UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1364

September Term, 2014

TINA MARIE SCHAFFER

v.

STATE OF MARYLAND

Krauser, C.J.,
Wright,
Arthur,

JJ.

Opinion by Wright, J.

Filed: September 23, 2015

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

By indictment filed in the Circuit Court for Baltimore City on June 5, 2013, appellant, Tina Marie Schaffer, was charged with first and second degree assault, conspiracy to commit first and second degree assault, reckless endangerment, and use of a deadly weapon with intent to injure. A two-day jury trial took place on August 7-8, 2014. On the first day, after a jury was selected and after opening statements, but before the beginning of the State's case-in-chief, Schaffer made a motion *in limine* regarding the admissibility of a portion of a recorded telephone call that she made from the Baltimore City Detention Center. The circuit court denied Schaffer's motion.

On August 8, 2014, following deliberation, the jury found Schaffer guilty of only second degree assault.[1] That same day, the circuit court sentenced her to four years of incarceration. On August 13, 2014, Schaffer filed this timely appeal, asking us to determine whether the circuit court abused its discretion in permitting the State to play a certain portion of her jailhouse telephone call for the jury.[2] We answer this question in the negative and affirm the circuit court's judgment.

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[1] The charges of reckless endangerment and use of a deadly weapon with intent to injure were not sent to the jury. The jury found Schaffer not guilty of first degree assault and both conspiracy counts.

[2] In her brief, Schaffer worded her question as follows:

> Did the trial Court abuse its discretion in permitting the State to twice play Appellant's recorded conversation from jail wherein the otherwise irrelevant remark is made that "he got the whole fucking Ku Klux Klan on their ass" particularly when the Appellant is white, the majority of the jury was black, a central figure was black and the Court agreed the comment was inadmissible but declined to exclude it on the incorrect belief that the State lacked the technical ability to excise the remark?

Facts

At trial, the State sought to prove that Schaffer assaulted Ronald Lee Downey at about 5 p.m. on April 30, 2013. Kathy Gentry, Downey's mother, testified that she was at home at approximately 5:30 p.m. on that day, when her "oldest son had come in the house and told her that [her] youngest son [Downey] was injured." As a result, Gentry ran out and onto the nearby railroad tracks, where she saw a man whom she knew as "Pappa" "swinging a pipe." About five minutes later, Gentry located Downey, who was walking with the help of a friend. Gentry took Downey to the hospital, where she was interviewed by the police. Gentry testified that she knew Schaffer "[j]ust by passing" because she previously encountered Schaffer at a "little homeless encampment" near the railroad tracks.

Officer Jacob Reed, who at that time was working in the Southeast District Patrol Division, testified that he responded to Bayview Hospital at approximately 11 p.m. on April 30, 2013, after receiving a call regarding an aggravated assault. Ofc. Reed stated that Downey "had a laceration and abrasions in the back of his head." Ofc. Reed recounted the following, as reported to him by Downey:

> [H]e described that he was over in the area of the 100 block . . . of North Haven and 100 block of North Janney.
>
> In the rear of those locations, there's a large field and some wooded area along with the railroad tracks. He went on to describe that while he was back there with a [friend] named Montrell, Montrell had gotten into an argument with a gentleman named Joe. He [Downey] said he [Joe] was a drug addict, he [Joe] went to buy him [Montrell] a pack of cigarettes.

> While they were arguing, two other people came. A guy that he knew as "Pappa" and a woman named Tina in her mid thirties began to engage in the altercation as well.
>
> When he noticed that it could possibly turn violent, he stood in between Montrell and Tina and held Montrell back as they were exchanging words and the lady Tina was cursing at him.
>
> When he went to turn his back to kind of push[] Montrell away, Tina hit him [Downey] in the back of the head with a piece of wood or some type of it looked like it came off a pallet maybe.
>
> When he stumbled forward, that's when he got hit in the back of the head again by the guy he knew as "Pappa."

Ofc. Reed testified that he was unable to "find any Montrell in that area."

