Circuit Court for Montgomery County
Case Nos. 134125C & 134442C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3144

September Term, 2018

TYRON R. JONES

v.

STATE OF MARYLAND

Beachley,
Wells,
Gould,

JJ.

Opinion by Beachley, J.

Filed: February 6, 2020

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

Tyron R. Jones, appellant, was convicted by a jury sitting in the Circuit Court for Montgomery County of second-degree assault, malicious destruction of property, and obstruction of justice.[1] Appellant raises seven questions on appeal, which we have rephrased for clarity:

I. Did the trial court abuse its discretion when it allowed a State's witness to testify about the presence of a gun at the home during the assault because the testimony was irrelevant and unduly prejudicial?

II. Did the trial court abuse its discretion in admitting a 911 call because it constituted inadmissible hearsay?

III. Did the trial court abuse its discretion in admitting video from the responding police officers' body cameras because the video was irrelevant and unduly prejudicial?

IV. Did the trial court err in its handling of a *Batson*[2] challenge?

V. Did the trial court abuse its discretion when it allowed a State's witness to testify about statements appellant made that the suppression court had earlier ruled were not admissible as heard on the body camera video?

VI. Did the trial court abuse its discretion in denying appellant's motion for judgment of acquittal on the charge of obstruction of justice?

---

[1] The jury acquitted appellant of a second count of second-degree assault against his daughter, Yanique Jones. Because Yanique and her father have the same last name, we shall refer to Yanique by her first name.

The court sentenced appellant to 15 years of imprisonment, all but ten years suspended, and five years of probation for assault; a consecutive 60-day term, all suspended, and five years of probation for destruction of property; and a consecutive five-year term, all suspended, for obstruction of justice.

[2] *Batson v. Kentucky*, 476 U.S. 79 (1986).

VII. Did the trial court abuse its discretion in denying appellant's motion for judgment of acquittal on the charge of second-degree assault?

For the following reasons, we shall affirm the judgments.

FACTS

The State's theory of prosecution was that on the evening of June 16, 2018, appellant and his ex-wife, Shannon Polizzi, had an argument during which he assaulted her, and punched a hole in her bedroom door. The State further averred that, about two months later, during telephone calls from jail, appellant asked Polizzi to lie about the assault and say nothing happened. The State proceeded under two theories of assault: intent to frighten and battery. The State's evidence came from: the testimony of Polizzi, her daughter Yanique, appellant's cell mate, and two responding police officers; Polizzi's written police statement; video footage from two responding police officers' body cameras; and appellant's recorded telephone calls with Polizzi from jail. Appellant's principal defense was that he and Polizzi had engaged in a mutual affray and thus he was not guilty of an assault. Appellant called no witnesses. The following evidence was elicited at trial.

On June 16, 2018, Polizzi lived in a townhouse in Montgomery County with her and appellant's four children, who ranged in age from nine to nineteen years old. Appellant and Polizzi had been in a relationship for about twenty years during which they were married for seven years. After their divorce in 2014, appellant spent time at her home taking care of their children.

When Polizzi arrived home after work around 9:00 p.m. on June 16, 2018, appellant and three of their four children were present. She went up to her bedroom where she and

appellant had a conversation that became an argument. When Polizzi attempted to leave the bedroom, appellant pushed her back into the room. Their oldest daughter, Yanique, then came into the room and told them to stop arguing, which they did. When Yanique went back to her bedroom, Polizzi and appellant, however, continued to argue, and he punched a hole through her bedroom door. Around this time, the police came to the front door, and they both went downstairs.

At trial, Polizzi downplayed these events, stating that appellant used "[n]ot a lot" of force when he pushed her back into the bedroom and did not touch her in any manner other than the push. However, the State entered evidence at trial that appellant hit Polizzi and threatened to kill her and their children.

Chad Warren and Nicole Seymour, police officers with the Montgomery County Police Department, responded to Polizzi's home around 9:30 p.m. on June 16, 2018, for a domestic violence call. The State admitted into evidence and played for the jury bodycam videos from the two responding police officers. On the videos, appellant, who was agitated and speaking loudly, can be seen opening the door and telling the officers without prompting, "Ain't nobody put a hand on nobody." Appellant also said without prompting: "I'm not going to kill her[]. I'm not going to kill my family yo." In the video, a police officer directs Polizzi to step just outside the home where she tells the officer that she came home from work, and appellant "pushed me" and "smacked me" and "pulled my hair out." Polizzi told the officer that appellant said he was going to kill her and their children, and

"he was going to blow [their] brains out." She told the officer that she was "scared for [her] life."

The State admitted as substantive evidence a prior inconsistent statement written by Polizzi that night. She wrote in her signed statement: "Came home at 9:15 p.m. Tyron started yelling and assaulting me; pulling my hair and punching me, scratched my face. Told me that he was going to kill me and my children and his self tomorrow, he was going to blow my brains out. Tyron Jones is my ex-husband." When the State asked Polizzi on direct examination if she had a gun in the house, she responded, "No." Polizzi testified that she did not want to be in court testifying against appellant, and that she had lied in the video and in her written statement because she was "very angry" and upset with appellant.

