Circuit Court for Montgomery County
Case No. 134518C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3355

September Term, 2018

JORDY GARCIA-VILA

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Wells,

JJ.

Opinion by Kehoe, J.

Filed: February 18, 2020

A jury sitting in the Circuit Court for Montgomery County convicted Jordy Garcia-Vila, appellant, of first-degree assault and second-degree assault, and acquitted him of attempted murder. The court, in turn, found appellant not criminally responsible by reason of insanity and committed him to the Department of Health. Appellant raises three issues for our review, all of which pertain to the criminal responsibility portion of his trial:

1. Did the trial court err in excluding evidence regarding appellant's mental health?

2. Did the trial court abuse its discretion in permitting improper closing argument?

3. Did the trial court err in failing to respond accurately to a question from the jury?

We answer each question in the negative and will affirm the judgments of the circuit court.

Background

The underlying facts are undisputed. As of December 26, 2017, appellant resided in an apartment in Silver Spring with his mother, Nora Vila-Alvarez, and his older brother, Peter Garcia-Vila ("Peter").[1] During the fall of 2017 appellant began behaving strangely and was twice admitted to a psychiatric hospital. On December 25, 2017, appellant, Peter, and Ms. Vila-Alvarez celebrated Christmas at the home of appellant's sister, Cynthia. During the day's otherwise uneventful festivities, appellant talked to and laughed to himself. That evening, appellant, Peter, and Ms. Vila-Alvarez returned to the apartment in which they

[1] Because Peter and appellant share the same surname, we shall refer to the former by his first name to avoid confusion.

resided. Peter and Ms. Vila-Alvarez retired to their respective bedrooms. Rather than sleep in his bedroom, appellant elected to spend the night on the living room sofa.

The following morning, Peter was awoken when appellant entered his bedroom and took his cell phone charger. Peter protested, saying "hey, hey, that, that is mine."[2] Appellant replied, "[Y]ou're not using it" and left the room. Still lying in his bed, Peter picked up his tablet and proceeded to watch YouTube videos. At approximately 8:24 a.m., appellant returned to Peter's bedroom. Though Peter addressed appellant, the latter did not respond. Appellant's eyes were fixed upon a particular area of the room and he was breathing as if agitated. Appellant asked Peter what he had told their sister the day prior. In response, Peter asked appellant what he was talking about. Appellant repeated the question. Once again Peter asked appellant what he was referring to. When Peter attempted to pick up his clothes, appellant revealed a swiss army knife that he had been holding in his gloved hand behind his back. He proceeded to stab Peter in his back, head, shoulder, and neck.

Peter pushed appellant and screamed, "Mom!" Awoken by Peter's cry for help, Ms. Vila-Alvarez entered the bedroom. Upon seeing her wounded son, she exclaimed, "Oh my God, what did you do?" She then urged appellant to flee to avoid being arrested by the police. Ms. Vila-Alvarez then told the jury that, instead of heeding her plea, appellant remained "standing there like a robot." When she touched appellant's arm and told him

[2] At trial Peter and Ms. Vila-Alvarez testified in Spanish. All quotations derived from their testimony are translations rendered by sworn court interpreters.

that she was going to call the police, he grabbed her by the neck and forced her to the floor. Peter screamed, "[N]o, not, not my mom, not my mom," grabbed appellant's arm, and pushed him against a wall. He then urged his mother to leave and to call the police. Ms. Vila-Alvarez fled the bedroom, followed by Peter. They escaped the apartment through its main entrance, the door to which Peter held closed while Ms. Vila-Alvarez called the police.

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

Analysis

1.

Appellant contends that the court abused its discretion by prohibiting defense counsel from calling Ms. Vila-Alvarez and Julie L. Smith, Ph.D. to testify regarding his mental disorder. (Dr. Smith is a forensic psychologist who had performed a psychiatric evaluation of appellant prior to trial.) Appellant claims that the jury could have inferred from their testimony that his mental illness prevented him from forming the specific intent to cause serious bodily injury, which is an element of the crime of first-degree assault.

Prior to trial, appellant moved to bifurcate the proceedings into the determination of guilt stage and the determination of criminal responsibility stage and waived a jury trial as to the issue of criminal responsibility. Pursuant to that motion, the jury would first determine whether he was guilty of the crimes with which he was charged. If found guilty, the court would then determine whether any mental disorder from which he suffered absolved him of criminal responsibility. Appellant further moved that the jury be precluded

from hearing testimony that he had pled not criminally responsible. The court granted appellant's motions, and the case proceeded to trial.

