. He asserts that the court erred by examining whether Mr. Nichols actually intruded on the property instead of examining whether Dr. Moaddab had a reasonable belief that Mr. Nichols was interfering with or about to interfere with his property.

In contrast to factual findings, which deserve deference under the clearly erroneous standard, we conduct an undeferential review of a trial court's legal conclusions. *See, e.g.*, *State v. Neger*, 427 Md. 582, 595 (2012). Nevertheless, in reviewing a verdict after a bench trial, an appellate court will presume that the trial judge knows the law and applies it properly. *See Thornton v. State*, 397 Md. 704, 736 (2007). "Because of these potent presumptions, we are reluctant to find error, opining that the judge misperceives the law, unless persuaded from the record that a judge made a misstatement of the law or acted in a manner inconsistent with the law." *Medley v. State*, 386 Md. 3, 8 (2005). These presumptions are particularly difficult to overcome where the trial judge does not misstate the law, but gives a correct statement of what the law requires. *See State v. Chaney*, 375 Md. 168, 184 (2003); *compare Mobuary v. State*, 435 Md. 417, 442 (2013) (vacating judgment where court misstated applicable law). Here,

there is no clear indication that the court misunderstood or misapplied the law regarding the first element of defense of property.

At trial, Dr. Moaddab raised the related defenses of defense of habitation, which can justify a person's use of deadly force to defend his or her home, and defense of property, which can justify a person's use of non-deadly force in defense of his or her property, whether personal or real. Both Dr. Moaddab and the State agree that Maryland Criminal Pattern Jury Instruction 5:02.1 states the requirements for defense of property at the non-deadly force level. It provides:

> **DEFENSE OF PROPERTY – NONDEADLY FORCE**
>
> You have heard evidence that the defendant acted in defense of [his] [her] property. Defense of property is a defense and you are required to find the defendant not guilty if all of the following three factors are present:
>
> (1) the defendant actually believed that (name of person) was unlawfully interfering [was just about to unlawfully interfere] with [his] [her] property;
>
> (2) the defendant's belief was reasonable; and
>
> (3) the defendant used no more force than was reasonably necessary to defend against the victim's interference with the property. [A person may not use deadly force to defend [his] [her] property. Deadly force is that amount of force reasonably calculated to cause death or serious bodily harm.]
>
> In order to convict the defendant, the State must show that the defense of property does not apply in this case by proving, beyond a reasonable doubt, that at least one of the three factors previously stated was absent.

Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") 5:02.1 (2d ed. 2013); *see also Dashiell v. State*, 214 Md. App. 684, 701 (2013) (discussing a similar formulation of defense of property as a defense to assault).

The trial court's analysis of the defense-of-property claim closely tracked those three elements. The court found that at least two of the elements were absent. The court first explained:

> The last defense that would be raised by the facts of this case would be defense of property. And the defense of property requires that the defendant actually believe that the victim was unlawfully interfering with his or her property.
>
> Now, the defendant never said that, but he did say that the victim, I think he said, was two or three feet inside the front door, and, therefore, was trespassing upon his property, he didn't belong there, those kinds of things.
>
> However, I find, as a matter of fact, that that never happened. In looking at other things that were testified about in his case, nothing that the victim did would have amounted to interfering with property.
>
> His going to the property was completely lawful. His approaching the defendant about signing a check, though it was a business dispute, there was nothing unlawful about that. The fact that the defendant told him to file suit, that was an option, but there was no warning about him to never come by the house, he was not trespassing at the time he went to the property.
>
> The fact is that, from the victim's point – although the defendant had what he believed was a legitimate dispute about not paying the bill, from the victim's point of view he had done work, and hadn't been paid for it. And, so, therefore, there was nothing improper about him trying to get the defendant to endorse the check. The knocking on the door, the speaking to him, the request for the signature on the check, nothing about that was interfering with the defendant's property.
>
> So, I find that that aspect of the defense of property did not exist.

Quoting selectively from this analysis, Dr. Moaddab argues that the trial court erroneously reasoned that a defense-of-property defense required an actual interference

with property rather than a property owner's reasonable belief that someone was interfering with or about to interfere with the property.

