UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2540

September Term, 2014

MOHAMED MANSARAY

v.

STATE OF MARYLAND

Woodward,
Friedman,
Zarnoch, Robert A.,
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: December 17, 2015

A jury in the Circuit Court for Montgomery County convicted Mohamed Mansaray, appellant, of first-degree rape. Appellant was sentenced to fifty years' incarceration, with all but twenty-five years suspended, to run consecutive to any outstanding sentences. Appellant appealed and presents the following questions for our review, which we have rephrased[1]:

1. Did the trial court err in denying appellant's motion for mistrial after the State's witness revealed that appellant had previously been incarcerated?

2. Did the trial court err in admitting evidence of cell-phone tracking?

3. Did the trial court err in admitting as non-hearsay the statement of a witness to a police officer?

For the following reasons, we answer each question in the negative and affirm the judgment of the circuit court.

BACKGROUND

The evidence at trial revealed the following facts. The victim, Ms. S., lived in her apartment located on Georgia Avenue with her two daughters, F.S. and H. S. Ms. S.'s

[1] Appellant phrased the questions as:

1. "Did the trial court err in denying the motion for mistrial after the State's witness revealed that Appellant had previously been incarcerated?"

2. "Did the trial court err in permitting unfairly prejudicial testimony from Detective Widup?"

3. "The [sic] trial court err in admitting hearsay statements?"

oldest daughter, H.S., was five months pregnant at the time, and appellant was the father of her unborn child. On the evening of March 31, 2014, Ms. S. arrived home around 6 p.m. and went into her bedroom, turned on the television, and was looking through some bills when she heard a "clicking sound." Ms. S. knew that she had locked the door, but proceeded to look around in the kitchen, living room, and in each of her daughter's bedrooms. Ms. S. did not see anyone. When she went to open the hallway bathroom door, a man, later identified as appellant, came out of the bathroom and jumped on her. Ms. S. was unable to see his face, or recognize his voice, but she said that the man was wearing all black and had a "sock mask" over his face. Ms. S. was struggling with the man and saw that he had a knife. She tried to run, but fell down and the man was immediately on top of her.

Ms. S. managed to grab hold of the knife, feeling it going through her skin, and took the knife from him. The man told Ms. S. that he would not hurt her if she would stop struggling and fighting with him. Believing that the man was not going to hurt her, Ms. S. gave him back the knife. The man proceeded to tie Ms. S.'s hands behind her back using a scarf, and to cover her eyes with duct tape. The man dragged Ms. S. to her bedroom and placed her on the bed and removed her underwear. Ms. S. begged the man not "to do this" and to use a condom, but he proceeded to force himself on her. Unable to penetrate her on the first attempt, the man spat on her vagina and proceeded to penetrate her vagina with his penis. The man raped Ms. S. three times while a knife was pressed against her throat and

chest. When the man finished, Ms. S. could feel semen coming out of her. After the man left the apartment, Ms. S. ran out of the apartment naked, screaming for help.

When Officer Colleen Brown, of the Montgomery County Police Department, responded to the 911 call for a sexual assault, she observed the victim, Ms. S., outside of her apartment building on her knees in a state of hysteria, crying and screaming. Officer Brown saw that there was blood on the victim's hands and face. Ms. S reported that a masked man wielding a knife had broken into her home and sexually assaulted her. She also reported that she was concerned for her daughter and appellant, because her attacker had threatened to kill them both.[2] She was taken immediately by ambulance to Shady Grove Hospital for a forensic examination.

Martha Stone, a forensic nurse examiner, testified that on March 31, 2014, she examined Ms. S. As part of her assessment, Stone collected bodily fluids, blood, and other suspected evidence from Ms. S. Stone also performed a vaginal examination and observed some abrasions at the posterior of the vagina. The evidence taken from the sexual assault exam was analyzed by the biology lab of the Montgomery County Police Department. A DNA profile was obtained from a sperm that was found in the vaginal/cervical sample of Ms. S.'s sexual assault exam. This DNA profile was matched to appellant, whose DNA profile had previously been obtained by investigators in reference to a 2009 sexual assault.

[2] Ms. S's attacker told her that appellant was responsible for the attacker's brother being in jail.