Next, Downey testified that on April 30, 2013, he was playing basketball with Montrell when Montrell saw a guy named Joe, who owed Montrell money. According to Downey, Montrell had given Joe $20.00 to buy cigarettes, and Joe came back with the cigarettes but did not return the change. Upon seeing Joe, Montrell and Downey followed Joe into the woods to try to get the money, and "[t]hat's when Tina and her boyfriend came out of the tent" to join in the argument. Downey testified that Tina hit him in the back of the head with a piece of wood and Pappa hit him with a pole. Downey identified Schaffer as the woman he knew as "Tina."

Following Downey's testimony, the State played a recording of a jail call from Schaffer, "[s]ubject to the motions hearing, . . . redactions, and the Court's rulings." During said motions hearing, the prosecutor had introduced the call as follows:

> [PROSECUTOR]: . . . So at this point in time, the State would like to proffer what it plans to introduce at trial as declarations against penal interest with respect to this case.

These are jail calls generated by the defendant in her own voice from her jail account. They have been disclosed to defense counsel. I have a certified copy of them.

THE COURT: Okay. They are statements by the defendant?

[PROSECUTOR]: Correct, jail calls that's [sic] she's made to other people concerning - -

THE COURT: Whether it is against penal interest or not is totally irrelevant. It's a statement of a party opponent.

[PROSECUTOR]: Correct.

[DEFENSE COUNSEL]: Well, some of this stuff, though, has nothing to do with the case. And I think, with all due respect - -

THE COURT: So it's strictly on relevancy grounds?

[PROSECUTOR]: Yes. That's his objection. That's why I decided to do it *in limine*, so we won't have a running - -

THE COURT: Okay. Fine. Very well. Let's proceed. Let's hear them.

[PROSECUTOR]: Thank[] you, Your Honor. For the record, this call is from June 14th, 2014. The portion which the State believes is germane occurred at 10 minutes and 35 seconds to approximately 11 minutes and 30 seconds.

Then there's another part of the same call later, ten minutes later, from 21:30 to 24:31 which the State feels is germane to this case. The State would like to introduce those portions.

If you can bear with me, I will skip to the portion once it cues.

"(Inaudible) monitored.

"(Inaudible) preliminary (inaudible). I'm happy just to hear you guys.

"(Inaudible.) You know what I mean? So.

"Okay. Where's he at now, (inaudible.)

"He ain't home. Michael? Over the - -

"No. Where's Michael at?

"Over there. Over the (inaudible.)

"(Inaudible.)

"(Inaudible) hospital with this shit, Mike.

"With you?

"Yeah.

"In court?

"Yeah. Cause I got my preliminary Tuesday.

"Oh, you do?

"Yeah. They got me down for a preliminary. But I don't think I'm going to get indicted because they got no witnesses. They don't have no weapon. They went up in the woods, nobody was a witness. And the boy, Kathy said she took the boy to the hospital; right, because he had internal bleeding in his head. But they didn't go to the hospital for six days later.

"No. That's (inaudible.)

"If - - you injure your head, you're going to die.

"(Inaudible.) you know, that's what - -

"This is a bullshit game.

"That's what - - yeah, this is going to happen like - - like (Inaudible.)

"(Inaudible.)

"Wanda from up the hill, she's over here."

[PROSECUTOR]: That's the first portion of the call from 6-14-14 the State would seek to introduce, Your Honor.

[DEFENSE COUNSEL]: No objection on that, Your Honor.

THE COURT: Very well.

THE CLERK: Okay. The second portion, Your Honor, is from the same date, 6-14-14. It starts off at 21:30 minutes. I'm going to cue it up in a moment, with the Court's indulgence, as I fast forward to the germane section.

