Circuit Court for Montgomery County
Case No.: 135064C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 236

September Term, 2020

CHARLES D. SHELTON

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: August 30, 2021

In the Circuit Court for Montgomery County, Charles D. Shelton, the appellant, was indicted on three counts of second-degree rape and one count of attempted second-degree rape. His first trial ended in a mistrial after a hung jury. The jury in his second trial convicted him of two counts of second-degree rape and one count of attempted second-degree rape and acquitted him of one count of second-degree rape. The court sentenced him to an aggregate sentence of thirty-five (35) years, to be followed by five years' supervised probation.

On appeal, Shelton raises four questions, which we have rephrased, combined into three, and reordered:

> 1. Did the trial court abuse its discretion by allowing a detective to testify about the first part of Shelton's police interview at all, and then by declining to allow the detective to testify about the second part of Shelton's police interview?
>
> 2. Did the trial court err by failing to strike the jury venire because it did not constitute a jury of Shelton's peers?
>
> 3. Did the trial court abuse its discretion by limiting the defense cross-examination of the victim?[1]

[1] As phrased by Shelton, the questions presented are:

> 1. Did the trial court err in refusing to allow the remaining portions of Appellant's police interrogation into evidence where those portions were admissible under the doctrine of verbal completeness?
>
> 2. Did the trial court err in allowing the jury to hear irrelevant and prejudicial evidence?
>
> 3. Did the trial court err in failing to strike the jury venire for its failure to constitute a jury of his peers?

(continued)

For the following reasons, we shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

At trial, the State called A.V.[2], the victim; Detective Benjamin Stokes, from the Special Victims Investigation Division, Adult Sex Assault Unit of the Montgomery County Police; and several other witnesses who offered testimony concerning their observations of events on the evening in question. Shelton did not testify. He called one witness.

A.V.'s testimony established the following. On Sunday, December 9, 2018, at around 1:00 p.m., she went to Growlers bar in Old Town Gaithersburg to watch a football game. While there, she consumed one bowl of soup and approximately eight or nine beers. As a result, she felt "tipsy" and "slightly intoxicated" but was able to stand and walk without difficulty.

Earlier the same day, A.V. had taken phentermine, an appetite suppressant. She explained that she had undergone gastric sleeve surgery, *i.e.*, weight loss surgery, in November 2016, and had lost 100 pounds. After the surgery, she would become "intoxicated much more quickly." At the time of this incident, A.V. weighed 150 pounds and stood 5'2" tall.

> 4. Did the trial court abuse its discretion in restricting cross-examination of the alleged victim concerning the victim's involvement in alcoholics anonymous and her specific involvement in community theater?

[2] It is not necessary to identify the victim by her full name. *See Raynor v. State*, 440 Md. 71, 75 n. 1 (2014) (declining to use sexual assault victim's name for privacy reasons), *cert. denied*, 574 U.S. 1192 (2015).

At around 7:00 p.m., A.V. left Growlers with a group of people and proceeded to another bar, Finnegan's, in Rockville. They arrived at around 7:30 p.m. A.V. consumed two more beers. She stayed at Finnegan's until around 9:00 p.m. She briefly returned to Growlers, only to discover it was closing, and then was invited by her friends to proceed to a third bar, Quincy's, in Gaithersburg. She declined and went home, but then decided to call an Uber to rejoin her friends. She arrived at Quincy's at around 10:00 p.m. By then, she had consumed 15 or 16 beers throughout the day.

Quincy's was lively when A.V. got there, with everyone watching football games. She sat at the bar and consumed four or five more beers. She stayed at Quincy's for three hours, by which time she was intoxicated.

At around 1:30 a.m., and after the effects of the phentermine had worn off, A.V. went outside Quincy's, sat on a concrete wall, and tried to call an Uber to take her home. Upon discovering that her phone had died, she went back inside the bar. She told an unidentified man she did not know, whose romantic pursuits she had rebuffed earlier in the evening (and who was not Shelton), that she could not get an Uber. He offered to get her a ride, but she decided she would rather walk home, even though that would take 40 minutes. She left the bar.

A.V. was having trouble walking, and outside the bar she fell over a planter. At that point, Shelton approached her and offered to give her a ride home. She accepted because, as she testified, she "didn't have a lot of options at that time." The jury was shown surveillance video of the encounter between A.V. and Shelton outside Quincy's.

Shelton took A.V. by the hand and led her to his car. She still was having trouble walking. One of her contact lenses had fallen out so she also was having trouble seeing. She felt "hazy" and "tired." A.V. got into the back seat of Shelton's vehicle and lay down. During the drive, she realized that Shelton was not going in the direction of her apartment. She let him know that, but he responded that he "knew where he was going." A.V. "passed out in the seat."

Soon thereafter, A.V. momentarily awoke when she felt Shelton removing her leggings and underwear. She realized he was pulling her pants down but was unable to stay awake and passed out again. She regained consciousness and felt Shelton's finger inside her vagina. When he then placed his finger inside her anus, she screamed out in pain. A.V. then felt Shelton behind her, on top of her legs. She still was intoxicated and was "terrified." Shelton flipped her over and removed her top and her bra. She was completely naked. Shelton tried, unsuccessfully, to penetrate her vagina with his penis. He then grabbed her hair and pushed her face into his penis, which she testified was "flaccid." Shelton told her to "suck it, suck it, suck it," and forced her to perform fellatio on him. She "didn't think I had any choice in the matter." After that, Shelton again tried, unsuccessfully, to penetrate her vagina. He forced her to perform fellatio once more and then, because he remained flaccid, "he stopped."

A.V. testified that she did not consent to any of the sexual acts Shelton perpetrated against her and did not consent to being made to perform fellatio on him.

Shelton got back in the driver's seat and drove to a location near A.V.'s apartment, where he stopped. He asked her to give him her cell phone number. She did so in order to

avoid a "conflict" and "get out of there." She got out of Shelton's vehicle, entered her apartment, and fell asleep. A few days later, she texted a friend and told him that she was "almost raped" and that she thought she was "going to be killed." After telling several other friends, A.V. eventually reported the incident to the police.