During the State's case-in-chief, the defense elicited testimony regarding appellant's mental state in and around the time of the charged offenses. During his cross-examination of Peter, defense counsel asked whether appellant had begun acting strangely during the fall of 2017. Peter answered in the affirmative. Peter also affirmed that appellant had twice been hospitalized in a psychiatric facility during that period.

During his cross-examination of Ms. Vila-Alvarez, defense counsel sought to contrast appellant's behavior prior to and during the fall of 2017. Counsel asked, "Before the fall of 2017, Jordy helped around the house, didn't he?" The State objected. During a bench conference, the State argued that defense counsel's question exceeded the scope of direct examination. Anticipating that the defense intended to inquire about appellant's psychiatric condition, the court expressed concern that defense counsel was conflating the issues of whether appellant's mental disorder negated the specific intent elements of the charged offenses and whether it rendered him not criminally responsible for said offenses. Citing *Hoey v. State*, 311 Md. 473 (1988), defense counsel argued:

> [E]ven separating out the two issues, the State still has the burden of proof of mens rea, and the defense is allowed to put before the jury the fact of the defendant's mental state. [I]t's similar to the fact that we could argue voluntary intoxication, and that affects someone's mental state. Even though this is not an inebriation situation, the fact that someone does or does not

> have a specific mental health diagnosis, and what is or isn't going on in a person's head is still relevant to mens rea.[3]

The court sustained the State's objection, ruling that the question exceeded the scope of direct examination.

Defense counsel subsequently asked Ms. Vila-Alvarez whether she had instructed appellant to discontinue use of his psychiatric medication. The State objected, and a bench conference ensued. During that bench conference, defense counsel maintained that per *Hoey*, he was permitted to elicit evidence regarding appellant's mental state to show that appellant had been incapable of forming the specific intent to cause death or serious bodily harm. The court reiterated its concern that defense counsel was conflating the issues of whether appellant lacked specific intent and whether he was not criminally responsible. The court further opined that defense counsel's repeated references to appellant's psychiatric condition were "really jumbling things up." Protesting that defense counsel's line of questioning exceeded the scope of direct examination, the State suggested that defense counsel call Ms. Vila-Alvarez as his own witness and question her on direct. The court sustained the State's objection, ruling that the question exceeded the scope of direct and that appellant would not incur any prejudice as the result of his questioning Ms. Vila-Alvarez during the presentation of his defense rather than on cross-examination during the

[3] In *Hoey*, the Court of Appeals stated that evidence of a defendant's mental impairment is admissible for the limited purpose of demonstrating that the defendant lacked the *mens rea* of a particular offense at the time that defendant performed the corresponding *actus reus*. 311 Md. at 491–94.

State's case-in-chief. The court explained that while questions regarding appellant's lack of motive were "an appropriate response to the State's presentation," questions regarding his mental health were not.

At the close of the State's case-in-chief, the defense sought to recall Ms. Vila-Alvarez for the purpose of eliciting testimony regarding "how she reacted after Jordy was psychiatrically hospitalized" and "what if anything she told him with respect to the medications he was prescribed." The State objected, claiming that such testimony was irrelevant. The court sustained the State's objection, reasoning:

> I have to say that I think the defense is putting on an NCR defense in most of this testimony and not a defense that goes to specific intent which is what was the purpose, if any purpose, of the actions, the thought process in connection with the actions taken that are the basis for the charges.
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> The fact that he was hospitalized a couple of times recent to the events, some are vaguely on time but recent, I just don't think is probative of his specific intent at the time of the crimes. The fact that he was off his medication I do not believe is relevant to his specific intent. That is, did he have a purpose at the time of the events to cause death or serious bodily harm, et cetera. I think it's misleading to the jury[.]
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> * * *
>
> I think you're trying a criminal responsibility case[.]
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> I've got to hear from the doctor, perhaps out of the presence of the jury if there's an objection, as to her end of things but I haven't heard anything in the proffer about the mom's testimony that goes to the issue of the capability of having a purpose in mind when certain actions were taken as opposed to, as I said, whether he could appreciate the criminality of his conduct and conform his conduct to the requirements of the law.