> "Wanda (inaudible.)
>
> "(Inaudible.)
>
> "(Inaudible) these people (inaudible.)
>
> "(Inaudible) shit (inaudible.)
>
> "(Inaudible.)
>
> "No, no. I spit on his shirt. No. I didn't get in no trouble for that. And he goes, 'Well, you're going to jail, so you got a warrant.'
>
> "(Inaudible.)
>
> "Got no warrant. He goes, 'You are (inaudible.)'
>
> "(Inaudible.)
>
> "(Inaudible.)
>
> "You know what, - -
>
> "(Inaudible) a warrant, not (inaudible.)
>
> "Your birthday's not even right. You're not even under your right birth date.
>
> "(Inaudible) Exactly. Exactly. I'm going to try to get that thrown out as a technicality. I'm been [sic] trying to get a hold of Poppa. Poppa's on the fifth floor. I got a (inaudible.)

"(Inaudible.)

"(Inaudible.)

"What floor you on?

"I'm on the fourth floor. He's on the fifth.

"What do you want me to (inaudible.)

"(Inaudible.) I went up to the fifth floor last week trying to (inaudible.)

"(Inaudible.)

"No. But I seen (inaudible) Hagerstown (inaudible.) He said Poppa (inaudible.)

"Wait a minute. When he (inaudible.)

"And he said, 'Are you Poppa's girl?'

"I said 'Yes.'

"He said, 'Poppa's been looking for you (inaudible.)' He said, 'Your name is Tina?'

"I said, 'Yeah.' Because I asked (inaudible) about Poppa.

"He said, 'Oh. You're the one that Poppa's been looking for.' (Inaudible.)

"I said, 'Poppa' - - I said, 'Poppa needs to let me know what happened at his indictment. Because he went for his indictment today.

"Did he? (Inaudible.)

"I'm not going to be able to get up there (inaudible.)

"(Inaudible.)

"He could be home. He could be because he might of not got [sic] indicted. The charges are bullshit. (Inaudible.)

"(Inaudible.)

"(Inaudible.)

"(Inaudible.)

"Attempted third - - (inaudible) second degree assault, third degree assault (inaudible) on a child. (inaudible.)

"(Inaudible.)

"But he had his preliminary. (Inaudible) preliminary first. So we could get (inaudible.)

"(Inaudible.)

"(Inaudible.)

"Michael said he went (inaudible) - - Tina, Michael said he went out of the (inaudible) on the preliminary.

"He what, Love?

"(Inaudible) That's only saying what the judge has said. (Inaudible.) They are not going to indict him, they are not going to indict you.

"They are not going to indict me (inaudible.)

"Right. (Inaudible.)

"(Inaudible.) Wait a minute. Wait a minute. (Inaudible) preliminary.

"(Inaudible.) going to drop, we're going to drop all the charges (inaudible.)

"(Inaudible.)

"(Inaudible.)

“(Inaudible.)

“(Inaudible) He said him and the girl Tina did this out of self defense. (Inaudible.) fucking thing. There was no witnesses. The little black boy that held the knife to my neck, they don’t - - they don’t have him as a witness because they couldn’t find him.

“Well, guess what? I went around there in a car. And Darryl was in the backseat. Michael was in the passenger seat. And I got (inaudible.)

“(Inaudible) nothing about these charges.

“All right. Well, I’m sorry. But, listen. Jasamina was sitting right across from her fucking house.

“(Inaudible.)

“(Inaudible.)

“(Inaudible.) green flag with the big (inaudible.) He was like, ‘Yeah.’ I said, ‘Let him know.’ He got the whole fucking Ku Klux Klan on their ass. They’ll (inaudible.)

“(Inaudible.)

“It just came out. I gave her that verbal threat (inaudible.)

“(Inaudible.)

“And I went around (inaudible.)

“(Inaudible.)

“But, okay. Mike and me, we thought we’d spotted her walking with (inaudible) couple of days of - - couple of weeks - - two weeks - - like right after you got locked up, but Michael (inaudible) because (inaudible). He was like, ‘No. (inaudible) fuck you.

“But you know what, now I ain’t (inaudible.) Are you there?

“Yeah, I’m here.

> "Okay. I ain't - - I ain't fucking with (inaudible) over a week. All right?
>
> "Why?
>
> "Because she accused me of using her (inaudible)."