Detective Kari Widup, with the Special Victims Investigation Division of the Montgomery County Police Department, testified that she responded to a report of a rape in the area of Georgia Avenue at 7:00 p.m. on March 31, 2014. During her initial conversation with Ms. S., Detective Widup learned that she was concerned for the safety of appellant because her assailant had stated that appellant put his brother in jail. Approximately 10:44 p.m., Detective Widup met with appellant to find out if there was anyone he had issues with or if he knew anyone who wanted to harm him or his family. Appellant, however, did not provide any useful information. During the course of their conversation, appellant acknowledged that he had a key to Ms. S.'s apartment. When Detective Widup asked for the key, appellant refused.

Detective Widup interviewed appellant again on June 2, 2014 following his arrest. When presented with evidence that his DNA was found inside of Ms. S.'s vagina, appellant responded that he did not know how it got there, and that he did not have sex with Ms. S. The detectives asked appellant about his sex life, and appellant revealed that early into his girlfriend's pregnancy, they had made a decision not to have sex as frequently, and as a result, he was not having sex as much as he would have liked. About two hours into the interview, appellant confessed to sexually assaulting Ms. S. Both the uncontroverted DNA evidence and the videotaped confession were presented as evidence against appellant at his subsequent trial.

Appellant testified in his own defense and denied sexually assaulting Ms. S. Appellant stated that, when questioned by the police, he confessed because he was tired

and did not want to face any more questions. Appellant explained that, when he told the detectives about what happened in the apartment when he was raping Ms. S., he was just making it up in his head.

Additional facts will be supplied below as necessary to our discussion of the questions presented in this appeal.

DISCUSSION

I.

Appellant first contends that the lower court abused its discretion in denying his motion for a mistrial. He maintains that Detective Widup's testimony regarding appellant's previous incarceration caused irreparable harm and that a mistrial was the only adequate recourse.

The State counters that Detective Widup's mentioning of appellant's prior incarceration was an isolated "slip-of-the-tongue" and that the trial court's curative instruction to the jury was an appropriate response.

Prior to his trial, appellant moved to preclude the State from mentioning that appellant had previously been incarcerated, and the State consented. Despite this agreement, the lead detective, Detective Widup, intimated during her trial testimony that appellant had been incarcerated previously. This occurred when the State was questioning Detective Widup about an interview that she had with appellant:

> [PROSECUTOR]: What was the purpose of the first meeting that you had with appellant]?

DET. WIDUP:	When I spoke with [the victim], she stated that the suspect…evidently had stated that [appellant] put his brother in jail. So, I followed up with [appellant] to see if he had any issues with anyone. If he knew of anyone that was out to hurt him or his family.
	* * *
[PROSECUTOR]:	When you asked [appellant] about whether or not he had any issues with anyone or anything like that, was he able to talk to you about that or give you any names, or anything to that effect?
DET. WIDUP:	No. **He said that he had not had any issues with anyone. I spoke to him about his previous incarceration, and asked him if during that time –**

(Emphasis added).

Appellant immediately objected and moved for a mistrial. After a brief bench conference, the trial court concluded that there was no misconduct on the part of the prosecution, that Detective Widup's mentioning of the incarceration was "an unintentional slip of the tongue," and that a mistrial would be an "extreme remedy for a minor transgression." In lieu of a mistrial, the court issued the following curative instruction to the jury:

> So, I'm going to give you an instruction and you'll hear this same instruction at the end of the case, but one of the instructions is what constitutes evidence. And of course evidence, we talked a little bit about it. It's testimony, physical evidence, stipulations, which I think we'll have one of or more of.

> But anyway, then it's the following things are not evidence and should not be given any weight or consideration. And then one of the things that is not evidence is any testimony that I struck or told you to disregard.
>
> All right, so, then another part of the instruction says when I did not permit the witness to answer the question, you must not speculate as to the possible answer. If, after an answer was given I ordered that the answer be stricken, you must disregard both the question and the answer.
>
> All right, so this is where this is all leading to. During the last question and answer, there was a question about when the detective first was talking to [appellant] because there was this whole issue of well, during the assault, the assailant brought up, oh well you know, [appellant] put my brother in jail, or something like that.
>
> So anyway, but in getting to that, the detective I think inadvertently brought up something about, oh well, well, [appellant] was previously incarcerated. So that's what's being stricken.
>
> So, we're going to start all over again with this thing. So my instruction to you is to disregard anything that had anything to do with that last question and answer. So we're going to kind of start over again, but I'm striking that evidence, both the question and the answer, so disregard it. Don't speculate about anything and we'll just pick up from where we are.

