Circuit Court for Montgomery County
Case No.C-15-CR-22-000206

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2023

September Term, 2022

ISIAH A. HOLLINS

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.
Raker, J., dissents.

Filed: December 14, 2023

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

Appellant Isiah Hollins and the victim, Alexander Alvarenga, were both working at a McDonald's in Rockville on the evening of November 16, 2021, when they began physically fighting outside the restaurant. During the fight, Hollins, using a small, concealable knife, stabbed Alvarenga six or seven times in the head. Hollins was charged with attempted first-degree murder and related assault charges.

At trial, Hollins argued self-defense. He wanted to show Alvarenga had a propensity for violence, and, therefore, was the aggressor in the fight with Hollins, by cross examining him about physical injuries Alvarenga had sustained in an unrelated incident that occurred a day or so before trial. The court prohibited that line of questioning. At the trial's conclusion, the court denied Hollins' request to provide a non-pattern jury instruction regarding Alvarenga's propensity for violence. And, later, Hollins objected to part of the prosecutor's argument in which she urged the jury to not let Hollins "get away" with his self-defense argument. The court overruled that objection.

The jury acquitted Hollins of attempted first-degree murder and first-degree assault but convicted him of second-degree assault. The court sentenced Hollins to ten years' imprisonment but suspended two years, in favor of five years of probation upon release. Hollins filed a timely appeal and submitted the following issues for our review, which we have slightly rephrased:[1]

[1] Hollins' questions, presented verbatim, are as follows:

1. Did the circuit court violate the Confrontation Clause of the United States Constitution when it prohibited Hollins from cross examining Alvarenga about visible injuries that resulted from an unrelated fight?

2. Did the circuit court err when it denied Hollins' request to provide a pattern jury instruction regarding Alvarenga's propensity for violence?

3. Did the circuit court err when it permitted the state to include allegedly prejudicial language in its closing argument?

For the reasons we will discuss, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hollins was Alvarenga's supervisor at a McDonald's restaurant in Rockville. During the evening shift, around 10:15 p.m. on November 16, 2021, Hollins criticized Alvarenga's use of Spanish and the two argued. Sometime later, Hollins and Alvarenga began physically fighting outside the restaurant.

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(1) Whether the trial court violated Mr. Hollins' right to confront and cross-examine the complaining witness about his propensity for violence, where the State introduced evidence of the complaining witness's prior convictions for assault, where the complaining witness explained the convictions happened when he was younger, and where the trial court barred [] Hollins from any inquiry of the complaining witness about acute injuries from fighting that were visible at trial?

(2) Whether the trial court erred when it refused to instruct the jury on the weight and effect of evidence related to the complaining witness's propensity for violence, where [] Hollins' proposed instruction was a correct statement of the law which was generated by the evidence and not covered by the other instructions?

(3) Whether the trial court erred when it permitted the State to impermissibly remark in closing argument to the jury, "Do not let him get away with this," and encouraged the jury to negatively assess the credibility of the [] Hollins' defense because he had "the benefit of listening to all the evidence . . . [and] seeing all the discovery . . . ."?

Alvarenga's Testimony

Hollins and Alvarenga hotly disputed how the fight started. When questioned about the altercation, Alvarenga testified that, after Hollins insulted his Spanish, he was angry and said was going home as soon as his replacement, Maurice Ware, arrived. As Alvarenga left the McDonald's, he saw Hollins' vehicle's headlights come on. While he was looking at the headlights, Alvarenga testified Hollins emerged from behind some bushes, swung a large knife at him, and threatened to kill him. Hollins stabbed Alvarenga six or seven times, as the two men fell to the ground. Alvarenga said a man called for the two to stop fighting, after which Hollins ran toward his vehicle, drove off, and yelled out his window "I told you all I'm a killer." Alvarenga went to the hospital to seek treatment for his injuries.

Because Hollins claimed self-defense and wanted to show that Alvarenga was the initial aggressor, the prosecution sought to get before the jury any potentially damaging testimony about Alvarenga before the defense could do so. The prosecutor asked Alvarenga (1) about several fights that occurred when Alvarenga was younger and (2) about two convictions he had for assault: one for slapping the hood of a police vehicle, and the other for spitting on a police officer's leg.

On cross examination, Alvarenga insisted he did not want to fight Hollins; he was only defending himself. At the hospital Alvarenga made a statement to the police in which he said he fought Hollins "like, one-on-one, you know, like men do," when the investigating police officer asked about the fight. Alvarenga also conceded that, sometime

in the past, he told Hollins he used to train as a boxer. Alvarenga also mentioned that the two men were pushing and shoving before punches were thrown.

Defense counsel attempted to question Alvarenga about his propensity for violence. The defense did not believe that Alvarenga had "outgrown" his aggressive behavior. Therefore, Hollins' trial counsel wanted to ask Alvarenga about injuries Alvarenga exhibited when he arrived at court to testify. At that time, Alvarenga displayed "a severely swollen knuckle to his right hand . . . scratches to his face, [] two black eyes," and "petechiae."[2] Alvarenga's family told the prosecutor Alvarenga's brother had assaulted him. Nonetheless, defense wanted to cross-examine Alvarenga about this incident to show that it was he who had started the altercation.