Schaffer then presented her objection as follows:

> [DEFENSE COUNSEL]: Okay. All right. This section, okay? First of all, the . . . thing about spitting on his shirt, that has nothing to do with this particular case. There's no allegation that anybody spit on anybody's shirt. And so that's not relevant to this case.
>
> The thing about talking about the warrant isn't relevant to the case. There's . . . that his mom snitched on them is not relevant to the case. And there's the thing where they are talking . . . where it says - - I understand what he's saying, putting in saying, "I'm denying the whole thing," and then it says, "The little black boy held a knife to my neck was not there," the words similar to that effect, that I'm not objecting to.
>
> And then but I am objecting to the K[u] Klux Klan remark, because; number one, my client didn't say that. Number two, there hasn't been any allegations in this case, that I'm sure I would have heard it, that any of the witnesses was bothered, or threatened, or harassed, or called, or bothered in any way whatsoever.
>
> So if somebody else makes - - make a stupid remark, that remark doesn't - - shouldn't enure to my client. She didn't make it and somebody else said it, she didn't say it, and nothing ever happened at all that anybody went by the victim's house or went by the victim's mother's house, made any phone calls or did anything to the people who are the State's witnesses in this case. So that wouldn't be relevant. In fact, you know, prejudice would outweigh anything that would be relevant.
>
> THE COURT: Well, what's the State's theory for bringing that in?
>
> [PROSECUTOR]: Your Honor, it's completely relevant in that it shows that this defendant not only knew about the facts, was present, knows what happens, is familiar with the victim's mother in this case, Kathy Gentry, knows her from the community, knows where she lives. It's totally relevant.

It also shows that she knows Poppa, she's Poppa's girl. She can't deny that she's associated with Poppa. She certainly has the right to remain silent. But this proves that she's not only familiar with Poppa, she's his girl, they both acted in concert. They were at the scene, they know where the victim lives, the victim's mother lives. I think it's totally relevant to the case and the *mens rea* in the case.

It talks about the facts in the case and their connection to each other and establishes deep knowledge of all the players involved.

[DEFENSE COUNSEL]: Do you want me to respond, Your Honor?

THE COURT: You may?

[DEFENSE COUNSEL]: Okay. Thank you.

Your Honor, the spitting on the shirt has nothing to do with the case. The K[u] Klux Klan remark has nothing to do with this case. And I'm sure you heard - - were paying attention to my opening statement which was self-defense in this case. Well, the fact is there isn't any questions that the jury's already heard that the people may know each other.

Well, people know each other. So the fact that they know where this woman lives doesn't prove anything. The fact is . . . the State, in their remarks, they haven't said that [defense counsel] is wrong. These people were harassed and intimidated in the course of this case. They haven't been. There hasn't been one single incident.

So that, number one, it isn't relevant. Number two, the prejudice of putting out remarks would outweigh the probative value. And number three, now, we're introducing this K[u] Klux Klan remark in here, which isn't even made by my client.

THE COURT: Is there a way to get the KKK remark out of your presentation?

[PROSECUTOR]: I don't - - I mean it would be hard to do, Your Honor. It's all interwoven. And in listening to these calls, there are actually other aspects that would be relevant. The State is not going to seek to introduce them from other calls. Because in this defendant's own statement, she seems to jump back and forth between 20 different topics. Sometimes she'll be on point for ten seconds. Then she'll go off on a 25-second

tangent to something that totally relates to her background and other crimes that she supposedly was involved in, then jumps back to this case.

The State has sought to introduce the most relevant uninterrupted aspects of the call which seem to at least put it together for any fact finder to decide, you know, who knows who, who was present where, what the familiarity is and what their intent is.

I think it's totally relevant and it's a declaration against penal interests. The defendant has no reasonable expectation of privacy in these calls. She has made these statements about these statements, had a two-sided conversation with somebody. It clearly shows she has intimate knowledge of the victim, the witness in this case and where they live and how they operate. They are all from the same community.

I mean she can't deny it, although it's her right to take the witness stand and deny it. Maybe she knows - - she thought she might deny these charges. But the State has the burden of establishing she was there. She doesn't have any obligation to take the stand and say anything, and the State has to prove that. And this is a mechanism the State can use to establish that by her own words and her own conversation that she made in a forum where she has no reasonable expectation of privacy. She is essentially on the record when she's saying all of this.