On December 17, 2018, Detective Stokes interviewed A.V. After developing Shelton as a suspect based on the phone number in A.V.'s cellphone, he obtained video surveillance footage from near Quincy's bar. Soon thereafter he obtained an arrest warrant for Shelton. On December 21, 2018, Shelton was arrested. After he waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), Detective Stokes interviewed him.

The police interview of Shelton was not admitted into evidence at either trial. The court ruled that portions of it could be used in questioning Detective Stokes, however.

The defense theory of the case was that on the night in question Shelton and A.V. engaged in consensual sexual acts.

DISCUSSION

I.

Shelton contends the trial court abused its discretion by allowing Detective Stokes to be questioned about what Shelton said during the first part of his police interview.[3] He maintains that the contents of that part of the interview was unfairly prejudicial. He further contends that, once the trial court allowed Detective Stokes to be questioned about the first

[3] The parties divide the police interview into two parts not based on length but based on content. In the first part of the interview, Shelton denied knowing anything relevant to the events on which the charges were based. In the second part of the interview, he claimed knowledge of the events and that his sexual encounter with A.V. was consensual.

part of the interview, the trial court further abused its discretion by not allowing defense counsel to question Detective Stokes about the second part of the police interview. The rulings Shelton complains about were made in motions hearings before and during the first trial, and in a ruling on a motion *in limine* during the second trial.[4]

Before his first trial, Shelton moved to exclude the first part of his police interview by Detective Stokes, arguing that it was irrelevant and unfairly prejudicial. He asserted that he was not advised of the purpose of the interview when it began and that his remark during the interview that he "goes to bars and that he talks to lots of women" had no relevance because he did not say he had engaged in sexual acts with these other women. He took the position that the prosecution was attempting to admit propensity evidence to prove bad character. He argued that in light of his defense of consent, this remark in the interview not only was irrelevant but also was unfairly prejudicial and would "confuse the issues of the case."

The prosecutor responded that the first part of Shelton's interview was "extremely probative of [his] state of mind, and [his] consciousness of guilt with respect to this case." Specifically:

> The fact that [Shelton] denies ever drinking, the fact that [Shelton] denies ever driving to Quincy's bar when he obviously drives there and away from the bar, the fact that he indicates that he initially doesn't mention Quincy's, doesn't go there, and then he says he does go there, it's – are valid things for the jury to be able to consider when they are determining whether or not he

[4] Although the police interview was not admitted into evidence in any form (transcript or recording) at either trial, a copy of the transcript of the police interview, unredacted, was identified at trial as State's Exhibit 18, and is included in the record on appeal. The transcript was used by counsel during direct and cross-examination of Detective Stokes.

> was truthful. Ultimately, this is a difficult case because it will center, likely, on the issue of consent. [Shelton's] denials during that 28 minutes, and his – what the State will present as incredible, or not credible, indications that he doesn't know what they're talking about, are important things, critical things, for the jury to be able to consider when weighing the credibility of the victim, as opposed to [Shelton]. Whether his, it's his statement, or his testimony, should he choose to get on the stand.

The prosecutor went on to say that "[Shelton], during that 28 minutes, states many provable lies. All of which bear on his credibility and are, and [sic] can arguably be used to show that he is culpable in this case." Further:

> [E]xcluding this section of the statement would create a huge windfall for the defense. Because if you exclude this, then all you really have is his, sort of, what appears in the context of the statement, an unbelievable epiphany as to, you know, whoa, now I know what you're talking about, of course. And giving this huge recitation of, of what occurred from his perspective. Whereas, when you put it in the context of this denial and lack of understanding for 28 minutes, it has an entirely different color. And I certainly understand why the defense would not want that.

The prosecutor also voiced disagreement with defense counsel's suggestion that the State was seeking to use Shelton's remark about meeting women in bars to show propensity or character evidence. In asserting that this evidence was not unfairly prejudicial, the prosecutor observed, "[Shelton] doesn't say anything about taking women home and having sex with them. And even if he did, Your Honor, that's not a crime, or a wrong, or a bad act, that would show propensity to commit crime. There is nothing wrong with doing that."

After hearing again from defense counsel, the court ruled that the first part of Shelton's statement could be used by the prosecutor in examining Detective Stokes on direct. The court disagreed with any suggestion that the State was trying to paint Shelton

as someone who "preys on women." The court also concluded that Shelton's remarks during the interview about meeting women at sports bars were not admissions of illegality and did not show propensity. In addition, the court concluded, the statements made by Shelton in the first part of the interview were not unfairly prejudicial given that he did not "talk about doing anything illegal toward that woman, or other women, forcing himself on them. He doesn't even talk about having sex with them. He talks about meeting them. I don't know what he does after he meets them."

The court went on to observe that the first part of the interview countered any suggestion by the defense that Shelton did not give his interview voluntarily. Noting that the State could present evidence that "the defendant denied certain information that later on he contradicted," the court ruled that "the State is entitled to present false statements that were made [by Shelton] in this interview and argue that they are false and argue that they are evidence of consciousness of guilt. So, I think the first few minutes of the interview are probative of that." Accordingly, the court denied the motion to exclude.[5]

As noted, Shelton's first trial ended in a hung jury. Before jury selection for his second trial, Shelton renewed his objection to the use of the first part of his interview. Defense counsel maintained that, given that the only issue before the jury was whether the encounter between Shelton and A.V. was consensual, including whether A.V. was so

[5] After denying the motion to exclude, the court and the parties went through the transcript of Shelton's entire police interview and agreed to redact several parts, meaning that those parts could not be used in examining Detective Stokes. That included statements by Shelton about his use of cocaine on the night in question, his probationary status, and other charges and convictions unrelated to this case.

intoxicated that she could not consent, any unrelated evidence about Shelton's promiscuity or sexual history was not probative and was unfairly prejudicial. Defense counsel remarked: "the issue is was she consensually going with Mr. Shelton to have sex, and the whole 28 minutes and 14 seconds [of the first part of the statement] does not answer any of that question."[6]

As before, the prosecutor responded that the purpose in using the first part of Shelton's interview on direct examination of Detective Stokes was to show that initially Shelton denied going to Quincy's and leaving alone with a woman, and that his "evasive answers are relevant to [his] consciousness of guilt which is obviously at issue here and also his credibility." The judge, who had presided over the first trial, denied Shelton's motion, stating:

> So your motion is denied for the reasons I stated in the first trial and for the reasons I will state again now. This is not a bad act. I said that before, and I will say it again. He's not accused of any sexually assaultive behavior on anyone prior to this event.
>
> As I remember saying back then, I do not think that there's any possibility that a jury would find that him going to a bar on a Sunday and consuming alcohol and watching football and meeting people at the bar is somehow prejudicial to him. It's not offered as a bad act.