The court prohibited any examination about Alvarenga's visible injuries. The judge ruled Alvarenga's injuries occurred "nearly a year" after the events with Hollins. Further, the court found and there was "no evidence" Alvarenga was "an aggressor in a fight, or that his injuries were due to his character or propensity for violence." The court ruled that to engage in this line of questioning was irrelevant, unfairly prejudicial, and likely to confuse the jury.

[2] Petechiae are "tiny spots of bleeding under the skin or in the mucous membranes (mouth or eyelids). They are purple, red, or brown dots, each about the size of a pinpoint." CLEVELAND CLINIC, https://my.clevelandclinic.org/health/symptoms/21636-petechiae.

Hollins' Testimony and Evidence

Hollins testified he arrived at work around 9:20 p.m. for his 10:00 p.m. shift. At 10:14 p.m., Hollins said he left the restaurant to move his car to the side of the building, so he could do drugs without anyone seeing him. After consuming the drugs, Hollins returned to the restaurant where he overheard Alvarenga speaking Spanish with another employee, Gloria Saravia. Hollins testified he asked Alvarenga why his dialect was different. According to Hollins, Alvarenga responded by "puffing up his chest" and telling Hollins to shut up. Saravia allegedly intervened and told Alvarenga to calm down. After the interaction, everyone returned to their workstations.

Soon after, Hollins testified that Alvarenga approached him and asked him if he wanted to "step outside," and threatened to "put a knife" in him. Hollins said he did not take Alvarenga seriously. But Hollins said he told Alvarenga to come talk to him once Alvarenga's shift replacement, Ware, arrived. According to Hollins, Alvarenga said Ware was already there and told Hollins to step outside. Hollins then left through the front side door and went to his car to grab a "pre-rolled marijuana" joint to "smoke and have a conversation." Alvarenga came out shortly afterward.

Hollins said he approached Alvarenga and threatened to tell the general manager about Alvarenga's threats toward him. Hollins testified that, then, without saying anything, Alvarenga punched him on the left side of his face and continued throwing punches. Hollins said he grabbed Alvarenga, and they both fell to the ground. Hollins admitted that he grabbed his "retractable knife with a brass knuckle handle" and swung it at Alvarenga

"punching" him in the head with the knife several times. The fight ended. Hollins acknowledged went to his car and drove away, yelling out of his window that Alvarenga was going to get fired. He then drove to a wooded area to change clothes, clean himself up, and dispose of the retractable knife.[3]

Defense counsel called two witnesses to the altercation. The first, George Russo, happened to be in his car at the time of the fight. Russo testified he saw two men come out of the McDonald's and "fuss, yell, and scream at each other." Russo then heard the men yelling "you pushed me, no you pushed me first." When Russo walked toward the commotion, he saw Hollins on top of Alvarenga. The second witness, Ware, testified that Alvarenga was unfriendly to everyone that night and at some point, asked Hollins "if he [was] ready to go outside."

Jury Instruction and Closing Argument

In discussing jury instructions with the court, defense counsel noted Alvarenga's two prior assaults, as well as the three or four fights he'd been involved in and requested a non-pattern jury instruction about Alvarenga's supposed propensity for violence. The proposed instruction stated:

[3] In his brief, Hollins discusses testimony from both him and his mother regarding a childhood condition and a past hand injury. The childhood condition is called Chiari Malformation, which required invasive brain surgery in 2001 to install a shunt to relieve fluid pressure in his brain. This condition, Hollins and his mother claimed, forces him to avoid physical contact because a head injury could be fatal. Hollins' mother also testified to a right-hand surgery Hollins underwent, resulting in his inability to close a fist. While these conditions were relevant at trial to establish a valid self-defense clam, they are not relevant to the issues for our review. Therefore, we will not detail these facts in our analysis.

> You have heard testimony about Alexander Alvarenga's character trait for violence. You should consider this evidence with all other evidence in this case. You may decide that is likely that a person possessing a character train for violence was the initial aggressor.

Defense counsel argued the instruction met the requirements under Maryland Rule 5-404(a)(2)(B) and was supported by the evidence. However, the judge ruled it "would not be appropriate to instruct the jury on the propensity for violence when there is no . . . pattern instruction regarding someone's propensity for violence."

During closing argument, the prosecutor made a rebuttal argument as follows:

> [Mr. Alvarenga was] walking out the McDonald's, 22 years old, and his manager arms himself, waits for him, and meets him outside the McDonald's and stabs him. That is offensive. And for to them argue to you ladies and gentlemen of the jury that the facts support Mr. Hollins is otherwise telling you the truth, had the benefit of seeing all the discovery, and to be able to craft a defense that does not make sense. I submit to you, ladies and gentlemen of the jury, do not be fooled by that. Do not let him get away with this.

Defense counsel objected to the statement once the prosecution finished speaking; however, the judge overruled the objection.

The jury acquitted Hollins of attempted first-degree murder and first-degree assault but convicted him of second-degree assault. The court sentenced Hollins to ten years imprisonment, suspended two years, in favor of five years' probation upon release. Hollins filed this timely appeal.

We will supply additional details to our analysis when relevant.

Discussion

I. Hollins' Confrontation Right Was Not Violated Because the Circuit Court Did Not Abuse its Discretion in Limiting Hollins' Cross Examination.

A. Parties' Contentions

Hollins contends his right to confront Alvarenga on cross examination was violated. He argues the circuit court prohibited him from establishing a self-defense by asking Alvarenga about an altercation with his brother that happened a day before Alvarenga testified. Hollins wanted to show that Alvarenga had not outgrown his propensity for violent confrontation as exhibited in the incidents with the police and the fights he admitted to participating in when he was younger.

