Circuit Court for Anne Arundel County
Case No. C-02-CR-18-000481

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3203

September Term, 2018

JEAN RONEL MORENCY

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Beachley, JJ.

Opinion by Kehoe, J.

Filed: July 30, 2020

> Abuse takes on many forms. . . . And, unlike a piece of carved wood that lays bare the work of a knife's whittling, when the object of abuse is a human being, layers of shame, fear, and trauma often obscure the imprint of mental and physical abuse.

Andrea M. Leahy, *Hearsay and Abuse: Where Past Is Present*, 48 U. Balt. Law Rev. 67 (2018).

Following a bench trial in the Circuit Court for Anne Arundel County, Jean Ronel Morency was convicted of second-degree rape, second-degree assault, and false imprisonment. The court sentenced him to twenty years' incarceration for second-degree rape, a consecutive term of ten years, all but five years suspended, for false imprisonment, and merged for sentencing purposes the assault conviction with the conviction for second-degree rape. On appeal, appellant presents a single question for our review, which we have reworded slightly: Did the trial court err in admitting impermissible hearsay testimony? For the following reasons, we answer that question in the negative and will affirm.

Background

In mid-July 2016, nineteen-year-old J.[1] came to the United States from Germany through an *au pair* placement agency that arranges for overseas child caretakers to work with United States "host families." J. began working for Dr. M. as a live-in *au pair* at Dr. M.'s residence in Anne Arundel County.

[1] The initial is chosen at random as is the initial for her employer. Neither the victim's first name nor her surname begins with the letter "J." Her employer's last name does not begin with "M."

On August 14, 2016, J. visited a friend in Washington, D.C. That evening, she took the Metro from Washington to New Carrollton. After she arrived at the New Carrollton Metro Station at around 9:20 p.m., J. was approached by a black minivan. The driver—whom she later identified as appellant—approached her and offered her a ride to her "host home." J. accepted. During the drive, J. engaged in casual conversation with appellant. Appellant asked J. whether she would like his telephone number in case she needed a taxi in the future. She answered in the affirmative and handed him her phone. Rather than add his telephone number to J.'s phone, appellant used her phone to call his own. Thereafter, the conversation took an uncomfortable turn. Appellant asked J. if she would like to see him socially and whether she "wanted to be his friend." Not wanting to be rude, J. replied, "[O]kay."

When they arrived in front of Dr. M.'s house, appellant urged J. to meet him the following day around the corner from Dr. M.'s home so that no one could see them, and he instructed her not to tell anyone about the proposed meeting. J. replied, "I can't stay, I'm late. I told my host mom . . . that I'm getting a taxi, and that I should be home soon." When she attempted to pay the fare, appellant refused to accept payment and insisted that they continue talking for five more minutes. He then drove behind the house and parked. He asked J. whether he could join her in the backseat. Despite J.'s having answered "No," appellant got into the backseat, where he sexually assaulted her. J. testified that she told appellant to stop and "tried to push him back," but to no avail.

Following the assault, appellant stood up, handed J. a napkin, and instructed her to "clean [herself] up down there." He then returned to the driver's seat and drove back to the front of the house, where he once again urged J. to meet him around the corner the following day and instructed her not to tell anyone.

J. rushed into the house, where she was greeted by Dr. M. and Dr. M.'s boyfriend. J. apologized to Dr. M. for being late, explaining that "the taxi driver took a long way." J. walked to her bedroom, where she began to cry. She then left a voice message with a friend asking for help and took a shower.

At trial, J. explained that she did not immediately inform Dr. M. that she had been sexually assaulted because she "was still in shock and scared[.]" She added that, at the time of the assault, she had been in Dr. M.'s employ for only a month, and they did not have a close relationship at that time. Nor did J. report the sexual assault to her parents because she was afraid and "didn't know how they [were] going to react … if they[] [we]re going to blame [her] or if they [were] going to be devastated." She further explained that she did not report the assault to the police because she was "afraid," "ashamed," and "didn't know what to expect."