Officer Warren testified that when he knocked on the door, appellant answered and was "yelling, cussing" and acting "extremely volatile" and "very erratic." Appellant had blood on the knuckles of his hand. Officer Warren testified that at some point during the interaction, he stopped appellant from going upstairs, and appellant told him: "[T]here are guns in this house. I'll blast you all away." Appellant told him the guns in the house were registered to Polizzi.

Officer Seymour testified that Polizzi appeared to have been crying. Polizzi told her that she and appellant had a verbal argument that "escalated to physical when [he] grabbed her, hit her in the face an unknown number of times, and grabbed her hair and pulled her." The officer noted that Polizzi had an open scratch on her right cheek and a red mark on her neck. Polizzi showed the officer "clumps of her hair" lying on the floor of her

bedroom. The State introduced police photographs of Polizzi showing the scratch on her cheek and mark on her neck, and photographs of the bedroom door showing a hole punched through it.

Yanique Jones testified that on the night in question her parents were arguing and she tried to stop them. She called 911, a recording of which was introduced into evidence and played for the jury. In the recording, she told the operator her father was "hitting" her mother, and her father had "hit" her when she tried to intervene. She testified that she told the truth when she called 911.

Syavash Randall Ayazi testified that he and appellant were cell mates in August of 2018, during which time Ayazi was incarcerated for second-degree assault, fleeing, resisting arrest, and escape. Ayazi admitted to a "long criminal record," with over ten convictions including a robbery in 2006. While cell mates, appellant told him that he wanted to call his wife and daughter and tell them not to come to court.

Ayazi also testified that appellant told him about the assault. Appellant told him:

> [H]e was tired of his wife not getting her life together. That she needed to [get] her f***ing license. And he got sick of it. And he was at home and he was drinking at a tree in the back of his house. And she came home. Obviously there was an argument that entailed [sic]. And I know exactly what room. He didn't explain it but it was a room where he punched [a] hole in the room. They were fighting with each other and he . . . [said he] whipped her ass. . . .
>
> [T]here is no evidence because there is no marks on her face. And that if he did [leave marks] at all[,] if there were going to be any marks they would be on her head because that's where he was punching her and it was not on her face. And that if he did it it was only a couple times like he didn't know. He said that he just . . . cracked. And he just had enough. He cracked and his daughter came from I guess behind him to get him off her mom.

Ayazi further testified that appellant admitted that he told Polizzi: “I’m going to f***ing kill everybody in this f***ing house starting with the kids and then you.” According to Ayazi, appellant said that there was a handgun and a registered shotgun in the house and that “[m]aybe it is a good thing that I did get locked up as well because I don’t know what the f**k I would have done.” On September 18, about a month after appellant told Ayazi what happened, Ayazi signed an agreement with the State, which was admitted into evidence. The agreement provided that the State would nolle pros Ayazi’s charges in exchange for his testimony.

Because appellant did not want his telephone conversations with Polizzi to be connected with his name, Ayazi agreed that appellant could use Ayazi’s prison identification number to call Polizzi. On August 10, about two months after the assault, appellant twice spoke to Polizzi from jail using Ayazi’s prison identification number. The recordings were played for the jury and the recordings and transcripts of the recordings were admitted into evidence. In the first call, the following colloquy occurred:

> [APPELLANT]: Hi Shannon[], now this is what I need, I’m not telling you what to do . . . . Listen to me for one time, listen. It ain’t, it’s like I said before, (unintelligible), it’s basically . . . the State of Maryland versus little ole Tyron, now I need the State of Maryland versus the Jones family. You’re the key, you’re the key.
>
> [POLIZZI]: I’m not the Jones family.
>
> [APPELLANT]: Listen, I don’t have time for that right now. . . . [R]ight now all I ask you to do, listen, you’re not going to get in trouble, you can’t be charged with nothing. All I need you to do, I mean my birthday is coming up and all I want for my birthday, all I ask you to do is my next [c]ourt date is on the 27th so I need you and my lawyer needs you at the same time. All

I ask you to do is basically write a letter to the DA and tell the lawyer that basically so I can make sure, so I can make sure -- oh my god.

[POLIZZI]: I'm not doing anything.

[APPELLANT]: Then make sure that the lawyer get the letter as well. All you're saying is basically you write a letter, nice, brief and short you main concerns, you write to the DA, you also writing a letter to the lawyer that basically you know, such and such, I suffer from anxiety. Listen, please, please, please, I suffer from anxiety, you know, I lied, that's it. I lied on the statement, that's it and I need you to sign it and you get it notarized. You get it notarized.

[POLIZZI]: So you want me to say I did nothing? That you did nothing when they have evidence that you did it.

[APPELLANT]: They don't have no evidence. That's what I'm telling you.

In the recording, appellant repeatedly asked Polizzi to say she lied in her earlier statement to the police, and she repeatedly replied that she would not. The recording continued:

[APPELLANT]: They lying on this f***ing piece of paper yo.

[POLIZZI]: I'm not lying. I'm not lying.