[6] Although in the circuit court, defense counsel briefly observed that evidence of Shelton's prior sexual encounters might be "bad acts" evidence and, although he now cites one case concerning prior bad acts evidence, *see Hurst v. State*, 400 Md. 397 (2007), the issue presented is limited to whether admission of the first part of his statement was irrelevant and unfairly prejudicial. *See Ochoa v. Dep't of Pub. Safety & Corr. Servs*., 430 Md. 315, 328 (2013) (issue not addressed by appellate court where appellant failed to "develop" his argument "in any meaningful way"). We note that, even were we to conclude that the bad acts issue properly was before us, we cannot conclude that simply meeting a potential romantic partner at a bar or restaurant is a "bad act." *See Klauenberg v. State*, 355 Md. 528, 549 (1999) (defining a "bad act"). We shall limit our discussion accordingly.

> The State is offering it to show that he originally denied knowing this woman, he originally denied being at the bar with this woman, he originally denied leaving with anyone at the bar, and he denied having any memory of it. It seems to me that it doesn't matter what he is going to say today at this trial or what he said at the first trial.
>
> What matters is that he gave a statement to the police in which he initially denied all of this. He denied a memory of it, denied it ever happened, and the State should be allowed to show the jury that he initially denied this and now has a memory of it and has an explanation for it. They should be allowed to cross-examine him on that should he choose to testify.
>
> The Court does not find that the introduction of this statement would be confusing, does not find it would be misleading, does not find it would be a waste of time, and does not find that it is cumulative. The State [sic] finds that it is relevant and that it is admissible, and so, for those reasons, your motion is denied[.]

On direct examination, Detective Stokes recounted that, during the interview, he asked Shelton whether he ever went to Quincy's bar and Shelton replied, "not really." Later in the interview, however, Shelton admitted frequenting Quincy's several times in the weeks prior to the interview. Initially, he told the detective that he did not drive to Quincy's. Detective Stokes testified that he asked Shelton about a white woman with blond hair, named "A" (the victim), who he may have met outside Quincy's. Shelton indicated he "did not know" but that the name sounded "familiar." Detective Stokes gave Shelton additional descriptive detail about "A," but that did not help him remember her. He asked Shelton if he remembered from "a couple weeks ago" and Shelton responded that he did not "know what you're talking about." But again, he indicated that the name "A" sounded "familiar." When the detective asked Shelton if he remembered leaving the bar with this woman, Shelton responded that he "did not know," that he had "no idea," and that he

wanted to see a picture of her. He further stated that he was not "blacked out drunk," and did not have a memory problem. He continued to ask for a picture.

Detective Stokes further testified that at that point in the interview, he told Shelton that the police had surveillance video of him leaving Quincy's. Shelton then acknowledged that he had met several white women near Quincy's. He said he never had left the bar by himself, with any of them. He acknowledged leaving Quincy's with a woman who may have been named "A" but not by himself - - he said his brother had driven them in his car. Shelton described the woman but told the detective he did not remember her name. He said that the woman he was referring to was from Cleveland and he had been with her about a week before this incident. The detective then asked Shelton about a "white chick" with blond hair and a red sweater. Shelton responded, "[a] red, and red sweater[,]" and that "it would have to be the same thing, but there was no physical contact in the car." Asked if there was anyone else, Shelton said, "Whoa."

Detective Stokes testified that, from then on, and for the rest of the interview, Shelton's answers changed. He admitted that he had had a sexual encounter with A.V. in the back seat of the vehicle he had been driving on the evening in question. He said they had engaged in "vaginal sex, oral sex, and he had also inserted a finger." He also said he had had no trouble achieving an erection. At the close of the interview, Detective Stokes informed Shelton of the crimes he was being charged with.

On cross-examination, Detective Stokes agreed that during the first 30 minutes or so of the interview, Shelton had expressed "curiosity about why he was there, wanting to know specific answers." He did not tell Shelton he was being charged with sexual assault

during that part of the interview. He agreed that, after Shelton indicated that he understood the subject matter of the interview, he described his encounter with A.V. at Quincy's and never again indicated that he did not understand what was being discussed.

"The standard of appellate review of an evidentiary ruling turns on whether the trial judge's ruling was based on a pure question of law, on a finding of fact, or on an evaluation of the admissibility of relevant evidence." *Brooks v. State*, 439 Md. 698, 708 (2014). Most evidentiary rulings are "left to the sound discretion of the trial judge and will only be reversed upon a clear showing of abuse of discretion." *Giant of Maryland LLC v. Webb*, 249 Md. App. 545, 566 (2021) (quotation marks and citations omitted). A court abuses its discretion when "no reasonable person would take the view adopted by the court," or when "the court acts without reference to any guiding rules or principles." *Powell v. Breslin*, 430 Md. 52, 62 (2013) (quotation marks and citation omitted).

Rule 5-401 states:

> "Relevant evidence" means 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.