Hollins argues the State "opened the door" to asking Alvarenga about the incident with his brother because Alvarenga put his character for peacefulness directly at issue. On direct examination, the following colloquy between the prosecutor and Alvarenga occurred:

> [PROSECUTOR]: You've had some run-ins with the law. Is that correct?
>
> ALVARENGA: Yeah.
>
> [PROSECUTOR]: Can you tell us about those instances?
>
> ALVARENGA: One time, **when I was younger**, I, what's it called, I hit a cop car.
>
> ***
>
> [PROSECUTOR]: Okay, and do you remember a spitting incident?
>
> ALVARENGA: Yes
>
> [PROSECUTOR]: All right. Can you tell us about that?
>
> ALVARENGA: Another time **when I was younger**, I was—I spit on a police officer, but on, like, on his leg.

Hollins sought to show that Alvarenga had not "outgrown" this behavior but was still prone to violence because Alvarenga arrived at court with a black eye and bruised knuckles, among other injuries, all of which allegedly stemmed from an altercation with his brother. The court did not permit Hollins' counsel to cross-examine Alvarenga on this specific issue, ruling that whatever happened between Alvarenga and his brother was irrelevant to the incident between Alvarenga and Hollins. To allow the defense to engage in this line of questioning, the court ruled, would have been a distraction.

The State argues the court had broad discretion to decide to admit or exclude character evidence. Further, the court did not prohibit cross examination about Alvarenga's past behavior; instead, the court only excluded inquiry into Alvarenga's present injuries. The State argues the circuit court correctly determined this inquiry was irrelevant because there was no evidence Alvarenga's injuries resulted from him being the aggressor in the fight with his brother. Figuring out whether he was the aggressor in that incident would have necessitated "a trial within a trial" which, the State asserts, the court correctly determined was a distraction and irrelevant to deciding whether Alvarenga was the aggressor with Hollins.

B. Applicable Standards of Review

The question before us involves an appellant's rights under "the Confrontation Clause of the Sixth Amendment to the United States Constitution, . . . a question of law, which we review under a non-deferential standard of review." *Langley v. State*, 421 Md. 560, 567 (2011). The specific confrontation issue here concerns the "opening the door

doctrine," a matter of evidentiary relevancy. We review the threshold question of whether a party has opened the door to introduce rebuttal evidence without deference to the trial court because we are reviewing a question of law. *State v. Robertson*, 463 Md. 342, 353 (2019). We then review the court's decision whether to allow the rebuttal evidence on an abuse of discretion standard. *State v. Heath*, 464 Md. 445, 458 (2019) ("Whether responsive evidence was properly admitted into evidence is reviewed for an abuse of discretion."); *see also Wallace & Gale Asbestos Settlement Trust v. Busch*, 464 Md, 474, 496 (2019) ("In regards to application of the 'opening the door' doctrine, we evaluate a trial court's decision first, as a matter of law, whether the 'door' was opened, and then, for an abuse of discretion as to the trial court's response if the 'door' was opened.").

The Supreme Court of Maryland has held an "[a]buse of discretion exists where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to guiding rules or principles." *Robertson*, 463 Md. at 364; *see also Nash v. State*, 439 Md. 53, 67 (2014) ("A court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.")

C. Analysis

1. The Right of Confrontation

The Sixth Amendment's Confrontation Clause provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him"; this bedrock procedural guarantee applies to both federal and state

prosecutions. *Crawford v. Washington*, 541 U.S. 36, 42 (2004). "The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986).[4] However, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Id.* at 679. More plainly, "the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Id.* (citations omitted).

"Although the scope of cross-examination is within the discretion of the trial judge, that discretion may not be exercised until the constitutionally required threshold level of inquiry has been afforded the defendant to satisfy the Sixth Amendment." *Marshall,* 346 Md. at 193. (Citations omitted). The Confrontation Clause "is satisfied where defense counsel has been permitted to expose to the jury the facts from which jurors, as the sole triers of fact and of credibility, could appropriately draw inferences relating to the reliability of the witness." *Id.* (citing *Davis v. Alaska*, 415 U.S. 308, 318 (1974)); *see id.*

[4] The constitutional right of confrontation includes the right to cross-examine a witness about matters which affect the witness's bias, interest or motive to testify falsely. *Marshall v. State*, 346 Md. 186, 192 (1997).

("[T]he test is whether the jury was already in possession of sufficient information to make a discriminating appraisal of the particular witness's possible motives for testifying.")

2. The Opening the Door Doctrine

In determining whether Hollins' right to confrontation was violated, we first consider whether the "door was open" to the type of inquiry into Alvarenga's character that Hollins attempted to elicit at trial. The opening the door doctrine "authorizes admitting evidence which otherwise would have been irrelevant in order to respond to (1) admissible evidence which generates an issue, or (2) inadmissible evidence admitted by the court over objection."[5] *Heath*, 464 Md. at 459. Put another way, "opening the door is simply a way of saying: My opponent has injected an issue into the case, and I ought to be able to introduce evidence on that issue." *Id.* However, the doctrine of opening the door has limitations. "It allows for the introduction of otherwise inadmissible evidence, but only to the extent necessary to remove any unfair prejudice that might have ensued from the

[5] Maryland Rule 5-401 provides the scope for the admission of evidence. The starting point for determining the admissibility of evidence is whether it is relevant. Relevant evidence is evidence having "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Heath*, 464 Md. at 458.