THE COURT: What I'm going to do is allow you to play this to jury, but I'm going to tell them that the only part of this tape that is admissible as evidence is words that the defendant says herself, that other parts are allowed in because they are part of the dialogue. But they are not going to be received to prove the truth of those statement[s] but rather only to give context to the statements the defendant is making.

And I will make sure that the jury understands that.

[DEFENSE COUNSEL]: All right. Your Honor, just for the record I just need to protect the record. I heard your ruling, but . . . the majority of the jury is African American, the victim in this case is African American, . . . my client is a Caucasian.

[SCHAFFER]: He is a Caucasian.

[DEFENSE COUNSEL]: Will you be quiet, please. (Inaudible.) Thank you.

It's . . . going to be - - you know, the victim's mother certainly is African American. And it's going to - - you know, it's hard to - - I know you're going to do your best - -

[PROSECUTOR]: Your Honor, for the record, she is not. They are all four Caucasians actually. The victim and her mother are Caucasians - - and his mother.

[DEFENSE COUNSEL]: They are not African American?

[PROSECUTOR]: No. They are Caucasian. Mr. Downey is a hundred percent Caucasian, blond haired gentleman, and his mother is a dirty blond hair Caucasian as well of Northern European descent.

I don't think that has anything to do with it. I don't know why they would have used that, but they are not African American.

[DEFENSE COUNSEL]: Well, then, the whole thing - - just putting the remark in makes no sense then at all, the relevance of putting in that K[u] Klux Klan remark in.

I mean maybe if I could make just a suggestion, I know that the Court has and that maybe the State calls their - - they have a new law clerk or something, and maybe they just type - - we've heard what it says, and maybe they type that up and we give it - - rather than hear it, they give it to them in writing, we could excise the K[u] Klux Klan statement, we could excise the spitting on the shirt thing.

As I said to you, I understand why the State's putting in the thing she says, "I'm denying the whole thing." I understand that's a declaration against penal interests.

And then in the next sentence, it says, "A little black boy held a knife to my neck," was not there. So I'm not objecting to that. But the thing with the KKK with the jury being mostly African American, it's completely unfair to my client. Thank you.

THE COURT: If there's a way to redact it, I would order it redacted. If it's intertwined, I can't redact it but I can tell the jury not to consider it.

In the - - to the extent that this is a dispute between Caucasians - - and I had no idea what - - as I mentioned to the jury, no idea of what the races of people involved were. That's really not an element in the case.

> But I can't clean up the language people use. How they express themselves and what they say to make their point is the - - is a consequence of the listening to people's calls. Maybe they aren't the person they would like to present themselves to be, but I think I can make it clear with my ruling that that's not part of the evidence in this case. I don't think that will create the prejudice.
>
> Had the defendant said it, that would be a totally different circumstance and possibly could be reason to formally redact that out of the defendant's statement. But I'm not sure how we can do that with the amount of information that's here.
>
> So the motion to exclude it is denied. I am going to instruct the jury that when they listen to any of these calls, it is the evidence that which is to be considered by them is only what the defendant is saying. To the extent that they hear anything else, use it only for the purpose of understanding what statements the defendant is making.

Just before the State presented the jail call at trial, the circuit court introduced the recording as indicated. In pertinent part, the court told the jury:

> Things that [Schaffer] says, her statements, may be used against her.
>
> . . . What the other people have to say is not being received as evidence of the truth of what the statement is, but only for you to understand why the defendant would be saying the things that she is saying.
>
> So to the extent that you can, ignore what the other people have to say. And certainly don't consider it as evidence for the purpose of your making your decision.

During the presentation of the defense, Schaffer testified that she did not know Downey but knew Montrell from a "run-in" that took place about three or four years ago. According to Schaffer, during that run-in, Montrell approached her as she was leaving a gas station and asked her for a cigarette. Schaffer stated that, as she went to grab her

cigarettes, "Montrell grabbed [her] around the neck and tried to pull [her] back into the woods," where he "smashed [her] head into the ground numerous times."