Rule 5-402 provides:

> Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

"Trial judges generally have 'wide discretion' when weighing the relevancy of evidence." *State v. Simms*, 420 Md. 705, 724 (2011) (citation omitted). Although "trial judges are vested with discretion in weighing relevancy in light of unfairness or efficiency considerations, trial judges do not have discretion to admit irrelevant evidence." *Id.* The

"*de novo*" standard of review applies "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." *Id.* at 725 (quotation marks and citations omitted). Thus, we must first consider whether the evidence is legally relevant, and then, if it is, whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns. *Id.*

The Court of Appeals has recognized that the relevance threshold "is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). Further, this Court has explained that we give significant deference to the determinations of the trial court that probative evidentiary value outweighs any danger of prejudice. *CSX Transp., Inc. v. Pitts*, 203 Md. App. 343, 373 (2012), *aff'd*, 430 Md. 431 (2013). Evidence is probative "'if it tends to prove the proposition for which it is offered.'" *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 220 (2011) (quoting *Johnson v. State*, 332 Md. 456, 474 (1993)). Evidence is unfairly prejudicial when it "'might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged.'" *Burris v. State*, 435 Md. 370, 392 (2013) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)). The question is one of balance, thus the more probative the evidence, the greater the unfair prejudice that must be shown to justify exclusion. *Id.*

Here, we are persuaded that the first part of Shelton's police interview—in which he appeared not to recall information, such as whether he ever had been to Quincy's and basic events that took place on the night in question—when considered against his sudden change in recollection, that on the night in question he had engaged in a sexual encounter

with A.V. that was entirely consensual, was relevant to his truthfulness and credibility. "[A] witness's credibility is always relevant." *Devincentz v. State*, 460 Md. 518, 551 (2018) (citing *Smith v. State*, 273 Md. 152, 157 (1974)). Further, "[w]hen the trier of fact must rely primarily—if not solely—on witness testimony to assess guilt or innocence, credibility takes on greater importance." *Devincentz*, 460 Md. at 551 (citing *State v. Cox*, 298 Md. 173, 185 (1983)). *Cf. Myer v. State*, 403 Md. 463, 477 (2008) (recognizing that purpose of cross-examination includes testing "'credibility and veracity,'" and that questioning to test the "'accuracy, memory, veracity, character or credibility'" of a witness's testimony is proper) (quoting *State v. Cox*, 298 Md. at 183-84).

Additionally, Shelton's denials and/or lack of memory about driving to Quincy's and drinking, and about any encounter with a woman named "A" on the evening in question, was relevant to the extent it suggested consciousness of guilt. "It is a forensic fact of life that an exculpatory effort that is disbelieved thereby becomes highly inculpatory. In prosecutorial jargon, it is called the 'false exculpatory.' In the algebra of production burdens, it goes to prove consciousness of guilt." *Hricko v. State*, 134 Md. App. 218, 242, *cert. denied*, 362 Md. 188 (2000).

Moreover, we do not agree with Shelton that use of the first part of his police interview in questioning Detective Stokes was unfairly prejudicial to him. Under Rule 5-403, a trial court may exclude 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 . . . waste of time[.]" Unfair prejudice warranting exclusion results when evidence "tends to have some adverse effect . . . beyond tending to prove the fact or issue

that justified its admission[.]" *Hannah v. State*, 420 Md. 339, 347 (2011) (quotation marks and citation omitted). As this Court has explained:

> In deciding whether a piece of evidence is "unfairly prejudicial" under the rules of evidence, this Court weighs "the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705, 98 A.3d 444 (2014). When evidence is of "a highly incendiary nature," its admissibility hinges on whether it "greatly aid[s] the jury's understanding of why the defendant was the person who committed the particular crime charged." *Id*. (quoting *Gutierrez v. State*, 423 Md. 476, 495, 32 A.3d 2 (2011)).

Montague v. State, 244 Md. App. 24, 39-40 (2019), *aff'd*, 471 Md. 657 (2020), *reconsideration denied* (Jan. 29, 2021).

Although there was some discussion about Shelton's social history of meeting women in bars, we are unable to conclude that this evidence caused any unfair prejudice so as to have denied Shelton a fair trial. The evidence elicited in the first part of Shelton's police interview was relevant and not unfairly prejudicial, and the trial court properly exercised its discretion in ruling it was admissible.

As mentioned above, Shelton also contends the trial court erred by not allowing use of the second part of his police interview in examining Detective Stokes. Shelton maintains that this part of the interview was subject to use under the doctrine of completeness.

During trial but outside the presence of the jury, defense counsel informed the court that she agreed that certain statements by Shelton during the police interview could be redacted, *i.e.*, not used in examining Detective Stokes, because they were cumulative. Later, defense counsel objected to excluding other statements Shelton made because, arguably, they were "relevant" and "explanatory." The prosecutor responded that the

majority of the statements the defense wanted to be able to use in cross-examining the detective consisted of inadmissible "testimony" and "self-serving hearsay."

After considering a sample passage taken from the 80-page transcription of Shelton's police interview, the court noted that the statements Shelton wanted to use were akin to "testimony in response to being accused of rape. And it's not, it is explanatory, but that's not the end-all and be-all of the test. The test is, it can't serve as testimony."[7]

The court then stated that it had gone over Shelton's interview in detail, numerous times, and that:

> I agree with the State that these remaining statements are not merely explanations. And I think the case law is very clear that in order to be admitted through this general principle of completion, the statements have to be explanatory and not, and they must aid in some type of construction or interpretation of the statements that are admitted.
>
> If those statements are ambiguous, misleading, or have some misimpression, they would come in, but they cannot come in if they are

[7] In particular, the court relied on this sample passage from page 35 of the interview:

> Detective: Tell me.
>
> Mr. Charles Shelton: So, when I, we had a sexual encounter.
>
> Detective: Tell me about it.
>
> Mr. Charles Shelton: Our sexual encounter was she got in the back of the car. I started talking to her. I started rubbing on her. She was like we can't be in this parking lot, we got to go somewhere else. So, I'm like, okay, fine. So, I took her to a neighborhood around the corner and we had sex in the backseat of the car. I took her home and she didn't even want to get out then, like she still wanted to have more sex. So, I didn't keep talking, like, no, you just (unintelligible) we got to go in the house because I was ready to get up for work. Like she told me that she had a husband and all of this, like everything. We had crazy sex in the backseat of the car.

> testimony. And I believe that these statements that we have not admitted, or that – I'm sorry – that are remaining, that the Defense wants to admit, are testimonial, and they are self-serving and, therefore, they are in violation of the hearsay rule. And the rule on completion does not protect them and allow them in.