Maryland Rule 5-403 states: "Although relevant, evidence may be excluded 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.

original evidence." *Robertson*, 463 Md. at 357 (citing *Little v. Schneider*, 434 Md. 150, 163-64 (2011)).

After determining whether the door is open, the court must next determine "proportionality," which is

> [a]n additional limitation of the [opening the door] doctrine is consistent with Maryland Rule 5-403. That limitation excludes 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.

Heath, 464 Md. at 460. Beyond the limitations consistent with Rule 5-403, the opening the door doctrine "does not allow . . . injecting collateral issues into a case . . . ." *Id.* at 459 (citations omitted). A collateral issue is one that is immaterial to the issues in the case. *Id.* For example, testimony from a witness is a collateral issue when the "alleged [circumstances] existed only as an unproven allegation, [and] testimony of the allegation was highly likely to lead the jury on a detour as to whether the [circumstances] actually happened and would distract the jury." *Id.* at 460 (citations omitted).

Hollins argues the circuit court judge kept "the door closed," and asks us to hold that decision was reversible error. After reviewing the record, we agree with Hollins that the door *was* open, but only as far as the incidents about which Alvarenga testified. It was *not* open to the extent that the circuit court erred by forbidding Hollins to inquire into the incident with Alvarenga's brother The court therefore did not deny Hollins the right of confrontation. Proportionality only required that the circuit court allow Hollins to cross-examine Alvarenga regarding the incidents that he testified about; namely, his prior

convictions and altercations that occurred years before. Hollins' counsel could have asked Alvarenga questions regarding any of those incidents. Instead, Hollins sought to focus on the injuries Alvarenga supposedly sustained as a result of an incident with his brother in an attempt to show Alvarenga's propensity for violence. In ruling against Hollins, the court said:

> So with respect to whatever happened in the last few days, again, my issue, if he was—we don't know if he was attacked, defended himself, or what. And I know you want to get into that, but we're not going to have a trial within a trial or an investigation within a trial to determine what happened within the last three days. It has nothing to do with what happened on November 16th of 2021. I've allowed you to go into his propensity issues with respect to violence, ask the questions about the number of fights, his prior convictions, and the behavior that lead to the convictions. That's all fair game. But what happened between the last three or four days with this young man, are—it's not relevant. I understand that the Defense's position is that he's indiscriminately fighting somewhere out there, and due to his character or propensity for violence. But there's no evidence of that, and I am not going to hold this jury while we investigate what happened to this man in the last three days. There's no evidence that he was an aggressor in a fight. There's no evidence that he was intoxicated when he was found unconscious last night. I don't know about this person's history or issues with alcohol, but there's no evidence when the only thing that I've heard was he was found unresponsive somewhere, and was taken to the hospital, and kept in the hospital. Okay, nothing about that in and of itself says that this man has a drinking problem, or that he was fighting, or anything else that occurred last night. I think we're getting a little far afield from what happened on November 16th of 2021.

The court explained why Alvarenga's injuries were irrelevant to determining whether he was the aggressor in the incident with Hollins. Specifically, the court balanced the potential prejudice of the testimony with its probative value. The court considered whether a fight that happened between Alvarenga and his brother a couple of days before trial was collateral and irrelevant to the issue of who was the first aggressor in Hollins'

trial. The court correctly determined Hollins' allegation rested upon an "unproven allegation," that Alvarenga started the fight with his brother. And the court properly concluded that proving that was "highly likely to lead the jury on a detour" away from what happened in Hollins' trial by instead focusing on what happened between Alvarenga And his brother. The court had broad discretion to limit cross examination and determine what was relevant. *Heath*, 464 Md. at 460.

We reiterate, after the State elicited evidence of Alvarenga's past assault convictions and participation in physical altercations, Hollins was allowed to cross examine him about those incidents. As that trial court stated, "that is all fair game." The court went even further and permitted questioning about Alvarenga's demeanor on the stand. The judge specifically stated:

> Now, I've noticed he's shaking on the stand. I have noticed he's shaking on the stand. I would say his demeanor is an appropriate area of cross examination. If you want to get into – ask him why he's shaking . . . I think you can cross-examine him on his demeanor on the – and by that, I mean his shaking . . . you can pose an appropriate question as to inquire as to why he appears to be shaking, why is he shaking during his testimony on the stand, I believe that is an appropriate area. The jury has the opportunity, I presume, to have observed him shaking, so can inquire into that.

Consequently, defense counsel had several avenues from which to question Alvarenga about his propensity for violence, but they chose not to do so. Instead, Hollins' counsel wanted to pursue in a line of questioning that would have led the jury into an inquiry over

who started the fight between Alvarenga and his brother.[6] We conclude that that exercise would have devolved into a trial within a trial and would have distracted the jury from considering who started the fight in this case. Hollins had several viable avenues of confronting Alvarenga about his aggressive behavior and was free to argue that Alvarenga started the fight with Hollins.

Further, we observe that the jury's verdict seems to indicate that they *must* have believed that Alvarenga played a more aggressive role than he suggested, because the jury acquitted Hollins of the most serious felonies, attempted murder and assault with a deadly weapon, in favor of second-degree assault. We conclude the court did not abuse its discretion in limiting cross-examination about Alvarenga's altercation with his brother.