[APPELLANT]: They saying I hurt you, I didn't.

[POLIZZI]: Yes, you did.

[APPELLANT]: No, I didn't, did I punch you?

[POLIZZI]: Yes.

In the second call a few minutes later, appellant continued to ask Polizzi to say she lied in her earlier statement. The following colloquy occurred:

[APPELLANT]: Shannon listen please, I don't have the time to sit there but don't question me, please don't do that right now. All I ask you to do is what I'm sitting here telling you to do. I need the help, the lawyer needs your help. Yanique already has a lawyer out there and everything. I need you to sit there and say it, you're not going to get in trouble, yo. They can't do nothing to you, they can't do nothing to you, but a little bit of self-love, you got

(unintelligible), that's all I ask you to do. You don't have to worry about -- I'm doing this for myself for a change for my children.

[POLIZZI]: (Unintelligible) picture of your hair blown out, we got pictures of scratches on you.

[APPELLANT]: Shannon.

[POLIZZI]: And you want me to tell them that I did that to myself?

[APPELLANT]: Listen they already like, listen, they have nothing. I seen the pictures already, this is nothing. I don't even remember pulling your hair whatever. Whatever sitting over there they saying, I don't remember any of that, a scratch ain't nothing, you know what I mean? They sitting there talking about I punched you or whatever, that's what they saying, they only going by what you saying, you think somebody going to dog on kill you or whatever. Please tell them that you lied on your statement, that's all I ask. I don't ask nothing else from nobody. I never even, you know what I mean, like I said, it was you --

[POLIZZI]: I'm not--

[APPELLANT]: -- while I was gone. You're not going to get in trouble. All I ask you to do is write them and tell them the three things, I deal with anxiety, that did not happen, I lied. Write that, get it notarized, get three copies, you know. Yanique write the same letter and I need Nia to write a letter.

[POLIZZI]: Nia's not writing no letter, and I already spoke to Nia, she's got nothing to do with it. I'm not getting my daughter involved.

As noted, appellant was convicted of second-degree assault against Polizzi, malicious destruction of property, and obstruction of justice. We shall provide additional facts as necessary.

DISCUSSION

I.

Appellant first argues that the trial court committed reversible error when it allowed Ayazi to testify that appellant told him that he had a gun in the house because the statement was irrelevant and unduly prejudicial. Appellant argues the testimony was irrelevant because it "did nothing to make it more or less likely" that he committed an assault, and the testimony was prejudicial because it implied that he was a "dangerous individual." He cites *Smith v. State*, 218 Md. App. 689 (2014), to support his argument. The State responds that the trial court did not err: Ayazi's testimony was relevant to the intent to frighten modality of second-degree assault because it corroborated evidence that appellant had threatened to shoot Polizzi, and Ayazi's testimony was not unduly prejudicial because the "police did not search the house for weapons, and there was no suggestion that [appellant] actually used guns he kept in the house or that they were not legally registered."

"Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Relevant evidence may be excluded, however, "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]" Md. Rule 5-403. Whether evidence is "unfairly" prejudicial is not judged by whether the evidence hurts one's case, but by whether 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) (alteration in original) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)).

We review *de novo* a trial judge's determination of relevancy. *State v. Simms*, 420 Md. 705, 724–25 (2011). However, we review for an abuse of discretion the trial judge's weighing of the relevancy of evidence against the dangers of unfair prejudice. *Id*. at 725. We find an abuse of discretion where a "ruling is 'clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,' when the ruling is 'violative of fact and logic,' or when it constitutes an 'untenable judicial act that defies reason and works an injustice.'" *Alexis v. State*, 437 Md. 457, 478 (2014) (quoting *North v. North*, 102 Md. App. 1, 13–14 (1994)). Accordingly, "we must consider first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403." *Simms*, 420 Md. at 725.

Second-degree assault, codified at Md. Code (2002, 2012 Repl. Vol.), § 3-203(a) of the Criminal Law Article ("CR"), can be committed in three different ways: a battery, an attempted battery, or the intent to frighten by placing the victim "in reasonable apprehension of an imminent battery." *Cruz v. State*, 407 Md. 202, 209 n.3 (2009) (quoting *Lamb v. State*, 93 Md. App. 422, 428 (1992)). The State proceeded under the first and third theory, with the trial court instructing the jury on both theories. To convict appellant of the intent to frighten form of assault, the State was required to prove that: 1) appellant intended to place Polizzi in fear of immediate offensive physical contact; 2) appellant had

the apparent ability at the time to bring about the offensive physical contact; 3) that Polizzi reasonably feared immediate offensive physical contact; and 4) appellant's actions were not justified. *See* MPJI-Cr 4:01A.

Ayazi testified on direct examination that appellant told him that he was "going to f***ing kill everybody in this f***ing house starting with the kids and then [Polizzi]," and "[m]aybe it is a good thing that I did get locked up as well because I don't know what the f**k I would have done."[3] The State then asked Ayazi whether appellant made any statements about firearms. The following colloquy occurred:

[THE STATE]: Did he say whether or not his wife owned a shotgun?