Defense counsel continued to insist that certain statements during the interview that were affected by the court's ruling actually were explanatory and not self-serving testimonial hearsay. This included: whether Shelton had left a voicemail for A.V. after the encounter; what kind of sex—anal, vaginal or oral—the two had engaged in or whether Shelton actually "fingered" the victim; and, whether A.V. had told him to stop. Defense counsel argued that these statements were probative of whether the victim was so intoxicated as to not be able to consent. The court then clarified its ruling:

> THE COURT: Sure. And she testified that she, at this point was, she said, a dozen ways, intoxicated, she used the word intoxicated.
>
> [DEFENSE COUNSEL]: Okay.
>
> THE COURT: She, at one point, use the word hammered. So he is attempting to counter her testimony that she was wasted, and that's what this whole, that's why she passed out, or was half asleep, or whatever.
>
> So I think it's you, it's, he is countering her testimony, and that is testimony. He's not explaining, which is what the rule requires. And I have tried to balance the defendant's right, and this is my last statement on it, to not testify in this matter against this rule. And I still believe that the rule is clear and the case law is clear, and I believe the rule and the case law has balanced that Fifth Amendment right as well --
>
> [DEFENSE COUNSEL]: Then, Your Honor –
>
> THE COURT: -- and so I'm trying to follow the rule and the case law.
>
> [DEFENSE COUNSEL]: So we will object, for the record, Your Honor --

THE COURT: All right.

On further cross-examination of Detective Stokes, defense counsel persisted, asking the court to revisit particular statements in the interview. Specifically, defense counsel wanted to cross-examine Detective Stokes about Shelton's statement that the detective should check Quincy's surveillance tapes to show that he was flirting with A.V. inside Quincy's that evening. The court determined that defense counsel could ask a yes-or-no question about whether Shelton told the detective to get the surveillance tapes. Detective Stokes testified that Shelton did inquire along that line during the interview. The court also ruled that defense counsel could ask Detective Stokes whether Shelton had said that A.V. had told him where she lived. Detective Stokes agreed that Shelton had told him that A.V. had said where she lived generally, but had not given him an address.

We begin by noting that there is no "redacted" version of Shelton's interview in the record. Although a "clean" copy of the transcript was marked for identification at trial and is included in the record, the absence of a "redacted" version makes review somewhat problematic. Indeed, we note that the parties do not even agree on what segments of the transcript were redacted.

Rule 8-501(c) states that the contents of the record on appeal "shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal." It is an appellant's burden to produce a record sufficient to determine whether error was committed by the trial court. *Black v. State*, 426 Md. 328, 337 (2012) (citations omitted); *see also Fields v. State*, 172 Md. App. 496, 513

("An appellant has the burden of producing a record to rebut the general presumption that a trial court's actions are correct"), *cert. denied*, 399 Md. 593 (2007).

Despite this omission, and the arguable conclusion that this issue was not properly before us for review, we will address it because, having examined the entire record, we can recreate those parts of Shelton's interview that are in dispute. *See, e.g.*, *King v. State*, 434 Md. 472, 480 (2013) ("[I]t is well-settled that Md. Rule 8-131(a) vests this Court with the discretionary power 'to decide such an [unpreserved] issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.'").

The doctrine of completeness is a common law rule that has been codified in Maryland as Rule 5-106, which states:

> When part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

In *Otto v. State*, 459 Md. 423, 447-48 (2018), the Court explained:

> In Maryland, the doctrine finds its roots from two sources: the common law and Maryland Rule 5-106. The application of the common law doctrine of verbal completeness requires that "[t]he offer in testimony of a part of a statement or conversation, upon a well-established rule of evidence, always gives to the opposite party the right to have the whole." *Smith v. Wood*, 31 Md. 293, 296-97 (1869). At common law, a party seeking to admit evidence pursuant to the common law doctrine of verbal completeness, could admit the remaining conversation or writing during the party's case-in-chief.
>
> Maryland Rule 5-106 partially codifies the common law doctrine of verbal completeness, but allows writings or recorded statements to be admitted earlier in the proceeding than the common law doctrine.

See also Conyers v. State, 345 Md. 525, 543 (1997) (recognizing that the standard of review under the doctrine of completeness is whether the trial court abused its discretion).

Recently, in *In re J.H.*, 245 Md. App. 605, 639 (2020), we explained that for the remainder of a document or statement to be admissible under the doctrine of completeness, it

> must "tend either to explain and shed light on the meaning of the part already received or to correct a prejudicially misleading impression left by the introduction of misleading evidence." *Paschall v. State*, 71 Md. App. 234, 240, 524 A.2d 1239 (1987) (internal quotations omitted). Other boundaries also contemplate the "prejudicial character" of the remainder, which is balanced against its "explanatory value." *Richardson v. State*, 324 Md. 611, 622-623 (1991) (citation omitted).

Of course, in this case, we are not addressing an item of evidence part of which was admitted and part of which was not. Nevertheless, the same concept applies in that Detective Stokes was permitted to be questioned on, and therefore to testify about, what Shelton had said to him in the first part of the police interview—but was not permitted to be questioned on, and therefore to testify about, what Shelton had said to him in the second part of that interview. We conclude that the doctrine of completeness does not support Shelton's argument that the trial court abused its discretion in precluding the defense from questioning Detective Stokes about what Shelton said during the second part of his interview.

As noted, in the first part of Shelton's interview, he initially did not claim to be familiar with Quincy's, although he had been there not long before the interview; said he did not remember a woman named "A," even after Detective Stokes described her; said he did not know and had no idea whether he had left a bar with that woman; said he had left Quincy's with a woman who might have had that name, but he was with his brother and in his brother's car, and that had happened about a week before the time frame Detective

Stokes was asking about; and added that he had had no physical contact with that person, who was from Cleveland, in the car. In the second part of his interview, after exclaiming "Whoa," Shelton said he remembered having a sexual encounter with A.V. on the night in question; said they were in the back seat of his own vehicle; recited what sex acts he engaged in; said he had no trouble achieving an erection; and claimed that the sexual encounter was consensual.