II. The Circuit Court Properly Declined to Give a Non-Pattern Jury Instruction on Alvarenga's Propensity for Violence But, Not for Reasons the Court Stated

A. Parties' Contentions

Hollins contends the court abused its discretion in not giving his proposed non-pattern jury instruction on Alvarenga's propensity for violence because it met Rule 4-

[6] We have no way of knowing whether trying to elicit from Alvarenga a one-word answer, in an attempt to stop the inquiry from expanding, would have shed any light on the incident or been any less distracting. For example, asking Alvarenga, "You appear in court today with all of these injuries. Isn't it a fact you attacked your brother?" would likely have elicited a "No" from Alvarenga. After all, Alvarenga maintained he is not an aggressive person and his family's comments to the prosecutor strongly suggested that it was Alvarenga's brother who was the aggressor. The court stopping the inquiry and allowing no more questions would not have been any more informative than asking no questions at all. If the court permitted more questions, then the court would find itself exactly where it feared, with the jury trying to figure out whether Alvarenga started the fight or whether his brother did.

325(c)'s three requirements: (1) it was a correct statement of the law; (2) the instruction was applicable to the facts presented at trial; and (3) the content of the proposed instruction was not covered in other instructions. Further, Hollins contends the court was simply wrong, as a matter of law, when the court stated that there was "not a . . . pattern jury instruction regarding someone's propensity for violence."

The State concedes that the judge was mistaken in stating there is no pattern jury instruction related to a defendant's or witness's propensity for violence. But the State argues the court properly declined to give the requested special instruction because there was no factual evidence supporting the contention that Alvarenga had a propensity for violence. We agree with the State and explain.

B. Standard of Review

Under Maryland Rule 4-325(c)[7], a circuit court "must give a requested jury instruction where '(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given.'" *Cost v. State,* 417 Md. 360, 368–69 (2010) (quoting *Dickey v. State,* 404 Md. 187, 197–98 (2008)). The "instructions

[7] Maryland Rule 4-325(c) provides as follows:

> The court may, and at the request of any part shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a request instruction if the matter is fairly covered by instructions actually given.

are reviewed in their entirety" and "[r]eversal is not required where the jury instructions, taken as a whole, sufficiently protect the defendant's rights and adequately covered the theory of the defense." *Carroll v. State*, 428 Md. 679, 689 (2012). When analyzing a circuit "court's decision not to give a requested instruction" we "apply an abuse of discretion standard." *Id.* (citing *Cost,* 417 Md. at 369).

C. Analysis

In *Robeson v. State*, 285 Md. 498 (1979), for the first time, the Supreme Court of Maryland held that on review, an appellate court may affirm a trial court for reasons different from the one on which the court based its decision.

> [W]here the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm. In other words, a trial court's decision may be correct although for a different reason than relied on by that court.)[8]

This exception to the general rule set forth in Maryland Rule 8-131[9] has been consistently reaffirmed. For example, in *State v. Bell*, 334 Md. 178, 187–88 (1994), our Supreme Court

[8] The Court also stated, "Considerations of judicial economy justify the policy of upholding a trial court decision which was correct although on a different ground than relied upon. This was explained by the United States Supreme Court in *Securities and Exchange Com. v. Chenery Corp.,* 318 U.S. 80, 88 (1943): 'It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate.'"

[9] **"**Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another trial." Md. Rule 8-131.

emphasized the standard set forth in *Robeson* is discretionary, and "stands not for the proposition that an appellate court *must* examine new, alternative grounds for upholding a trial court's decision, but only for the proposition that it may do so if it deems such review appropriate," and "this discretion should be exercised only when it is clear that it will not work an unfair prejudice to the parties or to the court." *See also City of Frederick v. Pickett*, 392 Md. 411, 424–25 (2006) (discussing *Robeson* and concluding "[t]herefore, we may consider whether the Circuit Court's dismissal could be affirmed on alternate grounds adequately shown in the record").

Here, the circuit court rejected Hollins' requested special jury instruction stating, "there is not a pattern jury instruction regarding someone's propensity for violence." The court was incorrect. Maryland Criminal Pattern Jury Instruction (MPJI-Cr) 3:20 addresses how the jury should evaluate evidence of the defendant's good character.

> You have heard testimony about the good character of the defendant for _____. Evidence of good character is not by itself a defense to a crime, but you should consider it with all of the other evidence in the case. You may decide that it is unlikely that a person possessing these traits of good character would have committed the crime charged.

Hollins' proposed instruction mirrored MPJI-Cr 3:20.

> You have heard testimony about Alexander Alvarenga's character trait for violence. You should consider this evidence with all the other evidence in this case. You may decide that it is likely that a person possessing a character train for violence was the initial aggressor.

Hollins relies on *Richards v. State*, 65 Md. App. 141 (1985) in support of his contention that the court should have accepted his proposed instruction. There, Richards was accused of stabbing Harry Wise. Richards claimed self-defense and asserted Wise was the initial

aggressor. Richards wanted to call a witness, Jerry Griffin, to prove Wise's propensity for violence, but the court required Richards to first lay the foundation by testifying himself. *Id*. at 143–44. Richards testified that Wise was the initial aggressor and had a propensity for violence of which Richards was aware. *Id.* The trial court instructed the jury "whereas there is evidence that prior acts of violence by the victim were known to the defendant you are instructed to consider such evidence in determining whether the defendant was reasonably apprehensive of danger and in determining who was the aggressor." We held that the instruction was appropriate in light of the facts ("the context of the overall charge") and was a correct statement of the law. *Id*. at 145.