We review the trial court's decision to deny appellant's request for a mistrial under an abuse of discretion standard. *See e.g. Simmons v. State,* 436 Md. 202, 211 (2013) ("[O]ur cases make clear that we apply the abuse of discretion standard of review in cases of mistrial."); *Carter v. State,* 366 Md. 574, 589 (2001) ("It is well-settled that a decision to grant a mistrial lies within the sound discretion of the trial judge and that the trial judge's determination will not be disturbed on appeal unless there is [an**]** abuse of discretion.").

Under Maryland Rule 5-404(b), evidence of other crimes, wrongs, or acts is not admissible against a defendant in a criminal case, unless the evidence falls under one of the narrowly-defined exceptions. "The other crimes rule reflects a fear that jurors will conclude from evidence of other bad acts that the defendant is a bad person and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking" *Behrel v. State*, 151 Md. App. 64, 123 (2003) (internal quotation marks and citation omitted). S*ee also Terry v. State,* 332 Md. 329, 426 (1993) (evidence of other criminal acts is inadmissible because it may confuse jurors or prejudice them against the defendant).[3]

When a jury has been exposed to inadmissible evidence, "[t]he question is one of prejudice to the defendant." *State v. Hawkins,* 326 Md. 270, 276 (1992). A curative instruction to the jury is usually a sufficient remedy for such prejudice; however, a mistrial is a more appropriate remedy when "the damage in the form of prejudice to the defendant transcend[s] the curative effect of the instruction[.]" *Kosmas v. State,* 316 Md. 587, 594 (1989). Said another way, a trial court's decision to issue a curative instruction rather than grant a mistrial will not be disturbed on appeal unless "the risk that the jury will not, or cannot, follow instructions is so great…that the practical and human limitations of the jury system cannot be ignored." *Bruton v. United States,* 391 U.S. 123, 135 (1968).

[3] In the present case, the State does not argue that Officer Widup's statement was admissible. Instead, the State argues that the trial court's instruction sufficiently cured any prejudice.

In *Guesfeird v. State*, 300 Md. 653 (1984), the Court of Appeals enumerated several factors that should be considered when determining the prejudicial nature of a witness's reference to inadmissible evidence:

> In determining whether [a reference to inadmissible evidence] was so prejudicial that it denied the defendant a fair trial, courts have looked at many factors. The factors that have been considered include: whether the reference…was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; whether a great deal of other evidence exists; and, whether an inference [from the inadmissible evidence] can be drawn.

Id. at 659.

Applying the above factors to the present case, we hold that the trial court did not abuse its discretion in choosing to issue a curative instruction rather than declare a mistrial. Detective Widup's statement regarding appellant's incarceration was an unsolicited, isolated comment. The statement was quickly addressed by the trial court, and no inferences could have been drawn by the jury other than the fact that appellant had previously been incarcerated. No mention was made about when appellant was incarcerated, how long he was incarcerated, or why he was incarcerated. More importantly, the statement had no bearing on the State's most damning evidence, namely the DNA sample linking appellant to the crime and appellant's subsequent confession.

Appellant attempts to draw parallels between the present case and other Maryland cases in which statements made by a witness about a defendant's prior bad acts were held

to be overly prejudicial. Although these cases seem to support appellant's contention that the trial court abused its discretion in denying his motion for a mistrial, a closer look at the facts of each case shows that none are apposite to the case at hand.

In *Kosmas v. State*, 316 Md. 587 (1989), the Court of Appeals reversed a defendant's murder conviction based on a witness's single, unsolicited reference to the defendant's refusal to take a lie detector test. *Id.* at 589. In that case, the defendant was charged in the murder of his wife. *Id.* at 590. At trial, the defendant's son testified that the defendant verbally and physically abused the victim, and a private investigator testified that the defendant contracted him to kill the victim. *Id.* The defendant vehemently denied both accounts, *id.* at 590-91, and no physical evidence was offered linking the defendant to the murder. *Id.* at 597-98.

The prejudicial comment came during the private investigator's testimony, in which he stated that he offered to administer a lie-detector test to the defendant after the victim's body was found, and the defendant refused. *Id.* at 592. The defendant immediately asked for a mistrial, and the trial court denied the motion. *Id.* The Court of Appeals reversed, determining the reference to be highly prejudicial, because the credibility of the defendant was crucial and because the State's other evidence was weak:

> Much of the strength of the State's circumstantial evidence case depended upon the jury believing that the defendant had repeatedly threatened and abused his wife, and had attempted to contract for her murder. The defendant adamantly denied the truth of those allegations. Informing the jury that the defendant had refused to take a lie detector test cut to the heart of the defense.
>
> * * *

> If the defendant is believed in those areas in which his testimony conflicts with that of [the witnesses], the State's case is very weak.