J. saved appellant's telephone number to her phone as "Arsch" (German for "Ass"). During the following days, J. received several calls from appellant's phone. J. testified that she had answered only one of those calls, that she did so by accident, and that she immediately hung up. When appellant called her from a different telephone number, she

unwittingly answered and spoke with him briefly.[2] Thereafter, she saved that telephone number as "Arsch 2."

During the weeks following the assault, J. described herself as "really frustrated," and testified that her frustration had adversely affected her work. Dr. M. likewise testified that J. had become withdrawn and depressed, and that her job performance had begun to suffer. Shortly after the incident, J. applied to transition to another "host family." The au pair placement agency requires that, after such an application is filed, the *au pair* must remain with his or her host family for a period of two weeks to afford the parties an opportunity to resolve their differences.

On September 1, 2016, J. and Dr. M. met with one of the placement agency's local coordinators. According to J., in anticipation of that meeting, Dr. M. and she had filled out forms identifying their respective grievances. J. testified that during the meeting Dr. M. and she were "kind of getting angry at each other." J. described her temperament at the meeting as "upset," "overwhelmed," and "frustrated." At a certain point during that meeting, J. began to cry and told Dr. M. and the placement agency coordinator what had transpired on the evening of August 14th. Dr. M. promptly called the police.

During a police interview conducted by Detective Christina Josa, J. reported that a man named "Ron" had sexually assaulted her on August 14th. J. provided Detective Josa with appellant's telephone number. Detective Josa ran that telephone number through a

[2] Telephone records from J.'s phone indicated that the call was about three minutes in duration.

law enforcement database that identified the telephone number as having been associated with appellant.[3] Detective Josa then conducted a search of appellant's Motor Vehicle Administration records, which revealed that he was the co-owner of a 2015 Toyota Sienna. On or around September 22nd, the police administered a double-blind photo array to J. J. "focused in on two photos," one of which depicted appellant, but she was unable to determine with certainty which one of those photos portrayed her assailant.

Following the incident, J. observed appellant on three occasions at the New Carrollton Metro Station. On one such occasion, she attempted to record appellant using her cell phone. Although J. was unable to film him, she did capture footage of the last four digits of his license plate number. Detective Josa testified that those digits matched the license plate number for appellant's 2015 Toyota Sienna.

At approximately 3:00 p.m. on January 21, 2018, Maryland State Trooper Andrew Selba was "conducting a patrol check" at the New Carrollton station. The license plate recognition technology with which his vehicle was equipped alerted Trooper Selba to appellant's license plate as he passed appellant's black 2015 Toyota Sienna, which appeared to be parked in the taxi lane. Upon approaching the vehicle, Trooper Selba confirmed that appellant was the driver and then arrested him.

[3] Detective Josa later obtained a search warrant for that cell phone. Given that the cell phone was "a burner phone," however, the cellular service provider did not possess any subscriber information for it.

At trial, FBI Special Agent Danielle Schnur was admitted as an expert witness in the fields of "historic cell site analysis and cellular technology." Agent Schnur examined the August 14, 2016, call detail records for both J.'s cell phone and the phone belonging to appellant. The cell site location information and call records for those phones were consistent with J.'s narrative of the events on August 14th. Appellant did not present any evidence in his defense.

We shall include additional facts in our discussion of the issues presented.

Analysis

1.

At trial, Dr. M. provided detailed testimony regarding her September 1, 2016, meeting with J. and the placement agency coordinator. She explained that the meeting had begun with her expressing frustration with J.'s apparent apathy toward her duties and her failure to perform them adequately. She testified that J. had gotten "flustered," stood up as if she was leaving, and said, "'I can't deal with this. I don't want to do this anymore.'" J. then returned to her seat, placed her head in her hands, and "started sobbing, hyperventilating." Placing her arm on J.'s back, Dr. M. asked, "'Honey, what's wrong? What's going on here?'" Dr. M. further testified:

> It became very clear to me that there was something more going on than simply her not being happy with me as an employer.
>
> So, I asked her, "Tell me what's wrong. What is going on? You're obviously very upset." She couldn't even speak. She was just sobbing so hard it was incoherent. So, I reassured her. I said, "Did something happen? What is going on? Please tell me. Please tell me. I can see how upset you are."