Nothing about the second part of Shelton's interview explained or aided in understanding what he had said in the first part of his interview. The second part did not furnish facts or provide context omitted from the first part, or cast what was said in the first part in a different light. Rather, the essence of the stories Shelton communicated in the two parts of the interview were diametrically opposed, presenting two completely different versions of events. In the first, on the night in question he did not recall being at Quincy's and he knew virtually nothing pertinent to the case, including the victim; in the second, on the same night, he and the victim encountered each other at Quincy's and engaged in a consensual sexual encounter, which he related in graphic detail, in the back seat of his vehicle.

Shelton's statements in the second part of the interview were unrelated to his statements in the first part and could not have served to explain them. And because his statements in the second part of the interview had no clarifying or explanatory value with respect to the first part, they only would be testimonial. That is to say, if they were to have come into evidence through Detective Stokes, their only purpose would have been to recount, as second-hand testimony, Shelton's version of what transpired between him and

A.V. on the night in question, and no more. This contravenes a requirement for use of the doctrine of completeness, that "the remaining evidence 'is not in itself testimony,'" and instead only is used "to explain the already admitted partial statements." *Otto*, 459 Md. at 454 (quoting *Feigley v. Baltimore Transit Co.*, 211 Md. 1, 10 (1956)).

We review the trial court's ruling on this issue for abuse of discretion. *See Otto*, 459 Md. at 453 ("Because reasonable minds could differ on the scope of the subject of the calls and the explanatory nature, abuse of discretion will not lie"). In the case at bar, the trial court thoroughly considered the entirety of Shelton's police interview, and the parties laboriously went through the transcript, line by line, to determine whether passages in the second part of the interview explained something stated in the first part of the interview. We are not persuaded that the trial court abused its discretion in ruling that the passages in the second part of the interview that Shelton wanted to use were not explanatory of the first part of the interview and simply were self-serving assertions that would amount to testimony, not subject to cross-examination, on his part.

II.

Shelton next contends the trial court erred by failing to call for a new jury venire given that the venire sent to the courtroom included only four African-American females and one African-American male. The State responds that Shelton waived this issue by accepting the jury as selected and it lacks merit in any event as there was no evidence of purposeful discrimination.

The venire consisted of 59 prospective jurors. After the prospective jurors entered the courtroom but before *voir dire* commenced, defense counsel objected to the

composition of the venire. *See generally*, Md. Rule 4-312(a)(3)(requiring a timely challenge to the venire). Defense counsel stated, "I would be remiss to not point out at this moment that there's four black women and one black man on this panel." The court noted the objection. Jury selection then started. After Juror Number 219, an African-American female, was removed for cause, defense counsel again raised an objection to the composition of the venire.[8] Defense counsel renewed this objection once again when Juror Number 236, the only African-American male, was stricken for cause for reasons Shelton concedes were legitimate.[9]

With respect to Juror Number 236, defense counsel argued to the trial court that she did not "care how many African-American females we have. My client is an African-American male." Because the only African-American male in the venire had been excused for cause, counsel asked for a "new panel because there's nobody of my client's race, and I don't think that's fair in a case when he's charged with rape against a white woman." The court agreed with defense counsel's assessment of the racial composition of the venire but decided to continue with the same venire.

When *voir dire* was concluded, defense counsel reminded the court that she had asked for a new venire panel to be brought to the courtroom because there would be a jury

[8] Juror Number 219 was removed because she said her religious beliefs prohibited her from discussing sex with other people.

[9] Juror Number 236 told counsel and the court that a friend of his was "falsely accused" and acquitted of a sexual act. In a long discussion at the bench, the prospective juror indicated that, given that he, his friend, and Shelton all are African-American males, he thought it best that he not serve on the jury. The court excused him for cause.

with "no African-American men on it." Defense counsel agreed that she could not make a challenge based on *Batson v. Kentucky*, 476 U.S. 79 (1986), because "the State hasn't asked to take him off other than excluding him for what are legitimate reasons, I will agree," but that the absence of another African-American male on the list of remaining prospective jurors was "prejudicial and unfair."

The court ruled as follows:

> THE COURT: Okay. [Defense Counsel] has put her objection on the record regarding the racial composition. Everything that [Defense Counsel] said regarding the number of apparent African-Americans on the panel is accurate. I think the State agrees with those numbers, but I do want to – I think the record will be very clear regarding Juror 236, and so I am going to rely on that record.
>
> It was very clear to me that Juror 236 candidly and quite frankly came to the bench and expressed reluctance to sit, and he expressed that reluctance based on his own race and the race of the defendant in this case and the nature of the allegations, what he's heard about the allegations.

The court observed that defense counsel did "an exceptional job" in handling *voir dire* of that prospective juror but "despite that, Juror No. 236 remained strong in his belief that he could not serve and would prefer to be excused, and, as such, I did excuse him." The court continued:

> I don't think that there's any law that says Mr. Shelton is entitled to a panel that reflects his race. He is entitled to a fair selection, and this Court has no influence at all over the panel that is brought to us. I don't know how many jurors were brought up here, 60-some jurors in random numbering from 182 all the way to 306, and, with that, there was no – and [Defense Counsel], to her credit, also is not making a Batson challenge. She's not suggesting that the State did anything inappropriate, but she is just suggesting that, overall, Mr. Shelton's race is not reflected in this veneer [sic], and your objection is noted.

The parties then made their strikes. Defense counsel exercised eight of the allotted ten peremptory challenges during selection of the jurors and two with respect to the selection of alternate jurors. *See generally*, Md. Rule 4-313(a)(3) (in cases involving imprisonment for 20 years or more, permitting ten peremptory challenges for the defendant and five for the State). At the end of jury selection, the court asked the parties whether they were satisfied with the jury and the alternates selected. Defense counsel did not offer an objection, stating: "The Defense is satisfied with the jury." At that point, the remaining members of the venire were discharged, the jurors and alternates who were selected were sworn in, and the court adjourned for the day.

The next morning, before opening statements, defense counsel addressed the court as follows:

> [DEFENSE COUNSEL]: . . . [Y]esterday after selected [sic] the jury, and I know I didn't say this at the time, but I just want to reiterate that when the defense said that they were satisfied in front of the jury, obviously I am still unsatisfied based on the lack of a person of my client's race being on the jury who is a man. There was only the one man, 236. He had to be excluded, and I just want to put on the record that for that reason, we are not satisfied with the jury.
>
> THE COURT: All right.