Dr. Moaddab fails to mention the court's express statement to the contrary. The court stated that "defense of property requires that the defendant actually believe that the victim was unlawfully interfering with his or her property." The court's conclusion – "I find that that aspect of the defense of property did not exist" – evidently referred back to the same requirement that the court had identified a moment earlier. The entire discussion of that element should be considered in that context.

As we interpret the verdict, the court found that Dr. Moaddab did not actually believe that Mr. Nichols was intruding on the property. As the court noted, Dr. Moaddab did not express himself in precisely those terms ("the defendant never said that" he "actually believe[d] the victim was unlawfully interfering with his or her property"). The court acknowledged Dr. Moaddab's testimony about what he perceived ("he did say that the victim . . . was two or three feet inside the front door, and, therefore, was trespassing upon his property"). But the court rejected that testimony in its entirety ("I find, as a matter of fact, that that never happened"). The remainder of the court's comments ("nothing that the victim did would have amounted to interfering with property") reinforced the conclusion that Dr. Moaddab did not believe that Mr. Nichols was interfering with property.

In light of the court's express statement about this element of defense of property, we are unpersuaded by Dr. Moaddab's suggestion that, by implication, the court somehow applied a different standard. At most, Dr. Moaddab points to only one

potential interpretation of the court's analysis. The transcript as a whole does not negate the strong presumption that the court meant what it said when it stated that defense of property requires the defendant's actual belief in an interference with property and proceeded to conclude that that element was not present. *See Chaney*, 375 Md. at 184 (concluding that defendant failed to overcome presumption that the sentencing judge knew the law and applied it correctly where the judge "did not misstate the law" but, "[i]n fact, correctly stated" the law).

In a related argument regarding this element, Dr. Moaddab contends that "no rational trier of fact could find beyond a reasonable doubt that Moaddab did not reasonably fear Nichols was seeking to enter his house." In support of his contention, Dr. Moaddab first points to the undisputed fact that Mr. Nichols's knock initially caused the front door to open, which he sees as conclusive evidence that he believed that Mr. Nichols was an intruder. But under the facts of this case, the mere opening of the door would not have created the appearance of an attempted intrusion. According to Dr. Moaddab's testimony, he knew that the latch to the door was "a little non-functional," and so, when the deadbolt was not secure, the door would open "if you tap hard on it." He agreed that the faulty latch mechanism was the reason that the door opened.

Thus, the opening of the door would not have indicated to Dr. Moaddab that Mr. Nichols was about to enter the house, but would have indicated only that Mr. Nichols had knocked while the deadbolt was not in place. Afterwards, as the court found, Dr. Moaddab went to the door and opened it the rest of the way, and Mr. Nichols remained outside and announced that he had only come to ask for Dr. Moaddab's signature. Given

those circumstances, the court reasonably concluded that someone in Dr. Moaddab's position would not have reason to believe that a person "standing at the door holding a check out for endorsement" was trying to enter the house unlawfully.

Dr. Moaddab also argues that Mr. Nichols did in fact unlawfully interfere with his property by refusing to leave for the short time after Dr. Moaddab told him to leave. The court indeed found that Dr. Moaddab yelled at Mr. Nichols to go away just before he "immediately" went to grab his gun. Mr. Nichols then waited on the front porch for at least a few seconds until Dr. Moaddab returned, pointing his gun. Even under those facts, however, the court was not required to conclude that Dr. Moaddab actually believed that Mr. Nichols was unlawfully interfering with his property. The court found that Dr. Moaddab "immediately" went for the gun, without first giving Mr. Nichols an opportunity to leave. Therefore, the court could reasonably conclude that Dr. Moaddab decided to use the gun before he had any reason to believe that Mr. Nichols was refusing to leave.

In sum, the court did not err when it rejected Dr. Moaddab's defense-of-property defense based on the conclusion that Dr. Moaddab did not actually believe that Mr. Nichols was unlawfully interfering with his property. Even if the court misapplied this element of defense of property, however, that error alone would not require reversal. After determining that the belief element was not present, the court went on to conclude that the third element of that defense – the reasonableness of force used – was also lacking. As discussed below, the court did not err in reaching that conclusion.