[AYAZI]: He said his wife --

[3] Prior to trial, appellant moved *in limine* to exclude Ayazi's testimony that appellant told him that there were firearms in the home. The State opposed the motion, arguing that Polizzi had told the police that appellant threatened to shoot her, and evidence of firearms in the house was relevant to her fear, an element of the intent to frighten modality for second-degree assault. The court reserved on its motion until Polizzi testified.

During the direct examination of Polizzi, the State asked the following question: "Ms. Polizzi, at the time of this incident on June 16th, 2018, did you have any firearms in your home?" Appellant's attorney objected and a bench conference ensued. When the court asked how the testimony would be unduly prejudicial, defense counsel responded: "[B]ecause there's no firearm found in this case. I know we haven't gotten in yet, but it's basically planting in the jury's mind that there was a firearm." The State responded that it was relevant because it went to the intent to frighten theory of assault and "the defendant's apparent ability to carry out whatever threats it is that he is making." The State acknowledged that they did not "know what she's going to say, but I [have] a good faith basis to inquire." After both parties presented argument, the court ruled: "I think it clearly shows she has a good faith valid reason to be scared for her life as she said, that she has guns and he's made a threat to use a gun. Overrule." The State then asked Polizzi whether she had a gun in her house and she said, "No."

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled. I'll allow that.

[THE STATE]: Or a firearm?

[AYAZI]: There was a shotgun and a handgun in a house which he said to me. He calls the shotgun a snake. It is a registered.

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

[AYAZI]: It's registered. He said it's registered he said in his ex-wife's name. He said he is lucky that the cops didn't find that s**t.

Ayazi's gun testimony was relevant under the intent to frighten modality of assault because it corroborated both appellant's intent to place Polizzi in fear of immediate physical contact and his "apparent ability, at that time, to bring about the offensive physical contact."[4] MPJI-Cr 4:01A *see also Lamb*, 93 Md. App. at 445 ("An assault of the intentional frightening variety . . . requires a specific intent to place the victim in reasonable apprehension of an imminent battery. That the assailant definitely does *not* intend to carry through on the threat is of no consequence."). Moreover, we discern no abuse of discretion in the court's determination that the evidence was not unduly prejudicial. Under the circumstances presented, we do not think the testimony was of the type that would influence the jury to disregard the evidence and determine guilt based on access to firearms "rather than by its belief that [appellant] committed the criminal acts." *Gutierrez v. State*, 423 Md. 476, 495 (2011).

[4] Appellant made no argument that the location of the firearm undermined the element of immediacy of the offensive contact.

Smith supra, cited by appellant, is distinguishable. In that case, Smith was convicted of involuntary manslaughter and use of a handgun in the commission of a felony for fatally shooting his roommate in the head. 218 Md. App. at 697–98. The police did not find a firearm in the apartment but did find "a bag containing multiple live rounds of ammunition in one of the bedrooms." *Id*. at 696 & n.1. Following his arrest, Smith gave the police three versions of the shooting: first, that he found the victim dead; second, that he found the victim dead with a handgun Smith owned on the floor next to him, which Smith afterward threw in a nearby lake; and third, that he placed his handgun on the floor where he and the victim were sitting and left the room, returning when he heard a gunshot and found the victim dead, after which he threw the gun in a nearby lake. *Id*. at 696–97. We reversed on an unrelated ground, but we proceeded to address whether the trial court erred in admitting evidence "relating to eight firearms that [Smith] owned and to ammunition found in Mr. Smith's apartment" because it was likely to arise again on appeal. *Id*. at 703. We stated:

> Although there was nothing illegal about Mr. Smith owning guns and ammunition, the evidence the court admitted regarding Mr. Smith's ownership of unrelated firearms and ammunition was minimally relevant, at best, and highly prejudicial, and should have been excluded from the trial of these charges. Neither the State nor the trial judge articulated how this evidence was relevant to whether Mr. Smith committed the alleged crimes. The fact that Mr. Smith legally possessed guns and ammunition does not make the weapons relevant to the victim's death, and we cannot see from this record how the inclusion of this evidence would help prove the offense charged. Without a more direct or tangible connection to the events surrounding *this shooting*, the evidence of the other weapons and ammunition owned by Mr. Smith failed the probativity/prejudice balancing test, and the trial court erred by admitting it.

Id. at 705–06.

In this case, Ayazi's testimony that appellant said there were guns in the house, one of which was registered to Polizzi, was relevant evidence. As previously noted, Ayazi's testimony was relevant to at least two of the elements of an "intent to frighten" assault: 1) that appellant intended to place Polizzi in fear of immediate offensive physical contact; and 2) that appellant had the apparent ability to shoot Polizzi. *See* MPJI-Cr 4:01A (setting forth the four elements of an intent to frighten form of assault). Therefore, unlike in *Smith*, there was a "direct or tangible connection" between Ayazi's testimony and the intent to frighten modality of assault. Accordingly, under the circumstances, we are persuaded that the trial court did not err in admitting Ayazi's testimony.

II.