Defense counsel then discussed his intent to call Dr. Smith, who had evaluated appellant and diagnosed him with "Schizoaffective Disorder, Bipolar Type," the symptoms of which may include psychotic thought processes, auditory hallucinations, and paranoid

delusions. The State objected to Dr. Smith's testifying during the guilt stage, arguing that consistent with the report she had prepared, the substance of her testimony would pertain solely to the issue of whether appellant was criminally responsible. The State further represented that Dr. Smith had explicitly stated that her analysis of appellant was limited to determining whether he was criminally responsible. Defense counsel responded that he neither intended to ask Dr. Smith whether appellant was criminally responsible nor planned on asking whether he "did or did not have a particular *mens rea* on the date in question."[4] Rather, counsel claimed, he intended to ask Dr. Smith to explain appellant's diagnosis and symptomatology. The defense further asserted, "I do think it would be proper and permitted for Dr. Smith to testify that in her opinion [appellant] was exhibiting symptoms of psychosis at the time of the event[.]" The court offered defense counsel the opportunity to question Dr. Smith outside the presence of the jury in order to determine whether she would be capable of offering an opinion regarding whether appellant was capable of manifesting specific intent when the crime was committed. The defense declined the court's offer and proffered that Dr. Smith would have explained the symptoms of psychosis and testified that the thought processes of individuals suffering from psychosis "don't form rational-

[4] Expert witnesses are prohibited from testifying to the ultimate issue of whether a defendant was capable of forming a particular specific intent. *See Gauvin v. State*, 411 Md. 698, 706 (2009); *Hartless v. State*, 327 Md. 558, 572 (1992) ("[T]he opinion of [the defendant's psychiatrist] concerning the defendant's actual intent at the time of the offense was properly excluded."); Md. Rule 5–704(b).

based intent, reality-based intent." The sole witness for the defense was an immigration attorney, who previously employed appellant. After eliciting testimony from that witness regarding appellant's prior employment, the defense rested.

A.

Provided that the other applicable rules of evidence are satisfied, evidence regarding a defendant's mental disorder is admissible either to negate the mental element of a crime or to prove that the defendant is not criminally responsible.[5] Where, as here, the proceedings are bifurcated, such evidence is not admissible for the latter purpose unless and until the defendant is found guilty. Md. Rule 4–314(b)(6)(A) ("Evidence of mental disorder … shall not be admissible in the guilt stage of the trial for the purpose of establishing the defense of lack of criminal responsibility. This evidence shall be admissible for that purpose only in the second stage following a verdict of guilty."). To be admissible during the guilt stage such evidence must both be supported by a sufficient factual basis and bear a rational nexus to appellant's inability to form the *mens rea* at issue. *Shiflet v. State,* 229 Md. App. 645, 679 (2016), *cert. denied*, 452 Md. 545 (2017). "Whether that rational nexus exists, and whether there is a sufficient factual basis to support the expert's testimony, is a matter committed to the sound discretion of the trial court, and a 'court's action in admitting or

[5] While evidence admitted to prove that a defendant is not criminally responsible bears on the appropriateness of criminal punishment notwithstanding guilt, evidence admitted to negate *mens rea* bears on whether that defendant is guilty of the crime with which he was charged.

excluding such testimony seldom constitutes grounds for reversal.'" *Id*. (quoting *Bryant v. State*, 163 Md. App. 451, 472 (2005), *aff'd*, 393 Md. 196 (2006)).

This Court's analysis in *Shiflet* is instructive. In that case, the defendant sought to introduce expert testimony describing his psychological profile to rebut the State's evidence that he had formulated the specific intent to kill. At a motions hearing, that expert witness testified that the defendant suffered from various mental disorders which adversely affected his ability to exercise impulse control. The court excluded the expert testimony. We held that the trial court did not abuse its discretion, reasoning that the proffered testimony did not "bear a 'rational nexus to the issues of premeditation and intent,'" and was therefore irrelevant. 229 Md. App. at 679. We explained that to establish such a nexus, the defense must establish "a direct connection between the fact and symptoms of the asserted mental illness and the specific mental state at issue." *Id*. at 679–80. Rather than merely identifying the illness or symptoms from which a defendant suffers and "opining generally on what the defendant might or might not have been able to do at the time," *id*. at 680, the proffered testimony must furnish adequate facts from which the jury could reasonably infer "that the defendant was suffering from the symptoms of that psychiatric disorder on the date in question." *Id.* at 679 (citations omitted). We further noted that "[b]ecause psychiatrists … lack the ability to reconstruct the emotions of a person at a specific time, they ordinarily are not competent to express an opinion as to the ... intent a person harbored at a particular time." *Id.*