### C. Reasonableness of Dr. Moaddab's Conduct

Assuming that Dr. Moaddab believed that Mr. Nichols was unlawfully interfering with or about to interfere with his property, the law authorized him only to "'use reasonable force, not intended or likely to cause death or serious bodily harm, to prevent or terminate'" that intrusion. *Dashiell*, 214 Md. App. at 701 (quoting *Vancherie v. Siperly*, 243 Md. 366, 371 (1966)); *see* MPJI-Cr 5:02.1 (stating that defense of property with non-deadly force is a defense to an assaultive crime where "the defendant used no more force than was reasonably necessary to defend against the victim's interference with the property"). The trial court concluded that pointing a gun at Mr. Nichols was unnecessary under the circumstances. Dr. Moaddab contends that the court erred in reaching that conclusion.[8]

In its opinion, the court stated that "[t]he third aspect of defense of property has to do with the reasonableness of the force that was employed at the time." The court reasoned that pointing the gun without firing did not amount to the use of deadly force. The court nevertheless concluded that the act of pointing the gun was excessive:

> . . . [T]he pointing of the gun at the victim under these circumstances of this case was, in fact, way more than was reasonably necessary at the time.
>
> Given the fact that, at the time, the defendant could have done many things short of what he did, he could have requested the victim to leave the property again. He could have closed the door. He could have bolted the

[8] At one point in his brief, Dr. Moaddab asserts that he "did not use 'force," because he did not fire the gun or otherwise make physical contact with Mr. Nichols. He fails to elaborate on the supposed significance of that observation. In any event, there are generally two types of force: actual force and constructive force. Using a weapon to put a person in fear is a classic example of constructive force. *See, e.g.*, *Fetrow v. State*, 156 Md. App. 675, 688 (2004).

> door. He could have called the police. He could have threatened to call the police. He could have threatened to get his gun. There were at least a dozen things he could have done, rather than going over and getting his shotgun.
>
> One significant thing I think that became apparent from the testimony was the fact that, as the victim was standing at the front door, and the defendant demanded him to leave the property, the victim had simply just asked the defendant to sign a check, and, at that point, the defendant left the front door, and returned with a shotgun.
>
> At that point, the victim could not see where he went. He saw that he went to the right; he came back holding a shotgun. It would not be unreasonable to think that maybe he went to get a pen, and, therefore, the time that had elapsed was so short, and the circumstances where the victim was there requesting the signature on a check, that it was unreasonable for the defendant to conclude, under those circumstances, that the victim was not going to leave the property, or that he wasn't going to follow his command. And, therefore, what he did was way more than necessary under the circumstances.

Dr. Moaddab takes particular issue with the court's statement that it was "unreasonable" for him to think that Mr. Nichols would not obey his command to leave the property.[9] Dr. Moaddab points out that, by that point in time, he had already told Mr. Nichols to leave and Mr. Nichols was still standing outside the door. Nevertheless, Dr. Moaddab's argument ignores a crucial part of the court's statement. The court actually said that it was unreasonable for Dr. Moaddab to think that Mr. Nichols would not obey his command to leave because "the time that had elapsed was so short," and the

[9] Dr. Moaddab characterizes the court's statement that "[i]t would not be unreasonable to think that maybe [Dr. Moaddab] went to get a pen," as a "finding." Dr. Moaddab asserts that there was no testimony that Mr. Nichols thought Dr. Moaddab went back into the house to get a pen. But the court made no finding about what Mr. Nichols was thinking. The court discussed that hypothetical possibility as part of its consideration of how a person in Dr. Moaddab's position would have reacted to the situation.

circumstances were those "where the victim was there requesting the signature on a check." Dr. Moaddab's brief uses an ellipsis to omit those portions of the court's statement.

As we understand it, the court's ultimate focus was, quite properly, on judging Dr. Moaddab's conduct in light of the circumstances as they would appear to an ordinary person in Dr. Moaddab's position. Perhaps Dr. Moaddab might have been justified in using a gun if Mr. Nichols had wantonly remained blocking the doorway for an extended period time or if Mr. Nichols had announced some more aggressive purpose. Under the facts found by the court, however, the situation was not at all dangerous until Dr. Moaddab brought a gun into it.