Appellant next argues that the trial court erred in admitting Yanique's 911 call because it did not fall within the present sense impression exception to the hearsay rule because it took place after the assault occurred. We disagree.

Hearsay is defined as "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." Md. Rule 5-801(c). Hearsay must be excluded, unless it falls within an exception. Md. Rule 5-802. The present sense impression exception permits admission of a hearsay statement where the statement is "describing or explaining an event or condition made while the declarant was perceiving the event or condition, *or immediately thereafter*." Md. Rule 5-803(b)(1) (emphasis added). In *Morten v. State*, 242 Md. App. 537, 556 (2019), we quoted from Lynn McLain, *Maryland Evidence: State & Federal* § 803(1), at

435–36 (3d ed. 2013), to explain the requirements for admitting a statement as a present sense impression:

> In order for a statement to be admissible as a present sense impression, there is no requirement that the declarant have been startled, excited, or upset about the event perceived. This is as it should be, because there is support for the position that unexcited statements tend to be more accurate than excited ones. Thus a sportscaster giving a "play by play" account is stating present sense impressions, as is a police officer speaking into a wire and describing what she is seeing.
>
> The statement must have been made either during the declarant's perception of the event or condition in question or immediately afterwards. Anything more than a slight lapse of time between the event and the statement will make the statement inadmissible.

(Emphasis omitted).

Yanique testified that after intervening in her parents' argument and being shoved by her father, she went to her bedroom and called 911. Over objection, the court admitted the call as falling within the present sense impression exception to the hearsay rule. On the call, Yanique can be heard telling the operator that her father had "assaulted my mother and he hit me." When the operator asked, "When did this occur?" Yanique responded, "*It's happening now*[.]"[5] (Emphasis added). When the operator asked for a description of her father's clothing, Yanique could not remember and stated that she did not want to find out by going into the hallway outside her bedroom door where her parents were still

[5] The transcription of the 911 call played during the motion *in limine* hearing to exclude the call varies slightly from the transcription of the 911 call played for the jury. Notably, the statement "It's happening now" does not appear in the transcript when the recording was played before the jury. However, according to the transcript, the motion court heard the statement "It's happening now" prior to ruling on the admissibility of the 911 call. Additionally, we have independently verified that Yanique said "It's happening now" on the 911 call.

arguing. When the operator asked her whether her father was the one shouting in the background, Yanique responded in the affirmative. When the operator asked, "[A]re you or anyone else in danger right now?" Yanique responded, "My little sisters, they're here, but they're in their room."

We agree with the State that the trial court properly admitted the call under the present sense impression exception to the hearsay rule. Although Yanique used the past tense when she said that her father had "assaulted" her mother, she also said the assaultive situation was "happening now," and appellant can be heard yelling in the background in the hallway outside her door. Yanique's bedroom was directly across the hall from her mother's bedroom. We have no difficulty concluding that the call was made "while [she] was perceiving the event or condition, or immediately thereafter." Accordingly, we find no error by the trial court in admitting the call as a present sense impression. *Cf. Cutchin v. State*, 143 Md. App. 81, 87–88 (2002) (holding that statement made one and one-half minutes after a fatal car accident was admissible as a present sense impression).

III.

Appellant argues that the trial court erred in admitting the officers' body camera videos because they showed events thirty minutes after the assault, and therefore the videos were irrelevant and unduly prejudicial. The State responds that the evidence was properly admitted because it showed appellant's consciousness of guilt (he stated several times without prompting that he never "laid a hand on anyone" and "I'm not going to kill her")

and because it showed appellant's continued agitated state immediately following the assault, which corroborated Polizzi's account of the events.

The law on relevance and prejudice set forth in section I., *supra*, is pertinent here. Additionally, case law provides that "[a] person's behavior after the commission of a crime may be admissible as circumstantial evidence from which guilt may be inferred." *Thomas v. State*, 372 Md. 342, 351 (2002). This circumstantial evidence is not admissible "as conclusive evidence of guilt, but as a circumstance tending to show a consciousness of guilt." *Id*. (quoting *Snyder v. State*, 361 Md. 580, 593 (2000)). "A person's post-crime behavior often is considered relevant to the question of guilt because the particular behavior provides clues to the person's state of mind." *Id*. at 352. This is because "the commission of a crime can be expected to leave some mental traces on the criminal." *Id*. (citing 1 J. Wigmore, *Evidence* § 173, at 632 (3d ed. 1940)).

Prior to trial, defense counsel moved *in limine* to exclude appellant's statements recorded by the officers' body cameras, except where appellant admits to punching the door. Defense counsel argued that appellant's statements were irrelevant because what appellant said twenty to thirty minutes after the assault was not relevant to the charges and the video was prejudicial. The State disagreed, arguing that the videos not only showed appellant's bloody hand and his admissions to hitting the door, but also showed his agitated state, which corroborated Polizzi's expected testimony that appellant assaulted her, as well as appellant's consciousness of guilt when he spontaneously offered that he had not hurt anyone. The court agreed with the State and denied the motion.