> And she didn't want to tell me what happened. So, it took a little bit of cajoling on my part of repeatedly just hugging her and being like it's okay. You can tell me. I was [in] full-on mom mode at this point.
>
> And she asked me if I remembered the time when she went to D.C. It was a few weeks prior. It was a Sunday. It was her day off. She asked me if I remembered that, and I said, "Well, of course I remember. That's fine. What does that have to do with anything?" And she proceeded to tell me that she got a cab ride home.

Defense counsel made a general objection. The State requested that, before ruling on defense counsel's objection, the court permit it to ask Dr. M. an additional question to determine whether her testimony was admissible under the excited utterance exception to the rule against hearsay. The court agreed. Thereafter, the State asked Dr. M. to describe J.'s demeanor at the time. Dr. M. answered, "She was broken. She was almost incomprehensible. She was so upset, hyperventilating as she recounted." The following colloquy ensued:

> [THE STATE]: Okay. Your Honor, I would argue that it comes in as an excited utterance. She's still under the -- she's crying, she's -- uncontrollably, and she's still under the stress from the event.
>
> * * *
>
> THE COURT: And [defense counsel], do you want to be heard?
>
> [DEFENSE COUNSEL]: Well, Your Honor, I think again the State's coming in under the excited utterance. I don't think it's allowed to be that far removed from the event. This is August and now it's September.
>
> [THE STATE]: Your Honor, I would -- I'm sorry to interrupt you. I would also argue that it was a prompt report under 5802.1--
>
> THE COURT: All right. I'm going to allow the statement as an excited utterance the -- finding that the exciting event in this case is the

> situation with the placement agency individual and the witness in the sit-down kind of confrontational situation where the alleged victim would not have had the opportunity or thought process to fabricate or time to fabricate her reaction or the words that she use[d] which is the very meaning behind the excited utterance exception to the hearsay rule. I find that to be the exciting event, and the excitement, if you will, is the demeanor articulated including the crying, sobbing, hyperventilating, heaving, head in her hands, certainly describes -- and by ["]excited["] I mean the legal definition of excited demeanor. So, I find that that fits well within the hearsay exception under 5–803.
>
> So, I don't believe I need to get to the prompt complaint analysis.

The State then asked Dr. M. what J. had told her next. Dr. M. testified:

> [J.] said that she was being driven home from the metro station, the New Carrolton Metro Station, and that the cab driver had tried to engage her in conversation, but she was not really interested in having a conversation with him. So, she tried to reply out of just politeness, just yeah, yeah, okay, whatever, basic remarks, not really to encourage him to pursue the conversation but just to avoid appearing rude.
>
> She said that he drove her to an area that was down the street from my house, that he got in the back of the car with her. And at that point, she just started sobbing and becoming incomprehensible again.
>
> So, I looked at her, and I said, "What happened? What happened? Did you—did he make you have sex with him?" And she just started sobbing, crying hysterical. And she said, "He was too big. He hurt me. He came and there were napkins afterward, and I wiped myself off. And then he asked me if we could still hang out, if we could still be friends." And then he drove her to the front of my house and dropped her off.

2.

Appellant contends that the court erred in admitting Dr. M.'s testimony as an excited utterance because the meeting with Dr. M. and the placement agency coordinator "was not a 'startling event' that suspended [J.'s] reflective thought." Rather, he argues, the meeting

was "an anticipated, well-defined event scheduled for a predetermined time, date, and place, with particular participants, and with the specific purpose of addressing [J.]'s work performance and Dr. [A.]'s complaints thereof." In the alternative, he claims that if the "startling event" had been the sexual assault itself, there was inadequate evidence that J.'s statement was a spontaneous product of that startling event, rather than the result of reflective consideration.

"Whether evidence is hearsay is an issue of law that we review *de novo*, as is whether hearsay evidence properly was admitted under an exception to the rule against hearsay." *Muhammad v. State*, 223 Md. App. 255, 265–66 (2015), *cert. denied*, 454 Md. 666 (2017). *See also Gordon v. State*, 431 Md. 527, 538 (2013) ("[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[.]"). We will not, however, disturb the factual findings underpinning the court's legal conclusions absent clear error. *Id*. Accordingly, we shall affirm those factual findings provided that the record contains substantial evidence in support thereof. *Id*. at 536–37.