Id. at 596-98.

Similarly, in *Rainville v. State,* 328 Md. 398 (1992), a witness made an unprovoked, isolated comment about the defendant's incarceration, *id.* at 399, which the Court of Appeals held was enough to warrant a mistrial. *Id.* at 411. In that case the defendant was charged with sexually assaulting a seven-year-old girl in her home. *Id.* at 400. At trial, the victim's mother mentioned that the defendant had previously been in jail for "what he had done to [the victim's brother]." *Id.* at 406.

The Court of Appeals held this comment to be incurably prejudicial, as the physical evidence against the defendant was weak and "[t]he State's case rested almost entirely upon the testimony of a seven-year-old girl." *Id.* at 409. Furthermore, the Court determined that a reasonable inference could be drawn that the defendant had sexually assaulted the victim's brother, which "almost certainly had a substantial and irreversible impact upon the jurors, and may well have meant the difference between acquittal and conviction." *Id.* at 410.

Finally, in *Carter v. State,* 366 Md. 574 (2001), the Court of Appeals reversed the murder conviction of the petitioner, because improperly admitted evidence of petitioner's prior bad acts was heard by the jury. *Id.* at 577-78. In that case, the petitioner was charged with the murder of his employer, who was killed by a single .22 caliber bullet during an apparent robbery. *Id.* at 578. Although there was some circumstantial evidence linking the petitioner to the crime, no direct evidence was found. *Id.*

At trial, one of the State's witnesses, a police officer, testified that the petitioner had a prior arrest on a weapons charge, which the officer revealed in an attempt to link the petitioner to the type of gun used in the murder. *Id.* at 579. Another witness testified that the petitioner stated that he had robbed the employer because some "crackhead" he sold drugs to owed him money, and a third witness testified that the petitioner had admitted to killing someone (not the victim). *Id.* at 580-81. Each time the petitioner objected and asked for a mistrial, and each request was denied. *Id.* Instead, the trial court issued several curative instructions to the jury, which "did nothing to diminish the prejudice to petitioner and, in fact, only exacerbated the harm." *Id.* at 582.

Ultimately, the Court of Appeals held that the trial court's decision to deny a mistrial was error, due in large part to the "cumulative effect of the inadmissible evidence[.]" *Id.* at 591. Not only was the jury exposed to inadmissible evidence multiple times, but such evidence was directly linked to key pieces of the State's circumstantial case against the petitioner, namely his connection with the murder weapon and his alleged motive. *Id.* Lastly, the Court held that the trial court's curative instructions were ineffective due to the fact that the instructions mentioned the inadmissible evidence multiple times, which tended to highlight the evidence rather than cure it. *Id.* at 591-592.

In the present case, unlike the statements in *Kosmas* and *Rainville*, Detective Widup's statement about appellant's incarceration had no bearing on the weight of the State's main evidence, which was strong. Appellant's DNA was conclusively matched to sperm belonging to Ms. S's attacker. In addition, the jury saw appellant's videotaped

interview with police in which appellant confessed to the assault and provided details about the crime that only the perpetrator would know.[4] Although appellant testified that he never assaulted the victim, when asked by the prosecutor whether he admitted to his girlfriend (the victim's daughter's) following his arrest that, "it was me, I did it, I'm sorry," appellant responded "yes." Given these circumstances, we cannot conclude that Detective Widup's isolated statement about appellant's previous incarceration "had such a devastating and pervasive effect that no curative instruction no matter how quickly and ably given could salvage a fair trial for the defendant." *Rainville,* 328 Md. at 411.

Finally, the trial court in the present case dealt with the statement quickly and in a succinct manner, and it does not appear from the record that any mention was made of the statement at any other time during the trial. Therefore, there was little chance that the statement had any sort of lasting or cumulative effect on the jury, unlike the statements in *Carter,* which were repeated several times by the witnesses and the trial court. Consequently, we cannot say that the purported curative instruction was inadequate to cure the prejudice. *Carter,* 366 Md. at 592 (stating that "generally cautionary instructions are deemed to cure most errors, and jurors are presumed to follow the court's instructions").