Dr. Moaddab complains at length about the court's comment that he could have done "at least a dozen other things" instead of grabbing his gun. He takes issue with each of the court's suggestions, characterizing them as dangerous or impossible. The doctor's criticisms assume without justification that his situation was more dire than the trial court judged that it would have appeared to an ordinary person. For our purposes, it will suffice to say that, under the facts found by the court, Dr. Moaddab certainly could have closed the door safely and bolted it to make Mr. Nichols leave.

Dr. Moaddab further contends that he did not commit an assault, because his words ("if you don't leave, I'm going to shoot you") were a "conditional threat."[10] But

[10] Dr. Moaddab relies on the inapposite case of *Causey v. State*, 45 N.E.3d 1239 (Ind. Ct. App. 2015). In that case, a defendant shouted to police officers: "'You don't belong on my property. If you come any closer I'll shoot.'" *Id.* at 1240. The court held that the use of those words did not support a conviction for felony intimidation, under a

the court found that Dr. Moaddab committed an assault through his actions, not through his words. The court stated that Dr. Moaddab committed an assault "[b]y pointing what appeared to be a shotgun at the chest of the victim[.]" Even if Dr. Moaddab had the right to use force or even to arm himself, he fails to explain why the additional step of pointing the gun was necessary to repel Mr. Nichols from the property. The court reasonably concluded that pointing the gun at Mr. Nichols's chest was more than what was necessary. *Accord State v. Hill*, 106 So.3d 617, 624 (La. App. 2012) (holding that the evidence supported the conviction for assault where trial court found "no overt or aggressive acts on the part of the victim that would justify the defendant's resorting to using his weapon," and the court therefore concluded that pointing the gun "was more than was necessary"); *Miller v. State*, 67 P.3d 1191, 1197 (Wyo. 2003) (holding that evidence supported conviction for assault where jury could have concluded that "it was not reasonably necessary for [the defendant] to defend herself by arming herself, pointing the weapon at [the victim] and cocking the hammer").

As a whole, Dr. Moaddab's argument implies that, any time a property owner tells someone who knocked on the property owner's door to leave, the property owner is legally justified in pointing a gun at the person if the person does not immediately leave.

statute that defined "intimidation" as a threat communicated with the intent that the victim "'be placed in fear of retaliation for a prior lawful act.'" *Id.* at 1241. The court reasoned that the defendant's statement was directed toward potential future acts rather than any prior lawful ones. *Id.* In this case, however, Dr. Moaddab was convicted of second-degree assault of the intent-to-frighten type, which does not include elements similar to those in the Indiana intimidation statute. *See, e.g.*, *Jones v. State*, 440 Md. 450, 455 (2014) (stating elements of second-degree assault of the intent-to-frighten type).

That is not the law. Even where there is an actual intrusion on the property, "[t]he permissible degree of force used to repel [the] intruder must not be excessive." *Law v. State*, 21 Md. App. 13, 31 (1974). The evidence supports the court's conclusion that Dr. Moaddab "was guilty of assault because he overreacted" and used "more force than was reasonably necessary." *Choi*, 134 Md. App. at 327.

## CONCLUSION

Having considered each of Dr. Moaddab's arguments, we see no error in the judgment. The trial court did not abuse its discretion by excluding the statement made by Mr. Nichols to Dr. Moaddab's son several months before the incident. The court made no clearly erroneous factual findings in reaching its verdict. The court did not apply an incorrect standard in evaluating Dr. Moaddab's defense-of-property claim. Finally, sufficient evidence existed for the court to determine that the State had proved beyond a reasonable doubt that Dr. Moaddab did not believe that Mr. Nichols was interfering with or about to interfere with his property and that Dr. Moaddab's actions were not reasonably necessary to defend his property.

At sentencing, the trial court aptly observed that "had the door not slid open when [Mr. Nichols] knocked on it, none of this probably would have happened." The court acknowledged that "this case is sort of a calamity of circumstances," but found that "even despite that, to grab a shotgun and aim it at someone under those circumstances was an overreaction to say the least." We see no error or unreasonableness in that judgment.

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