Maryland Rule 5–801(c) defines hearsay 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." Hearsay is generally inadmissible as substantive evidence absent an applicable exception or exemption. Md. Rule 5–802. Maryland Rule 5–803 provides exceptions to the rule against hearsay for which the unavailability of the declarant is not required. Among those exceptions is the "excited utterance," which Rule 5–803(b)(2)

defines as "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." That exception, therefore, requires (1) the occurrence of a startling event, (2) "'a spontaneous statement which is the result of the declarant's reaction to the occurrence,'" *Morten v. State*, 242 Md. App. 537, 547 (2019) (quoting *Mouzone v. State*, 294 Md. 692, 697 (1982)), and (3) a nexus—either direct or indirect—between the startling event and the content of the statement. *See Bayne v. State*, 98 Md. App. 149, 177 (1993). The Court of Appeals has explained the rationale for this exception as follows:

> The essence of the excited utterance exception is the inability of the declarant to have reflected on the events about which the statement is concerned. …. The rationale for overcoming the inherent untrustworthiness of hearsay is that the situation produced such an effect on the declarant as to render his reflective capabilities inoperative. The admissibility of evidence under this exception is, therefore, judged by the spontaneity of the declarant's statement and an analysis of whether it was the result of thoughtful consideration or the product of the exciting event.

Parker v. State, 365 Md. 299, 313 (2001) (cleaned up).

We will first address appellant's contention that the court erred in concluding that the meeting was a "startling event." Whether an event was sufficiently startling to still the reflective capabilities of the declarant is a factual finding, which we review for clear error. *See Hailes v. State*, 442 Md. 488, 499 n.6 (2015) ("A declarant's mental state is a factual matter, not a legal matter.").

Bayne v. State is instructive in this case. In *Bayne*, the uncle of the five-year-old victim discovered her "performing simulated sexual motions" atop her younger male

cousin. 98 Md. App. at 178. Upon doing so, he asked, "'[Victim's name], what are you doing? … [W]here have you seen this before?'" *Id*. at 164. The victim fled her uncle's house in a panic. Outside, she was met by her grandmother. After having been apprised by the uncle of the incident, the grandmother drove the victim to the house in which the victim and the defendant resided. Upon arriving at the house, the victim began to scream and refused to enter. Rather than escort the victim inside, the grandmother drove her to a convenience store, where she asked the victim what had happened. Instead of addressing the incident with her cousin and uncle, the victim answered that the defendant had "touched her all over and had hurt her." *Id*. at 153. According to the grandmother, the victim was "'very upset and frightened' during the period from when they had left the uncle's house through the convenience store incident." *Id*. at 178.

We concluded that the victim's statement was properly admitted as an excited utterance. We explained:

> The relationship between the subsequent startling event, the excited utterance generated by it, the prior event about which the statement comments, and the time between both startling events and the statement are all relevant, especially in regard to whether the utterance is made without reflection. *We see no reason, however, given the rationale for the excited utterance exception in the first instance, why a subsequent related startling event cannot be the startling event that produces an excited utterance about a prior event or why that excited utterance cannot be considered for admission under the excited utterance exception to the hearsay rule.* The trial court, of course, would still have to consider all elements, including the passage of time and opportunity for fabrication or excuse, in resolving the issue of spontaneity in order ultimately to rule on admissibility.
>
> We hold, therefore, that an otherwise qualified excited utterance that includes comments about a prior happening may be admissible under the

> excited utterance/spontaneous declaration exception to the hearsay evidence rule *if the subsequent startling event that generates the utterance relates directly or indirectly to that prior event*, i.e., is likely to produce an exclamation about the prior event. Because we perceive a relationship between the subsequent and prior events in the case at bar, we frame our holding in that context. *We do not now address whether that relationship between the two events is a requirement, leaving that issue for a future case.* The time between the prior event, the subsequent event, and the utterance are all factors that may be considered by the trial court in determining whether the utterance is indeed a spontaneous declaration or exclamation. We note that the trial court judge is uniquely situated to make that determination.