We likewise agree with the State that the body camera evidence was admissible. Appellant's emphatic denials that he assaulted his ex-wife and threatened to kill her, without any prompting from the police officers, was relevant to consciousness of guilt—it tended to show that appellant knew why the police were at his home, *i.e.*, to investigate an alleged assault, and that he needed to deny any criminal conduct from the outset. As the trial court properly noted, "He, as they say, protest too much, he denies an allegation which nobody's alleged that he did at that time, but ends up being [the] basis of the charge here." Equally important, the footage shows appellant still in a very agitated state, corroborating Polizzi's version of events that she gave in the video and in her written statement. Accordingly, we perceive no error by the trial court in admitting the body camera videos.[6]

IV.

Appellant next argues that the trial court committed reversible error during the jury selection process when, after he challenged the State's peremptory strikes based on *Batson*, the court's remedy was to offer to seat a different African-American in place of the juror that had been the subject of the *Batson* challenge. The State argues that appellant misconstrues what in fact occurred, and that the trial court did not act improperly. We agree that the trial court did not err.

Batson and its progeny prohibit the striking of potential jurors based on protections guaranteed under the Equal Protection Clause of the Fourteenth Amendment. *Edmonds v.*

[6] Although appellant argues on appeal that the footage was unduly prejudicial, he did not make that claim below. Accordingly, we shall decline to address it.

State, 372 Md. 314, 328–29 (2002). The purpose of the Supreme Court's holding is three-fold: 1) "to protect a defendant's right to a fair trial"; 2) to protect a potential juror's right not to be excluded from serving on a jury because of a discriminatory purpose; and 3) "to preserve public confidence in the judicial system." *Id*.

When a party makes a *Batson* challenge, a three-step process is employed. The party challenging the strike must first make a *prima facie* showing of a discriminatory purpose. *Ray-Simmons v. State*, 446 Md. 429, 436 (2016). If the challenging party meets this requirement, the burden shifts to the striking party to provide a neutral explanation for the strike. *Id*. at 436–37. Finally, the trial court must then determine whether the party opposing the strike has demonstrated purposeful discrimination. *Id.* at 437. The court may consider several factors in making this determination, such as whether the strike had a disparate impact on a particular protected class of persons, the composition of the jury, the persuasiveness of counsel's explanation for the strikes, the demeanor of counsel for the striking party, and whether the neutral explanation given has been consistently applied. *Edmonds*, 372 Md. at 330. In reviewing a *Batson* ruling, we reverse only if the trial court's decision was clearly erroneous, deferring to the trial court's findings of fact, evaluations of demeanor, and credibility determinations. *Id.* at 331.

Although appellant made *Batson* challenges to several jurors at trial, his challenge on appeal relates only to the striking of Juror 110, an African-American juror. The court inferentially found that appellant had satisfied the first prong of a *Batson* challenge—a *prima facie* showing of a discriminatory purpose—because it called upon the State to

explain why it struck Juror 110. The State responded, "Early 20's, single, not a lot of life experience, same type reason why we struck 148, same reason for both."

In ruling on the *Batson* challenge as to Juror 110, the court first noted that the State struck Juror 148, who was not African-American, because he was a "25-year-old personal trainer, no other life experience that we know of." The court further noted that the "State was consistent with striking [young jurors], except until the end when they ended up, maybe for a lack of strikes left in their case, with [an] 18-year-old." Returning to the State's reason for striking Juror 110, the court concluded,

> So, I am willing, if that's the only reason for that juror, so, I find the youth to be a good reason. I would want people with life experience on a case also if I was in the State's position. *So, I find that to be a race neutral reason*.

(Emphasis added).

In our view, the court's finding that the State had a race neutral reason for exercising a peremptory strike as to Juror 110 was not clearly erroneous. Indeed, the court noted that the State consistently attempted to strike younger jurors and independently stated that "I would want people with life experience on [this] case also if I was in the State's position." We therefore perceive no error.

Although the court fully satisfied its obligation under *Batson*, the court nevertheless offered appellant the opportunity to seat Juror 110 on the jury. Appellant declined the court's offer, presumably because seating Juror 110 would inevitably result in the unseating of another African-American juror. The court's gratuitous offer in this regard had no effect

on its prior determination that the State's strike of Juror 110 was race neutral. Accordingly, we discern no error.

V.

Appellant next argues that the trial court erred in permitting the State to allow Officer Warren to testify as to statements appellant made inside the home when a suppression court had earlier ruled that the statements were not admissible. The State responds that appellant "misconstrues the scope of the motions court's ruling." The State argues that the suppression court granted appellant's motion to suppress appellant's statements on Officer Warren's body camera from when appellant turned from the front door and walked into the home until he took out his own cell phone to record the event because those statements were private oral communications recorded in violation of appellant's right to privacy under Maryland's wiretap laws. *See* Md. Code (1973, 2013 Repl. Vol., 2019 Supp.), §§10-401–10-414 of the Courts and Judicial Proceedings Article. The State argues that the suppression court's ruling, contrary to appellant's argument, was limited to the officer's recorded video, not the officer's testimony as to what he witnessed. We agree with the State.