Schaffer denied living in the area and stated that she was there on the date of the incident because she was "hanging out with a couple of . . . friends." She recalled the incident as follows:

> I seen about five boys and this boy Joe arguing. Apparently Joe took off with one of the boy's money. . . .
>
> And Joe had ran. Joe took off running, which he probably did take his cigarette money. . . .
>
> * * *
>
> And that's when Montrell was like, "You got a cigarette?"
>
> And I was like, "No."
>
> And he was like, "I bet you remember about a cigarette." And at that point, he tried to grab me by my shirt and pull me back. And at that time, he took out a knife out of his back pocket and he tried to hold a knife to my neck.
>
> And he tried to get the other boy, which was Mr. Downey, to grab my pocketbook and get the money back for the cigarettes. He said, "Somebody's going to pay for these cigarettes."

Schaffer then testified that Mr. Oxendine [Pappa] came up to ask what was going on, and Montrell hit him "in the arm with a steel pipe and split his arm open." Afterwards, Montrell tried to grab Schaffer again, and Schaffer turned around and tried to push him, and may have "accidentally hit Mr. Downey" in the process. Schaffer denied ever wielding a piece of wood or hitting Downey in the head.

During deliberation, the jury asked whether they could hear the jail call in a louder volume. The circuit court interpreted this inquiry to mean that they would like to "rehear

the tape or the recordings," and the trial judge stated that because "it's in evidence, it can be played in the courtroom at any time." Counsel for the State and Schaffer both gave their consent, and the jury was brought back to the courtroom to listen to the recording. The jury, thereafter, found Schaffer guilty of second degree assault.

Discussion

Schaffer argues that the circuit court abused its discretion when it permitted the State to twice play her recorded conversation from jail. According to Schaffer, the portion that she sought to exclude was not relevant and served only to prejudice her, as she "is white, the majority of the jury was black, a central figure [in the case] was black." Moreover, Schaffer avers that the court had further reason to exclude the statement because the trial judge "agreed [that it] was inadmissible but declined to exclude it on the incorrect belief that the State lacked the technical ability to excise the remark."

In response, the State contends that this issue was not preserved for our review. Specifically, the State argues that "Schaffer did not preserve any claim that the recording could have been redacted, that the curative instruction was inadequate, or that the trial court erred in playing it in response to the jury's note." Alternatively, the State asserts that even if preserved, the circuit court properly permitted the playing of the recorded phone call.

Assuming without deciding that this issue was preserved, we are not persuaded that the circuit court abused its discretion in playing the recorded phone call without further redaction. *See State v. Simms*, 420 Md. 705, 724 (2011) ("The issue of whether a particular item of evidence should be admitted or excluded is committed to the

considerable and sound discretion of the trial court.") (citation omitted). "The fundamental test in assessing admissibility is relevance." *Thomas v. State*, 372 Md. 342, 350 (2002); *see* Md. Rule 5-402 ("[A]ll relevant evidence is admissible. Evidence that is not relevant is not admissible."). "Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. On appeal, "the abuse of discretion standard of review is applicable to the trial court's determination of relevancy" and the "'de novo' standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not of consequence to the determination of the action." *Simms*, 420 Md. at 724-25 (internal citations omitted).

In this case, the circuit court determined that the parts of the recording to which Schaffer objected were admissible "because they are part of the dialogue." The trial judge stated, "I'm not sure how we can do that [redact the statements] with the amount of information that's here." The judge also expressed his belief that including the statements would not "create prejudice" because, through the court's instructions to the jury, it would "make . . . clear . . . that that's not part of the evidence in this case." We perceive no abuse of discretion nor error on the court's part.