In sum, we hold that the trial court did not abuse its discretion in choosing to issue a curative instruction rather than declare a mistrial after Detective Widup testified to

[4] Appellant stated that he bound Ms. S's hands with a scarf and covered her eyes with duct tape. Appellant also stated that he had trouble getting aroused, that he helped clean Ms. S with tissues after the assault, and that he threw the tissues in Ms. S.'s trash can. All of these details matched Ms. S.'s testimony and the physical evidence found at the scene.

appellant's prior incarceration. *See Klauenberg v. State*, 355 Md. 528, 555 (1999) ("The grant of a mistrial is considered an extraordinary remedy and should be granted only 'if necessary to serve the ends of justice.'" (citation omitted)).

II.

Appellant next contends that the trial court erred in allowing Detective Widup to testify regarding appellant's cell phone records because the testimony was outside the scope of the cross-examination and Detective Widup was not qualified as an expert in cell phone technology.

The State responds that appellant "opened the door" to Detective Widup's cell phone testimony during cross-examination, and that any argument about Detective Widup's qualification as a cell-phone expert was waived because appellant failed to object during that part of Detective Widup's testimony.

During defense counsel's cross-examination of Detective Widup, defense counsel asked Detective Widup what steps she took in her investigation. Detective Widup responded that, among other things, she sent some paperwork to appellant's cell phone company. On re-direct, the State asked Detective Widup to elaborate on this answer, and appellant objected, claiming that the State's line of questioning was outside the scope of cross-examination. The trial court overruled the objection on the grounds that appellant raised the issue during cross-examination. Detective Widup's testimony continued as follows:

DET. WIDUP:	I sent a request to the cell phone company of [appellant's] cell phone

	provider seeking documentation about his cell phone.
[PROSECUTOR]:	And what is the documentation, what kinds of documentation did you get back?
DET. WIDUP:	Subscriber information, call detail records and cell side towers.
[PROSECUTOR]:	Based on that information did you do further research into those records and where the cell phone was during the time of this incident?
DET. WIDUP:	Yes.
[PROSECUTOR]:	And what if any information did you find?
DET. WIDUP:	That [appellant] was in the area of the apartment complex during the time of the incident.

During defense counsel's recross-examination, the following transpired:

[DEFENSE]:	Detective what was the purpose of requesting the cell phone records?
DET. WIDUP:	I wanted to see where [appellant] was during the assault.
[DEFENSE]:	And were you able to ascertain where he was during the assault?
DET. WIDUP:	Yes.
[DEFENSE]:	Where was he?
DET. WIDUP:	In the location of the apartment.
[DEFENSE]:	And how do you know that?

DET. WIDUP: His cell phone records reflected that.

Detective Widup also testified during recross-examination that she was not an expert in cell-phone technology and that she could not conclusively say that appellant was at or near Ms. S.'s home at the time of the attack. Appellant did not raise any additional objections beyond his original objection regarding the scope of the State's redirect.

A trial court's decision to admit evidence is normally "a matter left to the sound discretion of the trial judge." *Vandegrift v. State,* 82 Md. App. 617, 639 (1990) (discussing the trial judge's decision to admit a voice exemplar). Consequently, we extend great deference to the trial court and will reverse the court's decision "only if the court abused its discretion." *Hopkins v. State,* 352 Md. 146, 158 (1998).

Ordinarily, the scope of redirect examination is limited to the witness's explanations of any new matters brought up during cross-examination. *Thurman v. State,* 211 Md. App. 455, 470 (2013). Nevertheless, this is no hard-and-fast rule, and trial courts are granted broad discretion regarding the scope of redirect examination and the presentation of evidence in general:

> As a general rule, redirect examination must be confined to matters brought out on cross-examination. However, it is within the court's discretion to allow the introduction of something new or forgotten if the purposes of justice seem to demand it, and this Court will not interfere unless there is a clear abuse of such discretion.

Fisher Body Div. v. Alston, 252 Md. 51, 56 (1969).

In the present case, we hold that the trial court did not abuse its discretion in allowing Detective Widup to testify about the steps that she took during her investigation,

including those involving appellant's cell phone records. Appellant asked during cross-examination about Detective Widup's investigation, and Detective Widup responded that she "sent over some paperwork to the cell phone company[.]" At no time did appellant object or move to strike Detective Widup's answer. As a result, the trial court was well within its discretion in allowing Detective Widup to explain this answer during the State's redirect examination. *See Thurman v. State,* 211 Md. App. 455, 470 (2013) (discussing the general rule that explanations and replies to matters brought up during cross-examination are permitted during redirect).