"Generally, a party waives his or her voir dire objection going to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process." *State v. Stringfellow*, 425 Md. 461, 469 (2012) (citing, *inter alia*, *Gilchrist v. State*, 340 Md. 606, 617 (1995); *accord State v. Ablonczy*, 474 Md. 149, ___ (2021) (ultimately holding that defense counsel's objection to the court's refusal to

propound certain voir dire questions was not waived by accepting the empaneled jury). As the Court of Appeals explained, such objections are "directly inconsistent with [the] earlier complaint [about the jury]," which "the party is clearly waiving or abandoning[.]" *Gilchrist*, 340 Md. at 618; *accord State v. Stringfellow*, 425 Md. at 470. Notably, the Court has held that an objection to a venire not being selected randomly from registered voter-lists was directly aimed at the venire and was waived when the jury was accepted without qualification at the conclusion of jury selection. *Glover v. State*, 273 Md. 448, 451-53 (1975) (cited in *State v. Stringfellow*, 425 Md. at 470). Moreover, any objection to the jury selection process "must be expressed for the record before the jury is sworn." *State v. Tejada*, 419 Md. 149, 162 (2011) (quotation marks and citation omitted).

Here, defense counsel made known her objection to the racial composition of the venire prior to, during, and immediately after *voir dire* of the prospective jurors. Then, after exercising all her peremptory challenges during jury selection, defense counsel affirmatively waived any prior complaint by accepting the empaneled jury. The remaining prospective jurors were then discharged, the selected jury panel was sworn, and the court adjourned for the evening. The next morning, defense counsel changed her prior acceptance of the jury, and stated that she was not satisfied with the selection process. We hold that this issue was waived. *See State v. Tejada*, 419 Md. at 167.

Even if the issue were not waived, Shelton would fare no better. Under the Sixth Amendment to the United States Constitution, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, *by an impartial jury of the State and district wherein the crime shall have been committed*[.]" (emphasis added). As the

Supreme Court has put it, the accused is afforded a "constitutional right to a fair and impartial jury," *Lockhart v. McCree*, 476 U.S. 162, 198 (1986), and the venire panel must reflect a fair cross-section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 526-27 (1975); *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 220 (1946). To establish a *prima facie* case of a Sixth Amendment violation of the fair cross-section requirement, a defendant must show:

> "(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process."

Lovell v. State, 347 Md. 623, 662-63 (1997) (quoting *Duren v. Missouri*, 439 U.S. 357, 364 (1979)).

Nevertheless, as the Supreme Court iterated in *Taylor*, 419 U.S. at 538:

> It should also be emphasized that in holding that petit juries must be drawn from a source fairly representative of the community we impose no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population. Defendants are not entitled to a jury of any particular composition, but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.

(Internal citations omitted). *Accord Kidder v. State*, __ Md. __, No. 53, Sept. Term 2020 (filed August 4, 2021) (slip op. at 3).

Indeed, the fair cross-section requirement

> does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by

> court officials without systematic and intentional exclusion of any of these groups.

Thiel, 328 U.S. at 220; *accord Kidder, supra*, slip op. at 18-19; *Williams v. State*, 246 Md. App. 308, 344 (2020) (citing *Wilkins v. State*, 270 Md. 62, 65 (1973)).

In Maryland, statutes govern the process by which venires of prospective jurors are selected. "A citizen may not be excluded from jury service due to color, disability, economic status, national origin, race, religion, or sex." Md. Code (1974, 2020 Repl. Vol.), § 8-102(b) of the Courts and Judicial Proceedings Article ("CJP"); *accord Kidder, supra*, slip op. at 3-4; *Trotman v. State*, 466 Md. 237, 240 (2019). Section 8-104 of CJP requires that "[e]ach jury for a county shall be selected at random from a fair cross section of the adult citizens of this State who reside in the county." Section 8-206 of CJP specifically states that the "source pool" of prospective jurors is to be created by set procedures and shall include the names of all resident adults on the voter registration list and individuals with driver's licenses or identification cards issued by the Motor Vehicle Administration. The Court of Appeals has explained:

> The use of voter registration lists is designed to produce an array which is a representative cross-section of the community. This official means of selecting prospective jurors is not unconstitutional even when it may have some racially disproportionate impact. In order to establish a prima facie case of discrimination the party asserting such must show that the use of those lists resulted in *purposeful discrimination*.

Colvin v. State, 299 Md. 88, 106 (1984) (footnote and internal citations omitted, emphasis added); *see also Lovell*, 347 Md. at 665 ("Voter registration lists are frequently used in jury selection and the practice has been consistently sustained") (quotation marks and citation omitted).

Shelton bore the burden to establish purposeful discrimination in the creation of the venire. *See Colvin*, 299 Md. at 103; *accord Kidder*, *supra*, slip op. at 20; *see also Hicks v. State*, 9 Md. App. 25, 30 (1970) (observing that, once the challenging party meets that burden, it falls upon the opposing party to rebut the *prima facie* case). Considering the record before us, including Shelton's concession that the one African-American man in the venire was removed for a legitimate purpose, we are not persuaded that burden was met.

For Shelton to establish a *prima facie* case, he had to do more than merely allege that the composition of the venire was not a fair representation of the people living in Montgomery County. He had to show that the selection method from voter and motor vehicle rolls systemically excluded African-Americans, and more specifically African-American men, from the jury array. However, this method has been upheld as one "designed to produce an array which is a representative cross-section of the community." *State v. Calhoun*, 306 Md. 692, 712 (1986) (quotation marks and citation omitted). Moreover, Shelton did not present any evidence that there was any purposeful discrimination in the way this particular method was used in Montgomery County. We conclude that Shelton did not meet his burden to prove purposeful discrimination in the manner Montgomery County selected the array of prospective jurors who composed the jury venire in this case.

III.

Finally, Shelton contends the trial court erred by limiting his cross-examination of A.V. with respect to her role as an actor in local community theater and her involvement in Alcoholics Anonymous. The State responds that the court properly exercised its

discretion in so ruling and in any event, if there was error, it was harmless beyond a reasonable doubt.