People v. Wetmore, 583 P.2d 1308 (Cal. 1978) (*en banc*),[6] is illustrative of the rare circumstances in which evidence of a mental illness bears a rational nexus to and negates specific intent. The defendant in that case was found guilty of second-degree burglary and was subsequently adjudged not guilty by reason of insanity. The evidence presented at trial consisted of the testimony of the occupant of the burglarized apartment and three psychiatric reports. The apartment's occupant testified that he had left the apartment for three days, and upon his return discovered the defendant inside. The defendant was wearing the occupant's clothes and cooking his food. The occupant later discovered that several of his belongings were missing. According to the psychiatric reports, the defendant had a "long history of psychotic illness." *Id.* at 1310. The reports further advised that upon being released from a hospital the defendant "began to believe that he 'owned' property and was 'directed' to [the] apartment." *Id.* Upon discovering that the apartment door was unlocked, "he was sure he owned the apartment." *Id*. Only upon the arrival of the police did he realize that he did not.

On appeal, the Supreme Court of California held that the trial court had erroneously excluded the psychiatric reports during the guilt stage. According to those reports, the

[6] At the time that *Wetmore* was decided, California recognized diminished capacity as a defense. Accordingly, in W*etmore* the California Supreme Court did not distinguish between negating specific intent and an appellant's diminished capacity. *See People v. Saille*, 820 P.2d 588, 54 Cal.3d 1103, 2 Cal. Rptr. 2d 364 (1991) (providing an overview of California's historical recognition and subsequent elimination of the defense of diminished capacity).

Court reasoned, the defendant entered the apartment while under the delusion that he owned it and the contents thereof. That delusion was probative of whether the defendant was capable of forming the specific intent to commit a larceny or felony—the applicable *mens rea* requirement for second-degree burglary.

B.

Returning to the case before us, Dr. Smith diagnosed appellant with "Schizoaffective Disorder, Bipolar Type." According to her report, appellant's symptoms include "depression, irritability, paranoia, auditory hallucinations, . . . persecutory delusions, and sleep disturbances." Among appellant's delusions, Dr. Smith noted, were the beliefs that his brother was trying to poison him and that his brother had sexually assaulted him. "[A]t the time of the offense," the report continued, appellant "was exhibiting symptoms of psychosis," and "was acting on his delusional beliefs." Based on the above, Dr. Smith concluded that appellant had "lacked substantial capacity to appreciate the criminality of his conduct and could not conform his conduct to the requirements of the law."

The delusions described in Dr. Smith's report may well have furnished appellant with a motive for intending to cause Peter serious bodily injury. His mental illness may even have compromised his ability to exert self-control. The delusions described by Dr. Smith did not, however, provide a factual basis from which the jury could have reasonably concluded that he lacked the specific intent at issue at the time of this incident. The mere fact that appellant's specific intent was the product of irrational, confused, or delusional thoughts, without more, does not negate that intent. To do so, the symptoms of a mental

illness must actually prevent that intent from forming. *See Shiflett*, 229 Md. App. at 678–79 ("[D]efense evidence that could prove that the intent element of the crime did not exist, whether due to mental impairment or some other reason, is admissible." (citing *Hoey*, 311 Md. at 494)). Accordingly, the court properly excluded the testimony of Dr. Smith and Ms. Vila-Alvarez.

The uncontested facts in this case clearly indicate that appellant could, in fact, form a specific intent at the time of his attack on Peter. Prior to entering Peter's room, appellant placed a glove on his dominant hand and procured a pocket knife. As he entered Peter's room he concealed the knife behind his back. He twice asked Peter what he had told their sister. When Peter attempted to pick up his clothes, appellant stabbed him in the back. He continued to stab Peter in his neck, chest, and head until interrupted by Ms. Vila-Alvarez. When she threatened to call the police, appellant grabbed her by the neck and forced her to the ground, presumably to prevent her from doing so. Appellant pursued Peter as he fled. In the course of that pursuit, appellant attempted to pry open the apartment door. Appellant's behavior during the attack clearly evinced his ability to form the specific intent to cause serious bodily harm.[7]

[7] In its brief, the State also argues that the appellant's failure to notify the prosecution during discovery that Dr. Smith would address *mens rea* constituted a discovery violation warranting the exclusion of such testimony. Regardless of the merits of this contention, it was not the basis for the trial court's decision to exclude Dr. Smith's expert testimony.

2.

Appellant next contends that the trial court abused its discretion in permitting the State to remark in its rebuttal closing that "there is no evidence in this case that this defendant is mentally ill."