"[C]onduct of a trial, including admission of evidence, is . . . directed to the considerable discretion of the trial court." *Med. Mut. Liab. Ins. Soc. of Maryland v. Evans*, 330 Md. 1, 34 (1993) (Bell, J. dissenting) (citing *Crawford v. State*, 285 Md. 431, 451 (1979)). We have previously stated:

> "In that regard, and clearly relevant to whether there has been an abuse of discretion, judges are presumed to be 'men [and women] of discernment, learned and experienced in the law and capable of evaluating the materiality of evidence,' a proposition that is of some considerable significance in our jurisprudence. They are also presumed to know the law and lawfully and correctly to apply it. Additionally, a judge's presence at the trial, conducting it, with his or her 'finger on the pulse' of the situation, renders him or her the logical and, indeed, the best person to evaluate the existence of prejudice. Having lived with the case, the trial judge views the situation in three dimension, up close and personal, not from a cold record; thus, having closely observed the entire trial, he or she is able to appreciate 'nuances, inflections and impressions never to be gained from a cold record,' not to mention being able to assess, firsthand, the demeanor of the witnesses as well as the reaction of the jurors and counsel to those witnesses and to the evidence as it is adduced."

Tierco Maryland, Inc. v. Williams, 381 Md. 378, 427-28 (2004) (quoting *Med. Mut. Liab. Ins. Soc. of Maryland*, 330 Md. at 34-35 (Bell, J. dissenting)) (internal citations omitted).

As the State notes in its brief, "the transcript of the call is not a model of clarity, perhaps because the call itself was not a model of clarity." [3] For instance, the transcript does not reflect which person is speaking or how many persons are speaking at the same time. This may be the reason that the prosecutor believed that redacting the KKK remark "would be hard to do" or why the trial judge thought that the statements were "intertwined." Without being there, firsthand, to view the entire situation, we refuse to disturb the trial judge's exercise of his wide discretion in finding that the statements were relevant. We presume that the circuit court accepted the State's argument that it "sought to introduce the most relevant uninterrupted aspects of the call" to show that Schaffer

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[3] As the prosecutor explained during the motions hearing, "[s]ometimes [Schaffer will] be on point for ten seconds. Then she'll go off on a 25-second tangent to something that totally relates to her background and other crimes that she supposedly was involved in, then jumps back to this case."

"has intimate knowledge of the victim, the witness in this case[,] where they live and how they operate," and to clarify "the facts in the case[,] their connection to each other and . . . all the players involved." We cannot fault it for doing so.

Schaffer cites several cases from other jurisdictions to bolster her argument that she was prejudiced by the circuit court's decision, but those cases are distinguishable. For example, in the Alabama cases of *R.D.H. v. State*, 775 So. 2d 248 (Ala. Crim. App. 1997), and *Gillespie v. State*, 549 So. 2d 640 (Ala. Crim. App. 1989), the State introduced, or attempted to introduce, evidence that the defendant was a member of the Ku Klux Klan ("KKK").[4] Meanwhile, here, the State never alleged that Schaffer was a member of the KKK. In addition, it was undisputed that the statement about the KKK heard in the recording was not uttered by Schaffer.[5] There was no evidence that the unknown person who made the comment was a member of the KKK, and the KKK comment did not "come up in later testimony or in closing argument." *United States v. Padilla*, 869 F.2d 372, 380 (8th Cir. 1989) (concluding the testimony that co-defendant sold drugs to the KKK constituted harmless error).

[4] The Ku Klux Klan is an organization "which espouses white supremacy and racial hatred." *Chambliss v. State*, 373 So.2d 1185, 1207 (Ala. Cr. App. 1979). "The Klan is synonymous with racial bigotry and hatred and violence, harassment, and intimidation." *Gillespie*, 549 at 647. The defense made no allegation or proffer that the KKK was active in the vicinity of Baltimore City around the time of this incident.

[5] In addition, the statement was: "*He* got the whole fucking Ku Klux Klan on their ass." (Emphasis added). As such, the pronoun "he" could not have been understood to refer to Schaffer who is a "she."

Based upon the record, we cannot say that the circuit court erred in concluding that the statements in the jail call were not of consequence to the determination of the guilt of Schaffer.[6] Accordingly, we affirm the court's judgment.

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

[6] It is also worth noting that the jury found Schaffer guilty of only second degree assault and not the greater charge of first degree assault.