"The Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment . . . provides, in pertinent part, that, '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.'" *Langley v. State*, 421 Md. 560, 567 (2011) (quoting U.S. CONST. amend. VI.). The right of confrontation includes the opportunity to "'cross-examine a witness about matters which affect the witness's bias, interest or motive to testify falsely.'" *Martin v. State*, 364 Md. 692, 698 (2001) (quoting *Marshall v. State*, 346 Md. 186, 192 (1997)). A criminal defendant's constitutional right to cross-examination is not boundless, however. *Pantazes v. State*, 376 Md. 661, 680 (2003). Trial judges have "'wide latitude . . . to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues . . . or interrogation that is . . . only marginally relevant.'" *Smallwood v. State*, 320 Md. 300, 307 (1990) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)).

On direct examination, A.V. testified that she acted, directed, produced, and was on the Board of Directors for a local community theater, the Montgomery Playhouse. On cross-examination, she agreed that she had acted in murder mysteries at the community theater and had acted in the play "Catch Me If You Can." When she was asked to explain the part she played in that production, the prosecutor objected. At the bench, the court acknowledged that the fact that A.V. was an actress was relevant but questioned the relevance of a specific part she had played. Defense counsel responded by proffering that

"she plays a liar in her play" and that A.V. was a "liar." The court sustained the objection, ruling that defense counsel could question A.V. about being an actress, but could not go "into the exact details of the character she's playing[.]"

On further cross-examination, A.V. testified that a few days after the incident in question she told some friends about it. When defense counsel asked about one of these friends—"how did you know Jackie?"—the prosecutor objected. Defense counsel proffered that, in the first trial, A.V. had indicated that she knew Jackie from a "meeting," apparently referring to an Alcoholics Anonymous meeting. Defense counsel explained that she wanted to use this evidence to counter the State's theory that A.V. was too intoxicated to consent, stating, "if you are in AA it could go either way but certainly you are possibly an alcoholic and that effects . . . how alcohol would affect you that day." The court disagreed, stating that if defense counsel wanted to show how alcohol affects an alcoholic versus a non-alcoholic, she would need to present expert testimony. After hearing further argument, the court sustained the objection.

We are not persuaded that the trial court abused its discretion by limiting cross-examination in these two rulings. As the Court of Appeals has explained:

> As the decision to limit cross-examination ordinarily falls within the sound discretion of the trial court, our sole function on appellate review is to determine whether the trial judge-imposed limitations upon cross-examination that inhibited the ability of the defendant to receive a fair trial. Consistent with that discretion, we note, however, that the trial judge, and not this Court, is in the best position to determine whether the introduction of certain impeachment evidence would enmesh the trial in confusing or collateral issues.

Merzbacher v. State, 346 Md. 391, 413-14 (1997) (internal citations omitted). And:

> In controlling the course of examination of a witness, a trial court may make a variety of judgment calls under Maryland Rule 5-611 as to whether particular questions are repetitive, probative, harassing, confusing, or the like. The trial court may also restrict cross-examination based on its understanding of the legal rules that may limit particular questions or areas of inquiry. *Given that the trial court has its finger on the pulse of the trial while an appellate court does not*, decisions of the first type should be reviewed for abuse of discretion.

Peterson v. State, 444 Md. 105, 124 (2015) (emphasis added).

Neither of the questions objected to sought to elicit evidence that properly could be put before the jury. First, in asking what role A.V. had played in a particular play put on by the local community theater she was involved in, defense counsel sought to elicit that she had played a liar, and therefore that she was a liar. As a matter of basic common sense, the fact that an actor played a character in a play who is a liar is not probative that, in the actor's real life, he or she is a liar. Second, defense counsel sought to elicit, by asking how she knew a particular friend, that A.V. had met the friend at an AA meeting; and to argue from that that A.V. is an alcoholic and therefore alcohol would affect her differently than it would someone who is not an alcoholic. As the trial judge pointed out, this was a foray into scientific evidence for which there was no supporting expert testimony. Moreover, also as a matter of basic common sense, the fact that a person attends AA meetings does not reveal whether the person is an alcoholic; if an alcoholic, the level of alcoholism the person suffers; and beyond that, how the person's alcoholism affects, or does not affect, his or her tolerance of alcohol. The trial court correctly limited cross-examination into an area that defense counsel only could ask speculative questions about.

Although the court did not err, we also agree with the State that if there were error,

it was harmless beyond a reasonable doubt. There was other evidence the jury could consider in evaluating A.V.'s credibility and whether her judgment was impaired by alcohol to the extent that she was unable to consent. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (error will be harmless when reviewing court, upon independent review, is able to declare a belief beyond a reasonable doubt that there is no reasonable possibility that the error contributed to the verdict).

On cross-examination, A.V. testified that, as an actress, she had played "over the top roles," including the "funny maid, the funny cook," and that, although she did some dramatic work, she was "usually cast in comedic, farce roles." She also acted in murder mysteries sometimes requiring audience involvement. She agreed that, at around the time of this incident, she was preparing for a role in "Catch Me If You Can," and was learning her "lines." She testified that she was proud of being an actress and liked talking to people. Asked whether, based on her being an actress, it was easy for her to "tell a story," A.V. replied, "I'm actually not a great storyteller, but if I have a script, I'm good."

The jury also was presented with ample evidence concerning A.V.'s level of intoxication on the night in question. A.V. confirmed that she was drinking lighter beers that evening and that she knew that beer has less alcohol than wine or liquor. Defense witness Andre Banks, the bouncer at Quincy's on the night in question, testified that A.V. had no difficulty walking that night, he did not see her fall down, there was no reason to cut her off, and, although she was "tipsy," she was "having a good time pretty much." From what he saw, he did not believe she was drunk. He also saw A.V. and Shelton interacting throughout the evening, testifying that they were "flirty," and saw them walk

out to the parking lot together. In addition, Banks saw that someone called an Uber for A.V., but she declined to take it once it arrived. In addition, the jury saw a surveillance tape in which A.V. was seen talking to Shelton and using her phone at the time she claimed to be intoxicated. Accordingly, the court did not abuse its discretion and, if it did, we are confident that the error was harmless to Shelton beyond a reasonable doubt.

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