During its rebuttal closing, the prosecutor argued:

> The second-degree assault is what he did to Nora. He didn't use a knife on Nora. He tried to kill his brother. A lot was said, I remember in, in opening statement, [defense counsel] told you that he's mentally ill, that he's out of his mind, that he's, that he doesn't know what he's doing. Remember, His Honor said pay attention to what the evidence [sic]. There is no evidence in this case that this defendant is mentally ill.

The defense objected to the lattermost statement. At a bench conference, defense counsel first contended that, by underscoring the dearth of evidence of appellant's mental disorder, the State had effectively shifted the burden of proof to appellant. He then argued that the State had mischaracterized Peter's testimony regarding appellant's psychiatric hospitalizations. The State countered that its remark was a proper response to defense counsel's opening statement. The court overruled defense counsel's objection, reasoning that his opening statement had opened the door to the State's remarks, and that the State's remarks fairly responded thereto.

Attorneys enjoy "great leeway in presenting closing arguments to the jury." *Degren v. State*, 352 Md. 400, 429 (1999). During closing, "counsel may 'state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence[.]'" *Smith v. State*, 388 Md. 468, 488 (2005) (quoting *Henry v. State*, 324 Md.

204, 230 (1991)). "'Counsel is free to use the testimony more favorable to his side of the argument to the jury, and the evidence may be examined, collated, sifted, and treated in his own way.'" *Id.* at 487 (quoting *Wilhelm v. State*, 272 Md. 404, 412 (1974)). When opining on the evidence presented, counsel may "comment on its qualitative and quantitative significance." *Smith v. State*, 367 Md. 348, 354 (2001). Attorneys are likewise free to "indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions." *Warren v. State*, 205 Md. App. 93, 132 (quotation marks and citation omitted), *cert. denied*, 427 Md. 611 (2012). Such oratorical liberty is not, however, unbridled. Generally, "the court should not permit counsel to state and comment upon facts not in evidence or to state what he or she would have proven." *Smith*, 388 Md. at 488. The State generally may not, moreover, "'comment upon the defendant's failure to produce evidence to refute the State's evidence' because it could amount to an impermissible shift of the burden of proof." *Lawson v. State*, 389 Md. 570, 595 (2005) (quoting *Eley v. State*, 288 Md. 548, 555 n.2 (1980)).

Should closing argument run afoul of these general rules, "reversal is only required where it appears that the remarks of [the] prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Beads v. State*, 422 Md. 1, 10 (2011) (quoting *Degren*, 352 Md. at 431). Whether counsel's "'comments were prejudicial or simply rhetorical flourish[es] lies within the sound discretion of the trial court.'" *Id.* (quoting *Degren*, 352 Md. at 431). Accordingly, we will only reverse upon

finding that the trial court "clearly abused its discretion and prejudiced the accused." *Id.* (quoting *Degre*n, 352 Md. at 431).

These principles are subject to some limited exceptions. One of them was at issue in *Wise v. State*, 132 Md. App. 127, 148, *cert. denied*, 360 Md. 276 (2000). In *Wise*, this Court held that "a defense attorney's promising in opening statement that the defendant will produce evidence and thereafter failing to do so does open the door to the fair comment upon that failure[.]" *See also Eastman v. State*, 47 Md. App. 162, 166–67 (1980).

In his opening statement, appellant's trial counsel repeatedly forecast that he would present evidence that appellant was "literally out of his mind" during the assaults and was, therefore, incapable of formulating the specific intent to cause serious bodily injury. The defense advised the jurors that Peter ignored appellant's mental illness and that Ms. Vila-Alvarez "didn't want to accept that [appellant was] mentally ill." He informed them that appellant "desperately needed" his medications but had been instructed by Ms. Vila-Alvarez not to take them notwithstanding two prior psychiatric hospitalizations. Consistent with this theme, in his closing argument, defense counsel told the jury:

> Jordy was literally out of his mind. The lights were on, no one was home. And now that we've heard all the evidence and the testimony, we know he did not form the specific intent, the mental state, specific intent to kill his brother, to intend serious, physical injury to his brother.
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> * * *
>
> I want to talk about specific intent and these jury instructions and the difference between that and general intent. Attempted first-degree murder, attempted second-degree murder and assault in the first degree, those are specific intent crimes. Intent, what is in someone's mind? What's going on upstairs? Who is home? Are the lights on? Are you out of your mind or in your mind?