Bayne v. State, 98 Md. App. 149, 177 (1993).

On appeal, this Court recognized that, in certain circumstances a subsequent startling event—there, the victim's having been confronted with performing simulated sexual motions upon her cousin—may trigger a declarant's recollection of past trauma, thereby inducing such a degree of renewed stress as to still that declarant's reflective faculties. *See also State v. Owens*, 128 Wash.2.d 908, 911 (1996) ("'[A] later startling event may trigger associations with an original trauma, recreating the stress earlier produced and causing the person to exclaim spontaneously.'" (Quoting *State v. Chapin*, 118 Wash. 2d 681, 686–87 (1992) (in banc))); *McCarty v. State*, 257 S.W.3d 238, 241–42 (Tex. Crim. App. 2008) ("[U]nder the excited-utterance exception, the startling event may trigger a spontaneous statement that relates to a much earlier incident."); David W. Louisell & Christopher B. Mueller, 4 *Federal Evidence* § 439, at 507 (1980) ("Events may so deeply traumatize a person that long after stress has subsided a chance reminder may have

enormous psychological impact, causing renewed stress and excitement and educing utterances relating to the original trauma.").

The appellate courts of our sister states have applied this principle in a variety of contexts. *See, e.g.*, *State v. Folk*, 341 P.3d 586, 592–93 (Idaho App. 2014) (holding that the victim's identification of his abuser constituted an excited utterance where the later startling event was a nightmare about the abuse the victim had suffered the night before); *Esser v. Commonwealth*, 38 Va. App. 520, 526 (2002)) (holding that the victim's statements to her mother about a sexual assault that had occurred two days prior was admissible as an excited utterance where the startling event was her belief that she would be returned to the scene of her sexual assault and the possible control of the defendant); *State v. Gordon*, 952 S.W.2d 817, 820 (Tenn. 1997) (holding that the victim's identification of her rapist was admissible as an excited utterance where the startling event was not the sexual assault, but the pain suffered by the victim while urinating thereafter); *Hunt v. State*, 904 S.W.2d 813, 815–16 (Tex. App. 1995) (holding that the victim's viewing a news story about a sexually abused child three months after she was sexually assaulted was sufficiently startling as to render her statement that the defendant had "messed with" her an excited utterance); *Matter of Troy P*, 114 N.M. 525, 529 (1992) (holding that the imminent return of the victim to her father's custody was sufficiently startling as to render the identification of her abuser an excited utterance where she only interacted with her abuser when in her father's custody). *See also United States v. Napier*, 518 F.2d 316, 318 (9th Cir. 1975) (holding that the victim's identification of the defendant was properly admitted as an

excited utterance where the startling event was the victim's having seen a photograph of the defendant eight weeks following the assault).

Here, as in *Bayne*, the event which rekindled the stress from J.'s initial trauma consisted of a later occurrence which evoked the memory thereof. Whether that renewed stress itself was sufficient to qualify the meeting as a "startling event" depends not on whether, in a vacuum, the event would naturally tend to induce such stress as to still the reflective faculties of an average person. It depends, rather, on the actual effect of that event on the mind of the declarant. *See Gordon*, 431 Md. at 536 ("[I]n determining whether evidence is admissible under the excited utterance exception to the hearsay rule, … the trial court looks into 'the declarant's subjective state of mind[.]" (quoting 6A Lynn McLain, *Maryland Practice: Maryland Evidence State & Federal* § 803(2):1(c) (2d ed. 2001))); *Bayne*, 98 Md. App. at 176 ("'The courts seem to look primarily to the effect upon the declarant and, if satisfied that the event was such as to cause adequate excitement, the inquiry is ended.'" (Quoting 2 *McCormick on Evidence* § 272, at 206 (Strong ed. 5th ed. 1999))); *see also State v. Cunningham*, 337 Or. 528, 540 (2004) ("[B]ecause the focus is on the effect of an event on an individual declarant, the fact that some individuals might not have been excited by the incident does not bar admission[.]" (cleaned up); *Chapin*, 118 Wash.2d at 687 (1992) (in banc) ("[T]he startling nature of an event cannot be determined merely by reference to the event itself."); *State v. Carlson*, 311 Or. 201, 216, (1991) ("The startling-nature component is a relational concept, *i.e.*, whether an event is

sufficiently startling to qualify cannot be determined without focusing on the event's effect on the declarant.")