Prior to trial, defense counsel filed a written motion to suppress "all evidence and statements taken after the police entered Mr. Jones's house on June 16, 2018." The basis for the request was two-fold: appellant was never *Mirandized*[7] and he was never told he was being recorded in violation of Maryland's wiretap laws. The State opposed the motion,

[7] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

arguing that *Miranda* did not apply because appellant's statements were not the product of custodial interrogation, and the recording of his statements was not illegal under the wiretap statute because the statements were not "private" communications.

At the ensuing suppression hearing, Officer Warren testified and the State played the officer's body camera footage for the court. Approximately forty pages of the transcript of the suppression hearing reflect argument concerning the inadmissibility of appellant's video-recorded statements because of violations of the wiretap statute. Our reading of the suppression hearing transcript leads us to conclude that the court clearly believed that the appellant was only attempting to suppress his statements on the video. The court stated: "But if I suppress the piece [of video] between the [conversation at the door] and . . . him pulling out his phone, that just means that they can't see that tape. People can still testify about what happened. It doesn't make the testimony inadmissible." The State agreed with the court's assessment; defense counsel made no recorded comment. The court ultimately ruled that the police had partly violated appellant's rights under Maryland's wiretap statute, suppressing that part of the body camera footage from when appellant turned from the front door and walked into the home until he took out his own cell phone to record the event. The court then advised the parties where exactly the video recording should stop so as to conform with its ruling. The State then offered to provide opposing counsel with a redacted version of the video before trial.

On the second day of trial, the State questioned Officer Warren about his interaction with appellant when the officer arrived at the home. The State also played video from the

officer's body camera, stopping the video in accordance with the suppression court's ruling. The State then began to question the officer about what happened after the video on the body camera stopped. Defense counsel objected. During the ensuing bench conference, defense counsel advised the court that he believed that the suppression court had ruled that appellant's statements inside the home from that point forward had been suppressed. The trial judge, who had not been the suppression judge, heard both parties' arguments and ruled that appellant's statements, as testified to by the officer, were admissible.

Contrary to appellant's argument, we find no error by the trial court. Our review of the transcript of the suppression hearing makes plain that the suppression court's ruling, *i.e.*, suppressing a portion of appellant's statements on the body camera video because those statements were recorded in violation of Maryland's wiretap statute, only applied to appellant's statements on the video, not to the officer's testimony about other statements appellant may have made. As previously noted, the suppression court made clear that, even if part of the video were suppressed, "[p]eople can still testify about what happened." We therefore agree with the State that appellant misconstrues the scope of the suppression court's ruling and, accordingly, the trial court did not err in permitting the officer to testify about statements appellant made when the officer entered the home.

VI.

Appellant argues that the trial court erred in denying his motion for judgment of acquittal on the charge of obstruction of justice related to his telephone calls to his ex-wife

because there was no evidence that he acted with "corrupt means" as required by the statute. The State responds that appellant's argument has no merit. We agree with the State.

The standard for appellate review of evidentiary sufficiency is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 457 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "That standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citing *State v. Smith*, 374 Md. 527, 534 (2003)). When analyzing inferences made by the trier of fact, "the question 'is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence.'" *State v. Suddith*, 379 Md. 425, 447 (2004) (alterations in original) (quoting *Smith*, 374 Md. at 557). This is because weighing "the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *In re Heather B.*, 369 Md. 257, 270 (2002) (quoting *In re Timothy F.*, 343 Md. 371, 379–80 (1996)). Thus, "the limited question before an appellate court 'is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Allen v. State*, 158 Md. App. 194, 249 (2004) (quoting *Fraidin v. State*, 85 Md. App. 231, 241 (1991)).

The crime of obstruction of justice provides that "[a] person may not, by threat, force, or corrupt means, obstruct, impede, or try to obstruct or impede the administration of justice in a court of the State." CR § 9-306(a). A defendant's intent, absent direct evidence, may be inferred from the "circumstances surrounding the incident and the natural and inevitable consequences of the action." *Lee v. State*, 65 Md. App. 587, 592 (1985). We note that "corrupt means" is neither defined in the statute, nor in any Maryland case law. The comments to MPJI-Cr § 4:25 state:

> The Committee has not defined or explained the word "corrupt," believing that it, by itself, connotes its meaning better than a definition would. *See United States v. Reeves*, 752 F.2d 995, 998 (5th Cir. 1985) (defining "corruptly" as an act "done *with an intent to give some advantage* inconsistent with the official duty and rights of others" (emphasis in original) (quoting *United States v. Ogle*, 613 F.2d 233, 238 (10th Cir. 1979))); *United States v. Ryan*, 455 F.2d 728, 734 (9th Cir. 1971) (defining "corrupt" as with "evil or wicked purpose" and stating that "[s]pecific intent to impede the administration of justice is an essential element").

Furthermore, the Court of Appeals has stated, in discussing the precursor to § 9-306:

> The words of the statute are general and embrace in comprehensive terms various forms of obstruction. Thus the particular acts are not specified but, whatever they may be, if the acts be corrupt, or be threats or force, used in an attempt to influence, intimidate or impede any juror, witness or officer in any court of the State in the discharge of his duty, there is an obstruction of justice. Likewise, if by acts of similar quality and nature the due administration of justice in any court shall either be impeded or obstructed or be so attempted, there is an obstruction of justice.