Although Detective Widup's subsequent testimony regarding cell-phone technology may have been improper, we need not address it (including whether appellant "opened the door"), because appellant did not properly preserve the issue for our review.

"[O]pening the door" is a rule of expanded relevancy whereby "competent evidence which was previously irrelevant [becomes] relevant through the opponent's admission of other evidence on the same issue." *Clark v. State,* 332 Md. 77, 84-85 (1993). On the other hand, incompetent evidence is "inadmissible for reasons other than relevancy." *Grier v. State,* 351 Md. 241, 261 (1998). Thus the "opening the door" doctrine does not apply to incompetent evidence, which is generally inadmissible. *Id.* Testimony regarding cell-phone tracking by a lay person, such as the testimony given by Detective Wilder in the present case, has been viewed as incompetent evidence. *See Coleman-Fuller v. State,* 192 Md. App. 577, 619 (2010).

With that being said, it is well established that a party opposing the admission of evidence, incompetent or otherwise, must object at the time the evidence is offered. *Ware v. State,* 170 Md. App. 1, 19 (2006). If such objection is not made "at the time the evidence is offered or soon thereafter…the objection is waived." Md. Rule 4-323. In addition, "objections must be reasserted [after each question or answer] unless an objection is made to a continuing line of questions." *Ware,* 170 Md. App. at 19.

In the present case, appellant lodged no further objections to Detective Widup's testimony following his initial objection regarding the scope of the State's redirect. Appellant needed to object again when it became clear that Detective Widup's testimony crossed into the realm of potentially incompetent evidence, an issue that is separate and distinct from the issue of scope. *See Banks v. State,* 84 Md. App. 582, 588 (1990) ("[W]hen the grounds for an objection are stated by the objecting party…only those specifically stated are preserved for appellate review; those not stated are deemed waived.").

Likewise, there is nothing in the record to suggest that appellant's initial objection was meant to be continuous or applicable to the entirety of Detective Widup's testimony. We faced a similar situation in *Brown v. State,* 90 Md. App. 220 (1992), where the defendant made a timely objection to the admission of a handgun at one point during the trial but failed to object when the evidence was introduced later in the proceedings. *Id.* at 224. In ruling that the defendant failed to preserve the issue for appellate review, we held:

> For his objections to be timely made and thus preserved for our review, defense counsel either would have had to object each time a question concerning the gun was posed or to request a continuing

> objection to the entire line of questioning. As he did neither, his objection is waived, and the issue is not preserved for our review.

Id. at 225.

Moreover, on recross-examination defense counsel questioned Detective Widup at length about cell-phone technology, ultimately getting her to admit that she could not place appellant in the victim's apartment at the time of the attack. As a result, appellant cannot now claim that he was aggrieved by Detective Widup's testimony. *See Klauenberg*, 355 Md. at 544 (discussing the "invited error" doctrine, whereby a defendant who invites or creates error waives the issue on appeal).

III.

Finally, appellant argues that the trial court erred in allowing Detective Widup to testify as to what a witness told another officer because such statements were inadmissible hearsay. The State responds that the hearsay issues were waived, and if not waived, the witness's statement was not inadmissible hearsay, because it was not being offered for the truth of the matter asserted**.**

As discussed above, a trial court's rulings on the admissibility of evidence are normally reviewed for abuse of discretion. *See Hopkins, supra.* On the other hand, "[w]hether evidence is hearsay is an issue of law reviewed *de novo*." *Bernadyn v. State*, 390 Md. 1, 8 (2005). Appellate review of hearsay rulings is especially tricky because it often involves both questions of law and questions of fact. As a result, the Court of Appeals has adopted a two-pronged approach to the standard of review regarding the admission of hearsay:

> [T]he trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review. Accordingly, the trial court's legal conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error.

Gordon v. State, 431 Md. 527, 538 (2013) (citations omitted).

In the present case, the trial court did not make any factual determinations regarding the admission of the statement in question; instead, the court made a legal determination that the statement was not hearsay because it was not being offered for the truth of the matter asserted. For this reason, we review the trial court's ruling *de novo*.