In this case, the foundation laid by the State adequately supported a finding that there had been a startling event. At the time of J.'s statement, Dr. M. testified that she was "broken," "almost incomprehensible," "crying hysterical," "so upset," and "started heaving" and "hyperventilating." Such manifestations of excitement as those support a reasonable inference that the confrontational nature of the meeting and the questions posed therein induced such a state of distress as to still J.'s reflective capabilities. The court's finding that the meeting constituted a startling event is supported by substantial evidence, and was not, therefore, clear error.[4]

We next consider whether J.'s statement was made while she "was still in the throes of the 'exciting event' and therefore not capable of reflective thought."[5] *Harmony v. State*,

[4] Appellant also argues that J.'s statement was the result of reflective thought, specifically, an attempt by her to shift the focus of the meeting away from "the problems with her job performance." He asserts that if even if the assault itself had been the startling event, "[J.]'s statements to Dr. [M.] did not qualify as an 'excited utterance' primarily because the lapse in time between the alleged rape incident and the report … was two weeks." For the reasons explained in the main text, we do not agree—the dispositive issue isn't whether the assault itself was sufficiently traumatic to trigger an excited utterance but J.'s state of mind and her emotional state when she made the statement during the meeting with Dr. M. and the representative of the placement agency. The testimony and the case law fully support the trial court's ruling that J.'s emotional state "including the crying, sobbing, hyperventilating, heaving, head in her hands, certainly describes" constitutes am "excited demeanor."

[5] Appellant also argues that J.'s statement was "the result of reflective thought" as opposed to a spontaneous reaction to the meeting. *See Morten*, 242 Md. App. at 548 (quotation marks and citation omitted). He asserts that if even if the assault itself had been the startling event, "[J.]'s statements to Dr. [M.] did not qualify as an 'excited utterance'

88 Md. App. 306, 320 (1991). To constitute an excited utterance, "the statement of the declarant must have been a spontaneous reaction to the [startling] occurrence or event and not the result of reflective thought." *Morten*, 242 Md. App. at 547 (quotation marks and citation omitted). In assessing whether an utterance was a spontaneous reaction, "we look at the totality of the circumstances to determine whether the foundation for its admissibility has been established." *Cooper v. State*, 163 Md. App. 70, 97 (2005). Among the factors that we consider in making that determination, the most significant is the amount of time that elapsed between the startling event and the declarant's utterance. *Morten*, 242 Md. App. at 548 (citation omitted). We also consider whether the utterance was made in response to an inquiry, *State v. Harrell*, 348 Md. 69, 77 (1997), as well as the nature of the statement, such as whether it was detailed, *Marquardt v. State*, 164 Md. App. 95, 129 (2005), *cert. denied*, 390 Md. 91 (2005), or self-serving. *Gordon*, 431 Md. at 536. Where, as here, a statement pertains to a *prior* startling event, "[t]he relationship between the subsequent startling event, the excited utterance generated by it, the prior event about which the statement comments, and the time between both startling events and the statement are [also] relevant[.]" *Bayne*, 98 Md. App. at 177. Though these factors guide

primarily because the lapse in time between the alleged rape incident and the report … was two weeks." We do not agree. Lapse of time is a factor in deciding whether a statement is admissible as an excited utterance, but lapse of time is not dispositive and weighing the significance of the lapse of time is generally a matter for the trial court. *See Bayne*, 98 Md. App. at 177 (The time between the prior event, the subsequent event, and the utterance are all factors that may be considered by the trial court in determining whether the utterance is indeed a spontaneous declaration or exclamation. We note that the trial court judge is uniquely situated to make that determination.")

our analysis, it is the "emotional state of the victim at the time of her response [that ultimately] governs admissibility." *Davis v. State*, 125 Md. App. 713, 716, *cert. denied*, 356 Md. 178 (1999).