Romans v. State, 178 Md. 588, 592 (1940).[8] We have said that under the broad language of the statute, "if the action of appellant was intended to influence, intimidate or impede [the witness] from testifying against him, it would be prohibited conduct." *Lee*, 65 Md. App. at 592.

Here, appellant, attempting to conceal his own identity by using the identity of his cell mate, called Polizzi twice, asking her to write a letter to appellant's attorney and the prosecuting attorney stating that she "suffer[s] from anxiety" and that she lied in her written statement. Polizzi repeatedly stated during the call that she would not write the letter and that she did not lie in her written statement. Appellant told Polizzi that she was "the key" to the case against appellant and that she could not be prosecuted for writing the letter. Polizzi asked, "So you want me to say . . . [t]hat you did nothing when they have evidence that you did it[?]" Appellant replied, "They don't have no evidence. That's what I'm telling you." Appellant attempted to convince Polizzi to write the letter by telling her that

[8] The statute was amended in 2002. The Revisor's notes provide that the new section constitutes "new language derived without substantive change from former Art. 27, § 26, as it related to obstructing justice." "Recodification of statutes is presumed to be for the purpose of clarity rather than change of meaning and, thus, even a change in the phraseology of a statute by a codification will not ordinarily modify the law unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code." *Comptroller v. Blanton*, 390 Md. 528, 538 (2006) (alteration in original) (quoting *Md. Div. of Labor & Industry v. Triangle Gen. Contractors, Inc.*, 366 Md. 407, 422 (2001)). It is well-settled that the "Revisor's Notes express legislative intent." *Id*. (citing *Murray v. State*, 27 Md. App. 404, 409 (1975)). Because of the Revisor's Note and case law on this issue, we are persuaded that the Maryland General Assembly did not intend to change the elements of the crime of obstruction of justice in enacting the recodification. We note that appellant makes no argument to the contrary.

he loved her, that his birthday was approaching, that he would do the same thing for her, and that he needed to help Polizzi raise the children. Contrary to appellant's argument, we are persuaded that a rational juror could conclude that appellant had by "corrupt means" obstructed justice when he asked Polizzi to lie about what happened. Appellant attempted to influence a witness to provide a statement giving appellant an "advantage inconsistent with the official duty" of the witness to provide truthful statements. MPJI-Cr § 4:25. Accordingly, the trial court did not err when it denied appellant's motion for judgment of acquittal on the charge of obstruction of justice.

VII.

Finally, appellant argues that the trial court erred when it denied his motion for judgment of acquittal on the charge of second-degree assault because the State failed to prove that Polizzi did not consent to the contact. Appellant argues that the evidence showed that he and Polizzi were engaged in a "mutual shoving match," and therefore, there was no evidence of a lack of consent. We disagree.

As stated above, the State proceeded on the charge of second-degree assault under the battery and intent to frighten modalities of assault. To convict appellant of the intent to frighten form of assault, the State needed to prove that: 1) appellant intended to place Polizzi in fear of immediate offensive physical contact; 2) appellant had the apparent ability at the time to bring about the offensive physical contact; 3) that Polizzi reasonably feared immediate offensive physical contact; and 4) appellant's actions were not justified. *See* MPJI-Cr 4:01A. To convict appellant of the battery form of second-degree assault, the

State was required to prove that: 1) appellant caused offensive contact to Polizzi; 2) the contact was the result of an intentional or reckless act and not accidental; and 3) the contact was not consented to by Polizzi or legally justified. *See* MPJI-Cr 4:01C.

A "lack of consent . . . is clearly a necessary element to sustain a conviction of second-degree assault." *Hickman v. State*, 193 Md. App. 238, 257 (2010); *see also* MPJI-Cr 4:01C. Mutual affray is a defense to assault because it means there was consent. *See Hickman*, 193 Md. App. at 257–58. The trial court instructed the jury that to find mutual affray, the jury must find that Polizzi had the intent to engage in physical combat with appellant.

We are persuaded that a rational juror could find that Polizzi did not consent to either the battery or intent to frighten form of assault. Polizzi told the responding police officer that she and appellant had a verbal argument that became physical when he "grabbed her, hit her in the face an unknown number of times, and grabbed her hair and pulled her." Polizzi's written statement, admitted into evidence, indicated that appellant pulled her hair, punched her, and scratched her face. He told her that he would kill her and "blow [her] brains out." The footage from Officer Seymour's body camera confirms Polizzi telling the officer about clumps of her hair on the bedroom floor that appellant had ripped out of her head and showing the fresh scratch to her cheek and neck. Although we recognize Polizzi's attempt at trial to downplay appellant's actions, the jury was free to disbelieve Polizzi's trial testimony and instead credit her statements to the police made on the night of the incident. Those statements evidenced a lack of consent to physical contact.

Accordingly, the trial court did not err in denying appellant's motion for judgment of acquittal.

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