Under Maryland Rule 5-801(c): "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Such out-of-court statements are inadmissible unless they are permitted by applicable constitutional provisions or statutes, or unless they fall under one of the hearsay exceptions recognized by the Maryland Rules. Md. Rule 5-802. But an out-of-court statement is not hearsay if it is not being offered to prove that the statement itself is true. *See e.g. Benton v. State,* 224 Md. App. 612, 628 (2015) (Out-of-court statement was not hearsay because it was offered to show the witness's state of mind); *Ashford v. State,* 147 Md. App. 1, 77 (2002) (Out-of-court statement was not hearsay because it was offered to show the effect of the statement on the defendant).

During his cross-examination of Detective Widup, defense counsel asked Detective Widup why she had not investigated other suspects following her initial interview of appellant:

[DEFENSE]:	Why did you ask [appellant about his sister's boyfriend]?
DET. WIDUP:	I was curious about any males that may have any knowledge about [the victim].
[DEFENSE]:	Okay, your curiosity, what did you do with that information?
DET. WIDUP:	Nothing.
[DEFENSE]:	Why?
DET. WIDUP:	Nothing.
[DEFENSE]:	I understand you said nothing, but why did you do nothing?
DET. WIDUP:	At that point it was deemed that it was [ir]relevant.
[DEFENSE]:	Detective there was an unknown rapist on the loose. You didn't deem it would be relevant to contact a potential suspect?
DET. WIDUP:	[Appellant] described what [the] boyfriend looked like.
[DEFENSE]:	And what was that description?
DET. WIDUP:	That he had hair similar to what [appellant] has now. The witness' description was that the suspect

	running from the scene had twists in his hair. [5]
[DEFENSE]:	Now --
DET. WIDUP:	That would contradict the description of [the] boyfriend.
[DEFENSE]:	And who was that witness that was at the scene that gave you that description?
DET. WIDUP:	A woman that lived in the apartment complex.
[DEFENSE]:	Did you speak with that woman?
DET. WIDUP:	I personally did not, no.
[DEFENSE]:	What's her name?
DET. WIDUP:	I'll tell you, Taylor Jones.

Jones gave a written statement to Officer Garcia[6] that contained a physical description of a person running from the scene of the crime. Jones's statement was given to Detective Widup, who placed it in her case file. Defense counsel questioned Detective Widup at length about why she did not speak with Jones about her statement, why Detective Widup relied on Jones's statement, and whether she ever showed Jones any pictures of the suspects. At no time did appellant object or move to strike Detective Widup's answers.

[5] At the time of trial, appellant's hair was not in twists.

[6] The record does not indicate Officer Garcia's first name.

At a later point during the cross-examination, defense counsel asked Detective Widup why she did not investigate George Lopez, the ex-boyfriend of the victim's daughter:

[DEFENSE]:	Is there a reason for that?
DET. WIDUP:	Again I did not think Mr. Lopez was relevant to the investigation.
[DEFENSE]:	Why didn't you think so Detective?
DET. WIDUP:	Because he does not match the descriptions given.
[DEFENSE]:	The description that was given by [Jones] that you never spoke to?
DET. WIDUP:	I don't speak to everyone, that's correct.
[DEFENSE]:	You didn't speak to anyone, is that correct?
DET. WIDUP:	No.

On redirect, the State questioned Detective Widup about the description of the person Jones saw contained in her statement, and appellant objected on the grounds of hearsay. The trial court sustained the objection, and the State requested a bench conference. The State argued that much of appellant's cross-examination of Detective Widup focused on the thoroughness of her investigation and her disinclination to investigate other suspects. The State claimed that Jones's statement was being offered not to identify any particular person, but to show the state of mind of Detective Widup and to address the issues raised by appellant during cross-examination, namely why Detective Widup did not investigate

other suspects. The trial court agreed with the State and overruled the objection on the grounds that the statement was not being offered for the truth of the matter asserted.

We agree with the trial court that Jones's statement was not hearsay. The initial level of alleged hearsay was the description of the suspect in a written statement given by Jones to Officer Garcia. The second level of alleged hearsay was Detective Widup's testimony about the contents of Jones's statement. In neither case was the statement offered for the truth of its contents. Detective Widup's testimony on the contents of Jones's statement was admitted to explain the course of the investigation and to show why Detective Widup did not investigate other suspects. In addition, Detective Widup's testimony was not offered to identify any particular person, including appellant. Accordingly, the trial court did not err by admitting the testimony of Detective Widup regarding the contents of Jones's written statement to the police.

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