We agree with Hollins to the extent the court could have crafted a jury instruction regarding Alvarenga's alleged propensity for violence using MPJI-Cr 3:20 as a template. But we disagree with him about whether the evidence adduced at trial supported giving such an instruction in the first place. We have held that "it is incumbent upon the court, . . . when requested in a criminal case, to give an instruction on every essential question or point of law supported by the evidence." *Green v. State*, 118 Md. App. 547, 562 (1998). "A requested jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012). This Court must independently determine whether the requesting party "produced [the] minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Id.* (citation omitted).

Here, the evidence Hollins relies upon in requesting a special instruction was Alvarenga's two second-degree assaults convictions, his testimony that he had been in three or four fights in the past, his statement that "everybody fights," and Hollins' testimony that Alvarenga asked him to step outside and fight "like men do."

Evaluating these instances, we conclude that the last point, that Alvarenga essentially challenged Hollins to fight, is based wholly on Hollins' uncorroborated testimony. The other incidents alluded to generalized conduct ("everybody fights"). Unlike *Richards*, here, Hollins did not testify he knew Alvarenga had a propensity for violence. He called no witnesses who could corroborate the same. *Richards*, 65 Md. App. at 144. Instead, Hollins attempts to cobble together the specter of Alvarenga's violent character based on events that happened years before and of which Hollins knew nothing about. Further, the two second-degree assault convictions are not legally crimes of violence. Neither the Maryland State Commission on Criminal Sentencing Policy[10] nor the Maryland Criminal Code[11] include second-degree assault as a violent crime. Furthermore, the assaults were not in themselves violent acts, as the first was hitting a police car and the second was spitting on a police officer's leg. To be sure, both incidents were utterly disrespectful of law enforcement and were technically assaults. These acts, however,

[10] MSCCSP, Violent Crimes, CS§ 7-101 (Last Updated: October 2019) ("Correctional Services Article § 7-101, Annotated Code of Maryland, defines a violent crime as: (1) a crime of violence as defined in § 14-101 of the Criminal Law Article . . . ."

[11] *See* Md. Code Ann., Crim. Law § 14-101(a)

hardly constitute the kind of violence necessary to generate an instruction concerning Alvarenga's propensity for violence. Accordingly, although the court was mistaken in believing that a non-pattern jury instruction court have been crafted about Alvarenga's propensity for violence, the court was nonetheless correct in not giving such an instruction because the evidence did not support doing so.

III. The Circuit Court Did Not Err in Allowing the State's Rebuttal Closing Argument.

A. Parties' Contentions

Finally, Hollins takes issue with comments the prosecutor made during rebuttal argument. Specifically, Hollins contends the prosecutor encouraged the jurors to reach an emotion-based verdict and abandon their responsibility to render a verdict on the facts and the applicable law. Further, Hollins contends the prosecutor's comment that the jury should "not let him get away with this" "involved impermissible comments about [Hollins'] right to testify or remain silent."

The State contends that Hollins' objection came too late and his claim that the court erred in not addressing the prosecutor's inappropriate comments are not preserved for review. But even if Hollins' objection came in time, the court properly overruled Hollins' objection, so the State contends, because the prosecutor's comment was directed at Hollins' credibility and urged the jury not to believe him. That argument was fair game, the State posits, because the jury had heard both Hollins' and Alvarenga's testimony.

B. **Standard of Review**

We review a trial court's ruling on an objection to comments made during closing arguments for an abuse of discretion. The Supreme Court of Maryland has held that "[a] trial court is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case. *Ingram v. State*, 427 Md. 717 (2012) (citing *Mitchell v. State,* 408 Md. 368, 380–81 (2009)). Consequently, we will not disturb the trial court's ruling "unless there has been an abuse of discretion in that regard unless there is a clear abuse of discretion that likely to have injured the complaining party." *Id.* (citing *Grandison v. State,* 341 Md. 175, 225(1995)). "[A]ttorneys are afforded great leeway in presenting closing arguments[.]" *Degreen v. State*, 352 Md. 400, 429 (1999). "The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom." *Id*. at 429–30. "Generally, counsel has the right to make any comment or argument that is warranted by the evidence proved or inferences therefrom; the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is [the] accused's counsel to comment on the nature of the evidence and the character of witnesses which the (prosecution) produces." *Wilhelm v. State*, 272 Md. at 412; *accord Degren v. State*, 352 Md. at 430.

C. Analysis

In his brief, Hollins quotes this passage from the prosecutor's rebuttal argument that he finds objectionable:

> [Mr. Alvarenga] is walking out the McDonald's, 22 years old, and his manager arms himself, waits for him, and meets him outside the McDonald's

> and stabs him. That is offensive. And to them argue (sic) to you ladies and gentlemen of the jury that the facts support Mr. Hollins is otherwise telling you the truth, who's had the benefit of listening to all the evidence, who's had the benefit of seeing all the discovery, and to be able to craft a defense that does not make sense.
>
> I submit to you, ladies and gentlemen of the jury, do not be fooled by that. Do not let him get away with this.