* * *

The lights are on and no one is home.

In light of these statements, the trial court did not err in permitting the prosecutor to point out in rebuttal that that no such evidence had been introduced. In this regard, the prosecutor was certainly correct. During the guilt stage of the trial, appellant's mental illness was relevant only to the determination of whether he could form the specific intent to inflict serious bodily harm when assaulting Peter. Neither the testimony of Ms. Vila-Alvarez nor that of Peter furnished a factual basis from which the jury could have reasonably inferred that he had been incapable of doing so.

3.

Finally, appellant contends that by representing to the jury that "there are no laws relevant to this task about which you have not been instructed" the court inaccurately represented that appellant's mental illness was irrelevant to whether he had formed the specific intent to cause serious bodily injury. Appellant further claims that by responding as it did the court violated its obligation to resolve the jury's confusion.

During deliberations, the jury submitted a note to the court asking, "If a jury is questioning the mental health of a defendant are there any laws that need to be considered?" The note continued, "We are basing this on evidence provided by Peter and [Ms. Nora Vila-Alvarez's] testimony." Defense counsel requested that the court give the jury a version of Maryland Criminal Pattern Jury Instruction 3:31, which the defense had modified to include the italicized language.

> Intent is a state of mind and ordinarily cannot be proven directly, because there is no way of looking into a person's mind. Therefore, a defendant's intent may be shown by surrounding circumstances. In determining the defendant's intent, you may consider the defendant's acts, statements, *evidence of mental impairment*, as well as the surrounding circumstances. Further, you may, but are not required to, infer that a person ordinarily intends the natural and probable consequences of his acts.[8]

(Emphasis added). The court declined to give the requested instruction. Instead, over defense objection, the court provided the jury a written instruction, which read: "The role of the jury is to decide whether or not the State has proven each and every element of each charge by proof beyond a reasonable doubt. There are no laws relevant to this task about which you have not been instructed." The court explained to counsel that by focusing on the burden of proof and the elements of the offenses, it sought to disabuse the jury of the notion that appellant's "generalized mental health status" was a relevant consideration.

"We review a trial court's decision to give a particular jury instruction under an abuse of discretion standard." *Appraicio v. State*, 431 Md. 42, 51 (2013) (citations omitted). We will not disturb such a decision absent a clear showing that the trial court's discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.* (Internal quotation marks and citations omitted). "[A] trial court must respond to a question from a deliberating jury in a way that clarifies the confusion evidenced by the

[8] Following closing argument, the court provided the jury with written jury instructions. Among those instructions was an unmodified version of MCJI.

query when the question involves an issue central to the case." *State v. Baby*, 404 Md. 220, 263 (2008).

The circuit court properly declined to give appellant's recommended instruction, which sought to modify the pattern jury instruction. As a matter of law, appellant failed to produce sufficient evidence to generate the proposed instruction on the ability of a mental disorder to negate intent. *See Evans v. State*, 28 Md. App. 640, 667 (1975) ("Maryland has consistently held that [jury] instructions need not and should not be given on particular defenses unless and until there is evidence sufficient to generate a legitimate jury issue with respect to a particular defense."), *aff'd*, 278 Md. 197 (1976). In order to warrant the requested response to the jury's note, appellant needed to do more than produce "some evidence" that he suffered from a mental disorder. *See Arthur v. State*, 420 Md. 512, 526 (2011) ("For an instruction to be factually generated, the defendant must produce 'some evidence' sufficient to raise the jury issue."). He also needed to furnish "some evidence" that the symptoms from which he suffered were of such a nature and of such severity as to prevent him from forming a specific intent at the time of the assault. *Cf. Bazzle v. State*, 426 Md. 541, 555 (2012) ("A defendant is not entitled to an instruction on voluntary intoxication unless he can point to 'some evidence' that 'would allow a jury to rationally conclude' that his intoxication made him incapable of 'form[ing] the intent necessary to constitute the crime.'") (citations and footnotes omitted); *Sutton v. State*, 139 Md. App. 412, 428–29 (2001) (holding that a voluntary intoxication instruction was not warranted absent evidence establishing an impairment of the defendant's ability to for a specific

intent). Neither at trial nor on appeal did appellant present any facts from which a jury could rationally conclude that his mental disorder rendered him incapable of forming the specific intent to cause serious bodily injury during his assault of Peter. Given the absence of any such evidence, the court properly declined to adopt appellant's proposed instruction and accurately advised the jury that there were no relevant laws about which it had not been instructed.

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