Most significantly, Dr. M.'s testimony establishes that J. was in a profound state of emotional distress when she made her utterance. Her statement, moreover, occurred "while the exciting event [wa]s still in progress." *Morten*, 242 Md. App. at 548 (citation omitted). Accordingly, the timeliness of her statement weighs heavily in favor of our finding that the startling event prompted her statement.

Though J.'s statement was prompted by questions posed by Dr. M., those questions were general and non-leading.[6] *See United States v. Frost*, 684 F.3d 963, 974 (10th Cir. 2012) ("[E]ven if prompted by questioning, a statement may be admissible if the questions are somewhat open-ended"), *overruled on other grounds by United States v. Bustamante-Conchas*, 850 F.3d 1130 (10th Cir. 2017); *United States v. Phelps*, 168 F.3d 1048, 1055 (8th Cir. 1999); *State v. Thorngren*, 149 Idaho 729, 734 (2010). Moreover, while a statement made "in response to an inquiry … may be some indication of reflective thought," *Harrell*, 348 Md. at 77, that fact is hardly dispositive. Indeed, where, as here, "the circumstances are such that they indicate that the exciting event still dominates the declarant's thought processes, then the answer to a question is admissible." *Bayne*, 98 Md. App. at 180 (quotation marks and citation omitted).

[6] Although Dr. M. asked J. "did he make you have sex with him?" that leading question was posed while J. was already in the throes of excitement.

Appellant suggests that J.'s statement was self-serving, arguing that during the meeting J. "was … confronted with her poor [job] performance, which could have motivated her to fabricate a detailed excuse thereof." While Dr. M. and the placement agency coordinator may have intended for the meeting to resolve Dr. M.'s and J.'s respective grievances, the record does not reflect that J. had any such desire. To the contrary, it was she who, two weeks prior, had requested a transfer to another "host home." "Fabricat[ing] a detailed excuse" for her "poor performance" would have been contrary to that end. We also do not agree with appellant's characterization of J.'s statement as "detailed." Instead, the *lack* of detail contained in J.'s statement is more consistent with a spontaneous "blurt" than with a meticulous narrative indicative of reflective thought. The possibility of another motive is relevant as to the probative value of the testimony regarding J.'s statement but it does affect its admissibility.

Finally, we consider whether J.'s statement related to the startling event or condition at issue. "[A]n otherwise qualified excited utterance that includes comments about a prior happening may be admissible under the excited utterance … exception if the subsequent startling event that generates the utterance relates directly or indirectly to that prior event, *i.e.*, is likely to produce an exclamation about the prior event." *Bayne*, 98 Md. App. at 177. In this case, although unbeknownst to Dr. M. at the time, the meeting and questions posed therein were closely related to J.'s sexual assault.

In attempting to determine the cause of J.'s deteriorating job performance, Dr. M. posed questions to J., all of which were aimed at ascertaining the reason for the recent

changes in her temperament. Her answer to those questions, of course, was that she had been sexually assaulted outside of Dr. M.'s residence approximately two weeks prior. Under these circumstances, the meeting and the questions posed therein were "likely to produce an exclamation" about the sexual assault, and were, therefore, sufficiently related thereto. Accordingly, we hold that the trial court properly admitted J.'s statement as an excited utterance.[7]

THE JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] In its brief, the State asserts that J.'s statement is also admissible as a prompt complaint of a sexual assault under Maryland Rule 5–802.1(d). The trial court did not address this issue and neither shall we.

Finally, the State argues that any error in admitting the statement was harmless. The State asserts that the content of J.'s statement can be distinguished from the fact that she made a statement and that the trial court relied on the fact that the statement was made as opposed to its content in reaching its conclusion that J. was a credible witness. But to conclude that an error was harmless, the reviewing court must be convinced beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976). This standard applies in court trials as well as jury trials. *Nixon v. State*, 140 Md. App. 170, 191 (2001). In the present case, we cannot conclude beyond a reasonable doubt that the content of J.'s statement had no effect on the trial court's assessment of her credibility.