At this point in the trial, Hollins' counsel objected. The court overruled the objection, and the prosecutor finished her rebuttal shortly thereafter. In its brief, the State argues that Hollins' counsel's objection was untimely for anything the prosecutor said before the last two sentences quoted above. We disagree and conclude Hollins' objection to the last two sentences was timely, is preserved for our review, and should be considered in the context of the four sentences preceding them.

As to the merits of Hollins' claim of error, as best we can discern, Hollins finds the prosecutor urging the jury "not [to] be fooled" and "do not let [Hollins] get away with this" as making an impermissible "golden rule" argument. In support of this position, Hollins cites several cases. *First*, is *Donaldson v. State*, 416 Md. 467 (2010), a drug distribution case. There, the prosecutor adopted a reference made by one of the police officers investigating the case who referred to drug dealers as "the root of all evil." Our Supreme Court held the circuit court erred in not remedying the prosecutor's improper comment because the prosecutor had argued Donaldson should have been convicted not based on the evidence, but to address the larger problem of illegal drug distribution. Id. at 495–96.

Next, Hollins cites *Holmes v. State*, 119 Md. App. 518 (1998), where the prosecutor told the jury, "This is not about jail time. It's about the day of reckoning, the day of

accountability, the day we say no, Mr. Holmes, no longer will we allow you to spread that poison on the streets." We held the comments essentially urged the jurors to convict based not on the evidence or the law, but by putting themselves in the place of the victim—in other words, to convict based on their personal interests. *Id*. at 526–27.

Finally, Hollins also favorably cites *Beads v. State*, 422 Md. 1 (2011), a case in which Beads discharged a firearm in the middle of a crowd. In closing, the prosecutor exhorted the jury to stand up to Beads and say "[e]nough." Our Supreme Court held that such comments were akin to those in *Holmes*, violating the "golden rule" prohibition because the prosecutor was asking the jury to find beads guilty based on considerations of the jurors' "own personal safety." *Id*. at 10–11.

We agree with Hollins that a prosecutor urging a jury to convict based on emotion or on what might be in an individual juror's best interests is improper. Should a court fail to correct that impropriety after a timely objection, reversal would likely be appropriate as was the case in *Donaldson*, *Holmes*, and *Beads*. But here the prosecutor did nothing like what the prosecutors did in those cases. Instead, the prosecutor asked the jury not to be hoodwinked by Hollins' claim that he acted in self-defense. The prosecutor was arguing that Hollins was the first aggressor because after arguing with Alvarenga during their shift, Hollins left the restaurant, armed himself with a knife, lay in wait for Alvarenga, and then attacked him in the parking lot. The prosecutor was arguing that Hollins' behavior was not defensive but offensive and calculated to seriously injure Alvarenga.

Further, the prosecutor urged the jury not to believe Hollins because he had crafted a phony defense, as the prosecutor saw it. The prosecutor's comment about "not letting him get away with it" implored the jury not to be "fooled" by counsel's argument that Hollins acted in self-defense. These comments were directed at Hollins' veracity and the quality of the evidence he presented and constituted permissible rebuttal argument. *Wilhelm v. State*, 272 Md. at 412. Consequently, we conclude that the remarks here were not of the prohibited character of the comments in *Donaldson*, *Holmes*, or *Beads*. The court did not abuse its discretion in overruling Hollins' objection. Under these circumstances, reversal is not warranted.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.

Circuit Court for Montogomery County
Case No.C-15-CR-22-000206

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2023

September Term, 2022

ISIAH A. HOLLINS

v.

STATE OF MARYLAND

Wells, C.J.,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Raker, J.

Filed: December 14, 2023

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

I respectfully dissent. I would reverse the judgments on two grounds. First, given the State's clear attempts to portray the alleged victim as someone who had outgrown violence, I would hold that appellant should have been permitted to cross-examine him about more recent tendencies toward violence. Second, while evidence of the alleged victim's violent character was thin, I would hold that it was sufficient to warrant appellant's requested jury instruction.

As the majority opinion notes, the opening the door doctrine authorizes a party to introduce evidence that might otherwise be irrelevant to respond to an issue that the opposing party has injected into the case. *State v. Heath*, 464 Md. 445, 459 (2019). In this case, the State offered evidence that Mr. Alvarenga had committed assaults in the past. The State introduced Mr. Alvarenga's criminal convictions into evidence in its direct examination, walking the witness through Mr. Alvarenga's entire criminal record (two assault charges and one theft charge). For each charge, the State discussed the conduct underlying the conviction and asserted that the incident had happened "when [he] was younger."

Apparently, it was the State's trial strategy to "take the sting out of this evidence," assuming that the defense would or might offer this evidence on cross-examination or in its case. We can only guess at or assume the affirmative relevancy of this evidence when offered by the State. From a defense perspective, this line of questioning had a twofold purpose: first, to establish that Mr. Alvarenga's past behavior was not particularly violent, and second, to establish that, insofar as it was violent, that violence was a thing of the past.

As a result, the State injected two issues into the trial: the extent of Mr. Alvarenga's past conduct which the defense might characterize as violent, and whether that violence was, indeed, a thing of the past.

I agree with the majority that the State opened the door to questioning Mr. Alvarenga about the details of his past convictions. But such questioning would only address the first issue injected into the trial by the State, the extent of Mr. Alvarenga's past violence. It did nothing to address the issue of whether Mr. Alvarenga had "outgrown" his allegedly violent ways. Questioning on that second point was probative. Evidence that the victim had started a fight immediately prior to trial would undermine the State's evidence that Mr. Alvarenga was no longer violent. It was, therefore, probative.

As the majority notes, evidence may be probative under the opening the door doctrine and, nonetheless, inadmissible. Evidence that injects a collateral issue into the case and may lead the jury on a detour can be excluded under Rule 5-403. *Heath*, 464 Md. at 459. But the question that appellant's counsel sought to ask did not inject a collateral issue into the trial. Appellant's counsel sought to ask a single question about whether Mr. Alvarenga had started a fight with his brother. If the answer had been "Yes," that question (and any brief subsequent questioning about the circumstances of that fight) would have created no more of a detour than the State's decision to delve into other past conduct by Mr. Alvarenga.

The majority argues that the answer to appellant's question would likely have been "No," and that any attempt to then prove Mr. Alvarenga was lying with that answer would

have created a detour. Maj Op. at 17 n.6. But this argument ignores the fact that the court could have drawn a line at that single question. If Mr. Alvarenga said "Yes," then appellant would have established material evidence for his defense. If Mr. Alvarenga said "No," then the court could preclude further detours into the matter and avoid the confusion Rule 5-403 seeks to avoid. But a question does not become either irrelevant or unduly prejudicial simply because the witness could provide an unfavorable answer which might then invite questions that could be inadmissible. The question appellant wanted to ask did not, itself, create a problem under Rule 5-403. The trial court abused its discretion in restricting the cross-examination.

As to the issue of appropriate jury instructions, everyone agrees that the trial judge was wrong in declining to give the requested instruction merely because the Maryland Pattern Jury Instructions do not contain a pattern instruction for this circumstance. Rule 4-325 provides that a court must give a jury instruction when the following three-part test has been met: "(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given." *Dickey v. State*, 404 Md. 187, 197-98 (2008). Both parties agree that prongs (1) and (3) of this test were satisfied in this case. I would hold that appellant satisfied prong (2).

Prong (2) is satisfied when there is *some* evidence giving rise to a jury issue on the defense. *Allen v. State*, 157 Md. App. 177, 184 (2004). The Maryland Supreme Court has

been clear that the bar for producing sufficient evidence to require a jury instruction is very low, explaining as follows:

> Some evidence is not strictured by the test of a specific standard. It calls for no more than what it says – 'some,' as that word is understood in common, everyday usage. It need not rise to the level of 'beyond reasonable doubt' or 'clear and convincing' or 'preponderance.' The source of the evidence is immaterial; it may emanate solely from the defendant. It is of no matter that the self-defense claim is overwhelmed by evidence to the contrary. If there is any evidence relied on by the defendant which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden.

Dykes v. State, 319 Md. 206, 216-17 (1990). Hollins presented *some* evidence that Mr. Alvarenga had a character trait for violence. Mr. Alvarenga admitted that he had been in three or four fights in the past and that he believes that everybody fights. Mr. Alvarenga had two second-degree assault convictions. Appellant testified that Mr. Alvarenga asked him to step outside and fight "like men do." While perhaps underwhelming, this is *some* evidence of a propensity for violence, and meets the low bar required.

The majority's analysis of this evidence falls short in several ways. First, the majority argues that appellant was unable to corroborate some of the evidence of past violence. Maj. Op. at 22. This argument is unavailing on the above standard. The source of the evidence is immaterial, and no corroboration is required. *Dykes*, 319 Md. at 216-17. Thus, the appellant's testimony about threats to fight by Mr. Alvarenga should not be discounted.

Second, the majority argues that the admissions by Mr. Alvarenga amount to "generalized conduct" used to "cobble together the specter of Alvarenga's violent character

based on events that happened years before and of which Hollins knew nothing about." Maj. Op. at 22. It is interesting to note that this evidence was first introduced by the State, not merely cobbled together by appellant. As such, the jury had before it evidence of the character trial for violence. Nor was this evidence insufficient merely because appellant did not know about it. The requested instruction did not apply solely to a character trait for violence *that appellant knew about*. The requested instruction informed the jury that it could consider Mr. Alvarenga's character for violence in determining whether he had been the first aggressor (regardless of whether the appellant knew about the past violence). Thus, evidence of generalized conduct was satisfactory to give rise to a jury question necessitating the instruction.

Because there was some evidence that Mr. Alvarenga had a character trait for violence. Prong (2) of the above test was satisfied. As a result, under Rule 4-325, the court was required to give the requested jury instruction. Failure to do so was error.

These errors were not harmless. Where the trial court erroneously excludes evidence, we reverse the conviction unless the error was harmless beyond a reasonable doubt. *Dionas v. State*, 436 Md. 97, 108 (2013). This case turned on a question of self-defense. And the State's evidence on this point was not overwhelming. As the majority notes, "the jury's verdict seems to indicate that they must have believed that Alvarenga played a more aggressive role than he suggested, because the jury acquitted Hollins of the most serious felonies." Maj. Op. at 17. In that context, we cannot say beyond a reasonable doubt that additional evidence of violent conduct on the part of Mr. Alvarenga would not

have affected the outcome of the trial. Nor can we say that additional instruction on how to evaluate the evidence of violent conduct on the record would not have affected the outcome of the trial.

For the above-stated reasons, I would reverse the judgments.